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VOLUME TWO

Appendix to the Journal of the Assembly

LEGISLATURE OF THE STATE OF CALIFORNIA
1965 REGULAR SESSION

REPORTS

January 4, 1965—June 18, 1965



HON. JESSE M. UNRUH
Speaker

HON. JEROME R. WALDIE
Majority Floor Leader

HON. CARLOS BEE
Speaker pro Tempore

HON. ROBERT MONAGAN
Minority Floor Leader

JAMES D. DRISCOLL
Chief Clerk of the Assembly

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ASSEMBLY INTERIM COMMITTEE REPORTS

1963-1965

Volume 10

Number 17

REPORT OF THE ASSEMBLY INTERIM COMMITTEE ON EDUCATION

MEMBERS OF THE COMMITTEE

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LEO J. RYAN, *Vice Chairman*

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JANUARY 1965

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Michael A. Manley, *Consultant* (December 1964-January 1965)

Cristine B. Trask, *Secretary*

Gilbert M. Oster, *Legislative Intern* (June 1963-June 1964)

David M. Blicher, *Legislative Intern* (September 1964-January 1965)

REPORT OF THE SUBCOMMITTEE ON PERSONNEL PROBLEMS

Leo J. Ryan, *Chairman*
E. Richard Barnes
Jack T. Casey
Mervyn M. Dymally

Edward E. Elliott
Charles B. Garrigus
Joe A. Gonsalves
Stewart Hinckley

Published by the

ASSEMBLY

OF THE STATE OF CALIFORNIA

JESSE M. UNRUH
Speaker

JEROME R. WALDIE
Majority Floor Leader

JAMES D. DRISCOLL
Chief Clerk

CARLOS BEE
Speaker pro Tempore

CHARLES J. CONRAD
Minority Floor Leader

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LETTER OF TRANSMITTAL

January 8, 1965

HON. JESSE M. UNRUH
*Speaker of the Assembly, and
Members of the Assembly
Assembly Chamber, Sacramento*

GENTLEMEN: Pursuant to House Resolution No. 500.5, adopted on June 21, 1963, the Assembly Interim Committee on Education herewith submits its final report of the Subcommittee on Personnel Problems.

Respectfully submitted,

CHARLES B. GARRIGUS, *Chairman*
LEO J. RYAN, *Vice Chairman*

Subcommittee on Personnel Problems

RYAN, *Chairman*

BARNES

CASEY

DYMALLY

ELLIOTT

GARRIGUS

GONSALVES

HINCKLEY

REPORT OF THE
SUBCOMMITTEE ON PERSONNEL PROBLEMS
of the
ASSEMBLY INTERIM COMMITTEE
ON EDUCATION

MEMBERS OF THE SUBCOMMITTEE

LEO J. RYAN

Chairman

E. Richard Barnes *

Jack T. Casey

Mervyn M. Dymally

Edward E. Elliott

Charles B. Garrigus

Joe A. Gonsalves

Stewart Hinckley

January 1965

* Assemblyman Barnes does not concur in the portions of the report which deal with academic freedom and unprofessional conduct. He has submitted separate views on these topics which appear at the conclusion of this report.

SUBCOMMITTEE ON PERSONNEL PROBLEMS

The Subcommittee on Personnel Problems was established in June 1963 to study various legislative proposals, resolutions and problem areas related to school district employees and their employment duties. The committee was instructed by the full committee chairman, Assemblyman Charles B. Garrigus, to conduct any studies and investigations necessary in order to present legislative proposals to the 1965 session of the Legislature.

Measures submitted to this subcommittee were as follows: House Resolution 429 (relating to academic freedom of school teachers); House Resolution 128 (state college faculty research); House Resolution 244 (year-round use of facilities of higher education); House Resolution 546 (relating to unprofessional conduct); Assembly Bill 271 (retirement benefits for teachers); Assembly Bill 404 (classifications of administrative employees); and Assembly Bill 310 (health plan for school employees).

Each of the above proposals was studied at length, although the majority of final recommendations made by this committee are stated in nonspecific terms. In general, the committee has attempted to avoid endorsing any particular proposal and rather has endeavored to discuss the broad issues involved in each measure and to make recommendations which relate to the broad issues, rather than the recommendation of specifics.

ACADEMIC FREEDOM

House Resolution 429 (1963)

RECOMMENDATIONS

1. The committee believes that the defense and maintenance of academic freedom in the public schools of this state is a direct charge upon local school district governing boards and officials of local school administrations. The committee urges vigilance on the part of the citizens in order to ward off slanderous and unsubstantiated attacks upon the public school system and its personnel.

2. Should these attacks upon academic freedom continue at the present level, this committee believes the Legislature should initiate a full-scale investigation of the problem.

INTRODUCTION

On July 11, 1963, the Assembly assigned to the Rules Committee for reference to the proper interim committee the subject matter of House Resolution 429 (Ryan) of the 1963 session. HIR 429 reads as follows:

WHEREAS, Academic freedom, including free and unqualified inquiry in areas of controversial ideas, has historically been recognized in this State as an essential facet of an educational system designed to meet the highest standards possible to serve not only the youth of this State but all of its people; and

WHEREAS, Concern is growing over the many pressures currently being exerted to restrict academic freedom, and an examination should be undertaken of all influences and causes tending to restrict academic freedom; now, therefore, be it

Resolved by the Assembly of the State of California, That the Assembly Rules Committee assign to an appropriate interim committee for investigation and study the subject of academic freedom of teachers in all public schools and educational institutions and such interim committee shall report its findings thereon, together with its recommendations, to the Assembly not later than the fifth legislative day of the 1965 Regular Session of the Legislature.

The Assembly Rules Committee referred this subject matter to the Assembly Education Committee, which in turn assigned the investigation of this subject to its Subcommittee on Personnel Problems.

The format of the committee report that follows is unique. Our decision has been to let the matter speak for itself by placing before the members of the Legislature and the citizens of California large portions of actual testimony taken in committee hearing. We do this without intent to embarrass or expose any individual or organization, but rather with the desire to keep our interpretive text at a minimum and concentrate our attention upon a statement of legislative policy toward academic freedom.

The remarks we have selected for publication are, we believe, representative of the tenor of the whole hearing, and in themselves are worthy of publication to a wider audience than is commonly encountered in legislative hearings. The entire transcript is of public record, all information was presented under oath, and any persons desiring the complete transcript of the Paradise hearing may secure it by writing the office of the Assembly Committee on Education in Sacramento.

The Slender Thread

No one can follow the history of academic freedom in this country without wondering at the fact that any society, interested in the immediate goals of solidarity and self-preservation, should possess the vision to subsidize free criticism and inquiry, and without feeling that the academic freedom we still possess is one of the remarkable achievements of man. At the same time, one cannot but be appalled at the slender thread by which it hangs, at the wide discrepancies that exist among institutions with respect to its honoring and preservation; and one cannot but be disheartened by the cowardice and self-deception that frail men use who want to be both safe and free. With such conflicting evidence, perhaps individual temperament alone tips the balance toward confidence or despair.¹

The tensile strength of this "slender thread" has been sorely tested in numerous communities throughout California in recent years; in some the thread was held, in others the jarring caused by the "snap" has wrought wounds from which communities are still seeking to recover. In all instances placed before the committee the evidence of tension and turmoil was appalling.

When national attention was focused on Paradise, California, in a *Life Magazine* article, the State Assembly deemed it advisable to initiate an inquiry into the influences and causes of the turmoil and the debilitating effects wrought upon academic freedom.

We state quite frankly that we were highly disconcerted to find it necessary to initiate this sort of investigation. It is a sad commentary upon the state of academic freedom in our public schools when the irresponsible and often times vicious allegations and misrepresentations of modern "know-nothings" can so upset the harmony of and local control over public education that circumstances call for a legislative investigation with an eye toward corrective legislation.

Committee Findings

A reading of the materials contained in the following section of this report provides a background for the committee's findings.

The committee finds:

- (1) That precipitation of attacks upon local school officials and teachers is often instigated initially by the activities of persons who are not members of the community in which the attacks are made.
- (2) That these persons are often representatives of a political persuasion and that an unjustified and uncalled for "link" is established

¹ Hofstadter and Metzger, *The Development of Academic Freedom in the United States*, Columbia University Press, 1955, p. 509.

between political concepts with which they disagree and the concept of academic freedom. The equation thus established provides an emotional and anti-intellectual framework within which sweeping attacks upon unassociated political issues are translated into attacks upon school administrations, curricula and teaching methods.

(3) That members of the community who eventually warm to the attack are often times individuals with no children presently attending the schools in the community (or with no children at all); and who, furthermore, have little or no knowledge of the quality or nature of what is being taught in the classroom based on personal experience.

(4) That disseminators of misleading or libelous materials have received such information from sources outside the community and passed it on to others in the community without questioning or ever seeking to establish the veracity of such material.

(5) That teachers who have utilized political propaganda of all persuasions, with the approval of local school officials, as basic tools in an effort to develop the analytical and critical faculties of their students, have been viciously attacked; and that teachers who will not bow to pressure and harassment must face a totally unnecessary fight for their academic lives.

(6) That individuals who have sought to serve their community as members of school boards or in other official capacities have done so with a "heavy heart" in view of the extraordinary harassment of them as individuals and the consequent interruption of their family and business life.

(7) That school districts lose heavily both in terms of time and energy spent in self-defense and dollars and cents when bond issues are lost time and again, not for reasons of cost or educational need or the lack thereof, but because the validity and necessity of further educational expenditures becomes submerged in highly volatile and unsubstantiated charges.

(8) That students lose incalculably in the impairment of their educational opportunities when the ability to teach and develop curriculum undergoes an ideological attack.

Summary

On February 20, 1963, the committee held hearings in Paradise, California, as part of the study inaugurated under the terms of HR 429.

The testimony of the Superintendent of the Paradise Schools set out in full below, illustrates the nature and extent of the situation in Paradise.

Q: Mr. Tregarthen would you start by explaining to the committee what happened here in Paradise in recent months that led to the publicity that your school district has had, and the sequence of events from the official side of the school district as far as you are concerned.

Superintendent: Thank you, I will be glad to do so. I can give you the sequence of events to give you an historical perspective, and I can touch only upon the highlights. I must tell the

committee something they know from observation. Paradise is a wonderful community. It has wonderful people, wonderful climate, and an outstanding geography. Despite this, over a period of time a history of tension and turmoil has existed. Much of it has centered around the formation of the unified school district, the location of the high school site, and the criticism of teaching methods. Specifically, in February 1959, before an American Friends Service Committee Human Rights Conference, a group from the American Legion came to the high school and asked to address students on the dangers of subversion at the conference. Arrangements were made for them to meet with the administrators and several members of the school board and the press in the principal's office, at which time they voiced their concern.

Beginning in the spring of 1961, arrangements were made by various groups to bring speakers on anti-communism to speak in our community. These speakers included a Mr. Woolery, Mr. Billy Joe Hargis, Mr. Vanderfort and Mr. Brustadt. The Butte County Speakers' Forum was active in conducting meetings. Study groups were formed and citizens of the community were invited to participate. At these meetings the speakers made such statements as these, 'Some teachers teaching four classes of 25 pupils influence day after day 100 youth a year in a continuing brainwashing program.' Excerpts were read from persons purported to be pro-Communist whose books could be found in a school library. They said the pro-Communists influenced parents, speakers at PTA meetings, career meetings, and courses for teachers. A claim was made that the Communist conspiracy was to get one or more teachers into the school system who were not loyal Americans. The National Congress of Parents and Teachers, the United Nations, the National Education Association, President Eisenhower, President Truman, Chief Justice Earl Warren, the National Council of Churches, and many other agencies and people were labeled as part of the Communist conspiracy.

In September 1961, at an open house at the high school, a parent questioned the use of the 11th grade U.S. history textbook, *Our Nation's Story*, and also a discussion of the United Nations in our curriculum. On October 31, Halloween, 1961, a family distributed a mimeographed sheet attacking Mrs. Franklin, and the Asilomar Conference. The leaflet was handed out attached to a candy sucker for trick-or-treaters. During this period of time, literature on anti-Communist, racial prejudice, warning of subversion in schools, government, and churches, was distributed to members of the committee, board and teachers. Most of this was anonymous. There were innumerable telephone calls, many of them anonymous, to board members, community members and school people. An attempt was made to pass out on the high school campus handbills. There were letters to the editor which questioned the patriotism of the school people and Mrs. Franklin in particular. Pamphlets were distributed attacking isolated passages from texts and suggested that authors were not 100 percent American. Youth study groups on anti-communism were formed and a Minutemen's group was established, and some Paradise High School students were members. In Feb-

ruary 1962, a meeting of parents of children who had attended the Asilomar Conference with representatives from the American Friends' Service Committee was arranged. A group came to the meeting and challenged Mr. Seever, the American Friends' Service Committee representative. They asked such questions as, 'Would you defend your country? Would you want your daughter to marry a Negro?' Needless to say, these questions were not relevant to the discussion.

In the spring of 1962 the Oroville *Mercury* printed an editorial which attacked the Paradise teachers' attendance and remarks at a meeting in San Francisco. During this period of time parts of the text that Mrs. Franklin used in her class were duplicated and distributed throughout the community as evidence of subversion in the schools. In September of 1962 each of our new teachers received an anonymous letter degrading the school system and casting doubts upon teaching methods employed. On September 14 a letter to the editor was printed from the American Legion Americanism Committee, which suggested to people that they not vote Yes at the coming bond election. They listed a number of complaints about ultraliberalism. On September 18 the bond election lost. The latter part of September and early part of October two public meetings were held, at the first of which the American Legion Americanism Committee was asked to present their charges. For some years we have had statements made throughout the community that opponents had a file of documented evidence proving that Mrs. Franklin was subversive. The staff and community waited anxiously to finally have these aired publicly. As finally presented, they were meaningless. Nevertheless, one week later these charges were answered by school people at which time a large group of people attending gave the board of trustees and Mrs. Franklin a standing ovation. To a great degree, these public meetings provided a catharsis for the entire situation. Immediately following this, however, another incident occurred in which a parent called the high school and called on the intermediate school, complaining about a national school assembly in which a group of colored singers sang.

In the fall of 1962 Mrs. Franklin filed a lawsuit. In April 1963, at the board election, the incumbents ran for reelection and were opposed by three people who ran on a platform of economy, teaching the fundamentals, elimination of life adjustment classes, reducing adverse publicity which the schools had had, and the elimination of psychological testing. After a spirited campaign, the board members were reelected by a comfortable majority.

In April of 1963 a *Life Magazine* article appeared which described the unrest in Paradise and defended Mrs. Franklin. It also defended and praised the board and the community for their Americanism in withstanding the attack. On October 8, 1963, a bond election for the high school lost by 2 percent. A bond election was held on February 11, 1964—last week. During the campaign, opponents of the election, in letters to the editor, stated among other things that until Bibles were returned to the classroom, there would be no bonds. Another letter to the editor asked for economy in school construction. Another stated that until a

lawsuit was settled upon, it should be defeated. Another was to the effect that until subversion was eliminated from our schools, the bonds should be defeated. Radio broadcasts carried out the same themes. The bonds carried by a 69 percent majority because of the determination of this community that they wanted adequate classroom facilities for the boys and girls of Paradise. The remarkable citizens committee for schools conducted an extensive and splendid campaign.

Recently the Bible Presbyterian Church again attacked Mrs. Franklin. This brings us to the next occurrence, which is this Assembly Education hearing.

I would be glad to answer any questions. There are other members in this group who will tell you what the impact of the attack has been, the pressures people have undergone, and some of the things we have done to withstand the attack.

The following exchanges, between members of the committee and local school officials, illustrate the injurious and wasteful effects that are brought about by the uninformed attacks of a small segment of the community.

Q: Mr. Russell, inasmuch as you are principal of the high school which became involved in all of this, can you comment on what effect this controversy has had on your administration of what you consider a normal and worthwhile high school curriculum?

A: Yes, I will. Mrs. Franklin touched upon some of the problems, tensions, and so forth, that she felt because of the attacks. I would like to talk a little bit about the effect it has had upon the Paradise Schools. The total effect on the Paradise Schools cannot ever be completely measured. It can be described only in part. The toll in human dignity and health can only be mentioned. Specifically, some of the effects have been, first of all, the expenditure of time on the part of the administration and teachers during the past two and a half years counteracting the attacks from these critics. It has been tremendous. Time expended in this way should have been used for curriculum development, the provision of instruction, and other important educational matters. The time spent defending our schools, if translated into money, would run into thousands of dollars. Had this time and energy been directed to improvements of the program in the Paradise Schools, young people would be receiving a much better educational program. At times the preoccupation of the administrative staff on these problems has placed a heavy load on the shoulders of my teachers and personnel. Unfortunately we were sometimes unavailable to help them solve pressing education problems. Secondly, the impact caused by the aroused distrust and suspicion was an important factor. One speaker came to our community attacking in his speech every public agency beginning with our local police force on up to the highest federal offices, consequently bringing pressure upon school officials and the Board of Education. These attacks may have been a factor for defeating the two bond issues prior to the successful election this month. If this is the case, then these people have

prevented not only the youngsters of Paradise from having an adequate opportunity for learning, but they have also cost the taxpayers a considerable amount of money. The cost of these additional elections alone has run into the several thousands of dollars, but this is nothing compared to the increased responsibility in our schools now as compared to three years ago.

In summary, it can be definitely stated that the attacks on the Paradise schools have had the following adverse effects. First, the opportunity for our young people to learn has been impaired. Next, they have made it harder for us to teach, and, finally, they have increased the cost of education to the local taxpayer. The impact on the Paradise schools, because of these views of people, has been considerable. I wish to point out in closing that in spite of these attacks and the above adverse attacks on the schools, we did not alter our educational program. We did not remove questioned textbooks from the curriculum, and we are continuing to study controversial issues. As a member of the professional staff of the Paradise Schools, I feel that the defense of our beliefs and our educational program is well worth the effort.

A major portion of the Paradise controversy revolved around, as we have seen, the teaching methods and curriculum of one high school history and civics teacher. We have set forth below that portion of her testimony in which she describes the teaching methods she used in attempting to develop the critical and analytical faculties of her 12th grade students.

"As a teacher of American government at the 12th grade level, I feel that I have a tremendous responsibility in helping to develop the qualities, skills, attitudes, and habits which will enable our students to attain the very highest level of citizenship. To me, this high level of citizenship requires a sense of social sensitivity and civic responsibility. It implies that a citizen have respect for human dignity, that a citizen have respect for the open society and the democratic process, and that a citizen have respect for the law and a sense of involvement to help make the law. If one stops to analyze the citizen's role in making the law, he will realize that direct participation in voting demands an educated, well-informed voter in order to achieve the best that a representative democracy can offer. A good citizen must have learned the skills to apply rational and logical solutions which involve making judgments. Our students will soon be leaving school, some to go to college and others to have no more formal education. It is therefore imperative that the highest level of maturity be developed in all senior students and that the school provide them with the tools for critical analysis. Although this is gradually developing through the years, the maturity level of senior students permits and makes important such critical analysis of our current issues of the most significant nature. The nature of the term "issue" implies controversy, with the choice of alternatives according to the individual's belief. Allowing the students to examine issues and to make choices implies a trust in the democratic process. Many people would rather have students learn by indoctrination, that certain pat cliches be taught over and

over again, but this type of teaching does not allow for critical analysis which to me is the crux of the job of every single voter in the United States.

"What is the method of critical analysis? I should like to give an example of the method that I employ in my teaching. Having read an article, a student is asked to answer the following questions—and I would like to point out that these are not original with me. They have been used by political scientists for a long time. They are first given an article to read and the students are asked, 'What is the event? Is there any event? What details have been included about the event and why?' This *why* is very important and underlined. Then we ask about the propagandists. 'Who puts this piece of literature out? Who is he? What is his relation to the event? What are his assumptions? What are his aims?' (This is very difficult for some students at first but you would be surprised how simple it becomes later on.) Then we study the propaganda itself. The students tell me they enjoy this unit the most of any unit we have. 'What is the fact? What are facts? What do you as a student accept as facts? What judgments are made by the author of this piece of literature? Are the judgments based on fact?' And when we get there we have a fact-judgment relationship quotient. 'What rhetorical devices are in evidence?' The students here discuss all kinds of devices such as name calling, transfer, glittering generalities, card stacking, and so forth. 'What is the logical pattern of the argument?' Naturally not all questions can readily be answered. The wise student learns, however, that these are the questions he should ask of himself, and thus critical analysis of reading materials becomes a habit. The fallacy of logic and non sequitur arguments, faulty syllogisms, and other false analogies, are explained to the student. We advance by applying the above principles to simple commercials and finally to articles written by people of such divergent views as F. J. Cook, Frank Donner, J. Edgar Hoover, Carey McWilliams, Dan Smoot, William Buckley and Robert Welch, just to name a few. They are not told what to think. They are told to think. An essential point to make here is that frequently an article is chosen for reading material because of the author's relationship to the event described, and thus it might be necessary to find out what Barry Goldwater, Nelson Rockefeller, Arthur Schlesinger, Bertrand Russell, and many other persons think. This gives the reader a chance to make a critical analysis for himself. Thus two students taking the same topic with opposing views may both come out with A's, providing that the method of critical analysis was applied to the materials studied."

In response to questions from the committee as to whether she utilized material from a variety of political persuasions or points of view, this teacher indicated that she had often done so and encouraged her students to do so on their own.

The success of teaching methods employed by the teacher being attacked and the respect in which they were held by informed members of the community were amply demonstrated by the remarks of one Paradise citizen.

Mrs. Wesley: I am Mrs. Constance Wesley. I have lived in Paradise since 1951. I have two boys who are attending Chico State College. Both of them have been students of Mrs. Franklin's class.

Q: Would you address yourself to this question—as it relates to academic freedom in this situation?

A: I certainly will. I happen to be a very ardent Republican. I will support the Republican Party in the future as I have in the past. However, my children's interest in political science has been so stimulated in the Paradise High School that one of them is now a political science major. His last grade point average was 3.5. She (the teacher) knew all the time we were a Republican family, that they disagreed with her politics. She never at any time penalized them. She asked them to think. The last time that my older boy's thesis was handed in to her, she wrote, "Congratulations, John, you have evolved a very sound conservative policy." I would say she was instrumental in seeing that my boy got the Davis award for excellence in current events, and the second boy, who followed the next year, got the Bank of America achievement award in social studies. That's all I wish to say although I think that there's no personal persecution if a teacher can make students think for themselves and understand the other person's viewpoint. It's time in this country that those steps were taken. Thank you very much.

Q: Do you have any recommendations for improving the school system in Paradise or are you satisfied with it—as a parent?

A: I am satisfied as a parent. I think every individual, if he feels something is wrong, should certainly be entitled to a hearing by the school board, but you've just got to promote individualism in this country. I think any minority group has the right to its opinion, has a right to investigate, but certainly bigotry, rumor, and making statements when you haven't really verified them, well, you can see what it's done to an entire community. This is my town and I love it and I'm not criticizing it. The people here are wonderful. I know people on both sides who are wonderful, and I think it's unfortunate that we've had this situation—simply because people haven't really investigated before making accusations.

Q: You think then there have been charges made here that are irresponsible?

A: I think so. Now I will also state that I know the teacher is a liberal. All the students know it. My boys have gone to work and studied to get arguments to refute her position and sometimes she'll say, "Well, that's a pretty good point." That's the sort of atmosphere, to me, that "academic freedom" means. That's what it is.

Two letters representative of the published opposition to the Paradise Schools, appear in Appendix A. After the introduction of the first letter the following colloquy between members of the committee and a cosigner of the letter ensued.

Q: Mr. Millus, you say that every citizen should be aware of the conduct of the schools in the community. I presume from your

own responsibilities in the Legion, and from what you've just said, that you are cognizant or aware of what the activities of the schools are in Paradise. Would that, generally be an accurate statement?

A: No, I wouldn't say that I know everything that goes on in the schools.

Q: I didn't say everything; I mean enough. Do you think as an interested citizen that you have an average citizen's knowledge of what the schools are doing here in Paradise?

A: No, I wouldn't. Other than what's in the papers.

Q: Have you ever consulted with the school superintendent about the schools?

A: No, I haven't.

Q: Have you ever talked with the high school principal about the high school itself?

A: No, I haven't. The only thing is . . .

Q: What about the board members? Have you ever talked with the board members about their policies or their practices, or about their conclusions?

A: I think I did talk to one.

Q: Do you remember the gist of the conversation? I'm trying to find out here if you have expressed any kind of opinions regarding the policy which might relate to the policy which the board has regarding the teaching and instruction in the schools.

A: I don't remember; it was just a conversation.

Q: Was this very recently or some time back?

A: No, it's been some time back.

Q: Then you haven't had any recent contact with the school system itself, let's say, in the last year?

A: No, I don't remember the dates I talked with Ray Nieland. I think it was just before or just after that I was sued for the letter.

Q: Did you take any part in any of the election campaigns?

A: No, sir.

Q: Do you have any children in the Paradise school system?

A: Not at the present time.

Q: Have you ever visited any classrooms, any high school classrooms?

A: I'm sorry to say I haven't.

Q: Does the Legion have a program for improving our school system in Paradise or California?

A: I really don't remember whether there is one or not. I'm sure that there is some kind of a program set up by the American Legion.

Q: Does your post have a program for improving our school system in Paradise or California?

A: They have a program whereby they give a donation to the scholarship awards, and they send a boy to Boys' State each year.

Q: I don't mean scholarships. In curriculum matters, do you have any recommendations for teaching?

A: Not to my knowledge.

Q: Has your committee ever sat with the board and discussed programs and plans for improving the school system in Paradise?

A: I couldn't answer for the committee. Myself, I have not.

The author of the second letter found in Appendix A also appeared and members of the committee sought to ascertain the author's basis for mentioning Paradise, specifically, as a community in danger of communist subversion. The following discussion ensued.

Q: Mr. Langdon, after having reread that letter, you don't consider that critical of the schools?

A: Not particularly here. As I say, it applies to the whole country.

Q: Your choice of words here in one paragraph where you say, "The problem of subversion in our schools is not new or peculiar to Paradise alone."

A: I think the word 'alone' shouldn't have been there.

Q: But it's not peculiar to Paradise. It exists here and elsewhere, is that correct?

A: The impression I intended to convey is that there is a problem all over.

Q: You believe there is, in fact, subversion in the schools?

A: Yes, sir.

Q: To what extent? In what way?

A: All over.

Q: You say there is subversion. In what sense?

A: I think the textbooks are slanted.

Q: In what way?

A: I think they are slanted in favor of socialism.

Q: Could you give any specific . . . ?

A: They don't convey the true history of our country.

Q: Can you give any specific example of the textbooks that you feel are slanted, that you have gone through?

A: Not from memory.

Q: Have you studied the textbooks and read them through to determine if this is the case?

A: I have read the book that I quote there.

Q: E. Merrill Root?

A: Yes.

Q: Have you read George Orwell's book, *Animal Farm*?

A: No, sir.

Q: Have you read his book, *1984*?

A: No, sir.

Q: Are you aware of the content of those books?

A: No, sir.

Q: Those two books are probably the finest examples of a slashing attack on communism, as such, and socialism, and what the welfare state can lead to. These two books are very commonly used in the schools. Are you aware of the fact that these are used in the schools?

A: No, sir.

Q: Are you aware of the fact that *1984* has been criticized by people because it is in use in the schools?

A: No, sir, I've never heard of it.

Q: Well, the reason I asked the question is because I think it is important to see—to develop here that if there is to be criticism of the schools and the content and the subversion, and so forth, this is a rather broad charge which can cause doubt and suspicion and fear in people's minds in the community. And in a case like that, where they become concerned and excited and lose confidence in their schools, and their schoolteachers, and their administration, it can lead to the kind of situation we have here. Your charge of subversion is then, I think, rather serious. You say here that there is indoctrination. In your letter you mention indoctrination. Could you give me any idea what you meant by that? Mr. Langdon, would you read that paragraph again so there won't be any misunderstanding about it?

A: [Reads] "Indoctrination is not done in a brazen easy manner to discern but rather by an insidious presentation such as a continued downgrading," and so on.

Q: Would you read the whole paragraph, please?

A: [Continues reading] "Of the things that a republic stands for, and a constant upgrading of communism, generally done under the name of socialism."

Q: Now would you be specific? I think this is a very specific charge here and I think it is directly enough related to the condition here in Paradise so that it relates to this particular situation. I would like you, if you can, to be more specific about what you feel is a "downgrading of our republican system" and I've forgotten the exact words you used, "the upgrading" I believe, "of socialism, which is the same thing as communism."

A: All through E. Merrill Root's book he cites example after example of where the true history of the country wasn't brought forth in the textbook. That's what I'm referring to.

Q: Have you ever read any books on socialism?

A: No, I've never read any books on it.

Q: Have you read read any books which were of a different political philosophy or persuasion of E. Merrill Root's book? What other books have you read about this subject?

A: I don't think I have read any other books. I have read lots of magazine articles.

Q: Well, now, would you say that in order to form a valid conclusion in regard to any situation that it would be necessary to examine all sides of a question?

A: I presume so.

One of the difficulties we have encountered in presenting the position of those who initiated the attack upon the Paradise schools stems from our inability to get that attack on the record from anyone else other than those who were attacked. The committee chairman in his summation at the close of the hearings, expressed the committee's concern for this insubstantial and unsubstantiated presentation of their point of view by the attacking forces.

"We came here seeking the truth and we feel that no one need fear stating the truth if they are honest with themselves.

"It seems to me that there has been a pattern of vague charges and implications. For example, we have heard it implied that Mrs. Franklin is engaged

"In religious indoctrination;

"In sexual immorality and looseness;

"In deliberate distortion of factual material to teach un-American concepts.

"We have heard it implied that there are Communists and Socialists in our schools, busy, I suppose, teaching the subversive overthrow of our government. And we have heard it implied that attractive young teachers use their physical charms to dazzle youngsters while they seduce them morally and intellectually with dangerous ideas.

"Yet not one witness has had the *courage* to use this forum where the truth can be measured to make *specific* charges—to say, 'I accuse.'

"The witnesses have followed a consistent pattern:

"Fears and suspicions about the schools have been voiced;

"Subversion and un-Americanism of those teachers involved has been implied.

"With all this, the classroom has remained free of those who, in the true American sense of fair play, should have seen for themselves by visiting the classes before they made such statements or accepted such statements from others.

"Finally, before this body, *no one* can be found to make such statements!

"I can only conclude that such statements are without basis in fact and are groundless."

Committee Conclusions

Academic freedom is a modern appellation for an ancient idea. It goes back at least as far as Socrates' eloquent defense of his teachings in the face of charges of corrupting Athenian youth. Traditionally, the idea has struggled and flourished in the great universities of the world. In California today, the idea of academic freedom in public education of our State is being sorely threatened.

In California, since our earliest days of statehood, we have adhered to the idea that free public education is the cornerstone of our democracy. Our goal is and has been an enlightened and informed citizenry, capable of assuming the responsibilities placed upon them by a democratic way of life. One of the operational principles in the realization of this goal is to teach students to think, evaluate and participate as citizens even if it involves controversy. Democracy will not function if, at all levels of public education, we fail to resist the efforts of those who would seek to raise our children in a cocoon of ignorance.

Another operational principle is the necessity of academic freedom for the true proprietors of our educational system: our teachers. By this we mean, in the context of this study, the right of the teacher to free and unqualified inquiry into areas of controversial ideas, and sufficient latitude within the educational structure to permit realization of this inquiry in the classroom.

We do not believe the Legislature can provide by law for the guarantee of academic freedom. When weak or willful administrators seek to reinforce themselves in the face of attack by threatening a teacher into submission, the Legislature can act; and we have done so in another report of the committee dealing with the dismissal of teachers for "unprofessional conduct." (See the section on HR 546, this report.) In those instances, protective legislation under what we have termed "academic due process," we trust, will be effective. But legislative protection of the tradition of academic freedom, is inherently unrealistic. The elementary and only truly effective support for academic freedom rests in the administrators of our schools and the citizens of our communities.

Our summary of testimony taken at Paradise demonstrates, we think, the extent to which small and despairing people can, through uninformed allegations and rumormongering, disrupt for an extended period of time an entire school system. And Paradise is not a unique example. In other California communities actions comparable to medieval "bookburning" have torn communities apart; concerted efforts have been made to "stack" local school boards with persons unrepresentative of the total community; and generally bona fide community debate over the conduct of the school system has been buried under a landslide of emotional and irrelevant charges and countercharges of "subversion," "moral decadence" and the like.

The committee's sincere hope—and major recommendation—is that the story of Paradise will serve as a lesson to the rational and honest citizens of other communities, so that they too will not awake one morning to find their community a hotbed of antagonism with consequent paralyzing effects upon school life.

When communities in our state are visited upon by the activities of those who sow—with words of hate, fear and suspicion—either through misguided ignorance or for the deliberate purpose of subversion and the destruction of the traditions of academic freedom as it exists in the educational system of this state, the committee charges the citizens of the community to know and recognize these people and to challenge them to make their vague, fearful and dangerous charges out loud and to be specific. Extremists of the left or right, individually or organizationally, must be taken seriously. The citizens of California cannot sit idly by and permit the subversion of a whole school system and the slander of its people, while self-appointed groups pressure, harass and debilitate our system of public education.

UNPROFESSIONAL CONDUCT

House Resolution 546 (1963)

RECOMMENDATIONS

1. The committee recommends that the Legislature define the term "unprofessional conduct" in substantive form such that governing boards of school districts and state courts have prior knowledge of legislative intent.

2. It is recommended that definitions of "unprofessional conduct" should not vary from district to district and area to area.

3. The committee recommends that charges of "unprofessional conduct" be restricted to activities of employees during the hours of their employment.

4. The committee recommends that charges of "unprofessional conduct" relate to specific instances of behavior.

5. It is recommended that Education Code Section 13417 be amended to provide that "expert panels" utilized in cases arising from charges of "unprofessional conduct" be used by mutual consent and agreement of the adversary parties.

FINDINGS

The committee heard testimony in November 1963 and September 1964 at Millbrae and La Mirada regarding House Resolution 546 by Assemblyman Petris. Testimony was received from virtually every educational group representing teachers, school administrators, and governing boards.

The committee finds that associations which represent teachers exclusively are unanimously opposed to the use and continued existence of Education Code Section 13403(a).

The committee finds that associations which represent governing boards, school administrators or combinations of teachers and school administrators oppose any change in the code.

The committee was informed at length of the case of *The Board of Trustees of the Lassen Union High School District*, Plaintiff and Respondent, v. *Jack Owens*, Defendant and Appellant, decided in the Third District Court of Appeals, July 26, 1962 (206 Cal. App. 2nd, 147). The committee finds this case to be the only California case solely devoted to the issue of unprofessional conduct as that charge relates to dismissal proceedings against a tenured teacher. The committee finds that in all other cases the courts have rendered decisions based on other charges filed in the indictments leaving the issue of unprofessional conduct unresolved through judicial decision.

In the Owens case, the court said:

"The word 'unprofessional' is a relative expression without technical meaning, and the phrase 'unprofessional conduct' as used in the Education Code has been given no legislative definition."

In a positive manner, the court said:

"In an action to dismiss a teacher on the grounds of 'unprofessional conduct' where the sole basis of the charges was the publication of letters critical of education, the trial court's primary inquiry should have been to the questions of whether there had been any disruption or impairment of discipline or the teaching process as a result of defendant's letters." (See Appendix B for the majority opinion in the Owens case.)

The committee finds that actions and attitudes are considered by local boards and administrators to be unprofessional in one context or in one place or area but not another. We find that no statewide pattern of professional behavior exists, save for behavior directly connected with the teaching process during duty hours. We find that imbibing alcoholic beverages, use of tobacco, signing petitions, revealing contents of school documents to legislative committees, appealing directly to one's legislative representative, and opposing majority opinions have been interpreted as being "unprofessional."

The committee believes that the phrase "unprofessional conduct" should be strictly construed insofar as it serves as a legal cause for dismissal of a permanent certificated employee. Conversely, professional conduct should be limited to that behavior directly connected with the education of students in the classroom or on official excursions. It should not be used as a technical substitute for "indelicate," "nonconformist," etc.

Strictly construed, professional conduct is that behavior which imparts knowledge and values to students. Unprofessional conduct, by converse definition, would impair the imparting of knowledge or universally accepted values.

The committee heard no testimony to the effect that teachers should not be subject to reasonable directions in the performance of duty. No one has suggested that the teacher should be a totally free agent. Indeed, the district court noted:

"One employed in public service does not have a constitutional right to such employment and is subject to reasonable supervision and restriction to the end that proper discipline may be maintained and that employees' activities may not be allowed to disrupt or impair the public service."

However, the committee heard testimony and the court cited a characteristic case from the Florida Supreme Court (*Adams v. State* 69 So. 2nd 309, 311), that the issue of unprofessional conduct is often couched in terms not of whether the public service *has been* impaired, but whether it *might be* impaired in the future. The committee does not believe that charges of unprofessional conduct should be leveled on assumptions that deleterious consequences might possibly result from certain past actions. It would, by contrast, seem proper to have to prove that impairment actually has resulted from the alleged unprofessional conduct, and that this impairment relates specifically to the learning capacities and achievement of the students.

The committee heard repeated testimony that a teacher does not know beforehand what conduct is considered professional. Few, if any,

local governing boards have written policies of professional conduct. There are deep divisions of opinion among various educational associations on what constitutes unprofessional behavior.

In contrast, the committee heard testimony relating to unprofessional conduct as used in legal and medical circles. It is apparent that this phrase is tightly defined in the professions of law and medicine, such that it is almost never used. The practitioner has foreknowledge on a statewide basis even before he officially enters upon his career.

The expert panel procedure under Education Code Section 13417 was criticized on a number of grounds, the most important of which deals with a lack of procedural due process. It appears that permanent employees accused of "unprofessional conduct" must frequently prove their innocence, without the right of cross-examination. The burden of proof is, therefore, sometimes shifted from accuser to accused. It was also learned that the expert panel is not necessarily engaged by the governing board with the prior agreement of all parties to the dispute. Present code provisions allow the importation of a panel against the challenges of an accused. This provision is especially relevant as the committee notes major philosophical disagreement among the various statewide educational associations. It is also clear that the code makes no provision for choice between competing expert panels drawn from separate statewide organizations if such a circumstance should arise.

Throughout the hearings, specific examples of "unprofessional conduct" were cited. The committee believes, however, that in every case, the charges could have been subsumed under one or another of the other specific charges contained in Section 13403 such as dishonesty, incompetency, or evident unfitness for service. No cases were brought to the committee's attention which clearly required the use of an undefined category such as "unprofessional conduct."

The committee notes, however, that special cases may arise in the future which would not lend themselves to proceedings under the other subsections of 13403. Therefore, the committee does *not* recommend that the phrase be entirely stricken from the Education Code. Rather, the committee recommends extreme caution in the use of the charge. Because of the inherent vagueness of the term, we recommend that dismissal proceedings against a certificated employee separate charges of "unprofessional conduct" from the other subsections such that a conviction for e.g. dishonesty is not confused with conviction for "unprofessional conduct."

The committee would recommend that legislative intent be expanded to assure that charges relate to specific concrete instances of behavior of a grave nature and that the courts construe the phrase strictly, limiting it to direct effects on the teaching process.

The committee takes the position that efforts to dismiss tenured teachers are allowed and reinforced by state law. Therefore, we believe that charges of "unprofessional conduct" should be governed by statewide standards. The committee would hope that the various statewide educational organizations could voluntarily agree to set aside divisive matters and unite in a common attack on this problem.

Lastly, the professional position of the teacher is complicated by a situation wherein he is expected to serve many masters. The teacher has an obvious professional duty to his students. He has a duty also

to his employer, the governing board representing the residents of the school district. The committee believes that much dissention has arisen because of this dual commitment of the professional teacher. Where he truly believes that the interests of his students are being sacrificed to the interests of his employer, the professional teacher is inherently placed in the impossible position of having to choose between masters. Such conditions, the committee finds, are frequently the cause of a choice in favor of the students with consequent charges of unprofessional conduct being filed by the school administration or the governing board.

The committee finds this dual master relationship involving the professional teacher and his students on the one hand and the school employee and his employer on the other, to be cause for great concern in developing greater status for California educators. So long as schooling continues to be an enterprise in which employees are hired by governmental entities to accomplish the purpose, there can, but not necessarily must, be disagreements.

The committee heard testimony outlining the relationship of medical doctors to governmental and private employers. The evidence shows clearly that there is a strictly observed dichotomy between the role of the medical practitioner as a professional expert in health and his role as an employee of a hospital, a clinic, and so forth. The committee recommends that the dual capacity of certificated school employees be similarly defined by consensus, and that the proceedings for dismissal under the "unprofessional conduct" clause be limited to actions which have been proven to be detrimental to the direct teaching process.

CLASSIFICATION OF BUSINESS MANAGERS AND OTHER ADMINISTRATIVE EMPLOYEES

Assembly Bill 404 (1963)

RECOMMENDATIONS

1. The committee finds that the position of school district business manager should not be restricted to either certificated or classified personnel. Individuals from either service should be eligible, if qualified, for the position of business manager.

2. The committee recommends amendment of the Education Code to permit assignment of a title now carrying with it the requirement of certification to those employed in a position which functions as a business manager, irrespective of the position title.

3. In order to insure that positions of business manager will remain open to all qualified applicants and that local school districts will be free to develop such standards of qualification as they see fit, the committee recommends that subsections (m), (n) and (o) of Section 13055 of the Education Code be repealed.

4. The committee also recommends that public information duties be unrestricted as to the classification of individuals hired to fulfill such duties.

5. It is recommended that consideration be given to codifying minimum standards of qualifications for these types of positions, particularly those which embody business-type functions. In lieu of such codification, the Department of Education might be directed to provide such minimum requirements by administrative regulation.

FINDINGS

On October 7, 1964, the committee heard testimony relative to AB 404 (Winton), which provides for the hiring and titling of persons performing the function of business manager and amends the Education Code to provide that such persons need not be credentialed.

Testimony before the committee centered around this issue: Should administrative duties in the public school system that can be performed by persons not holding a credential, be restricted to and performed only by persons holding a credential?

At the outset, the committee notes that there was some confusion as to the present state of the law regarding this issue. The committee thinks it advisable to set forth the present law so that a clear comparison with operational changes and consequences of the proposed AB 404 may be made.

Currently the law does not require a credential or other certification as a prerequisite to holding a business manager position. Such positions are neither mandatorily certificated nor classified. However, operation under the code does, as the committee found, result in the practical consequence that nearly all business manager positions in the upper

echelons of local administration in fact require credentialed persons. The reasons for this appear to be twofold:

- (a) Persons performing 50 percent or more of their duties in the area of educational policymaking are required to be credentialed. (Education Code Section 13055.)
- (b) Persons who receive certain title assignments as specified in Section 1537 of the Education Code must be credential holders.

With regard to (a), the committee found that falling into the categories listed in Section 13055 are persons engaged in budget preparation, building programs, public information dissemination, and other unspecified business functions. It is apparent from the code provisions and from testimony that there is no credential authorized or required which directs itself to these activities or to the qualifications of persons performing them. There is merely the arbitrary requirement that when one performs 50 percent or more of his duties in areas set forth in Section 13055, he must be a possessor of a valid credential. This being so—with the result that there is no guarantee that a perfectly good teacher holding a credential will make a good business manager—the issue is again highlighted: Why restrict such positions to holders of credentials?

The argument most frequently advanced in favor of the principles of Section 13055 (m), (n) and (o) was that holders of credentials will insure that decisions affecting educational policies will be made by persons familiar with the peculiar problems and needs of education. This argument though valid to a certain extent, is not conclusive. Business managers are not at the top of the administrative hierarchy in school policy decision making. There are always fully credentialed, certificated personnel who are responsible for making the decisions concerned with educational policy. As one witness stated:

... a business manager or a public relations man does not necessarily need a long history in education. He does not necessarily need certification because as a member of an administrative staff, his direct superior is the superintendent, who is answerable to the board in the setting of policy matters. . . . It would seem to follow that there is no reason why a public relations person or a business manager need be fully credentialed when his direct superiors will make the educational decisions.

A further and inherent weakness of Section 13055 described to the committee relates to the opportunity of the local board to define away the possibility of open competition for qualified noncredentialed persons for business manager positions, without at the same time insuring that qualified persons will actually fill the position. Local districts are capable of restricting the holders of business manager positions to credentialed personnel simply by the device of defining the duties of such a position to include 50 percent or more of matters set forth in Section 13055, whether or not such duties are actually performed. Possible abuse of this section's intent by simply appending the proper words in the job description must be remedied if qualified persons are to be encouraged to apply. The Legislature or the Department of Education might undertake to specify the minimum criteria to be used to evaluate a person's qualifications for the position of business manager;

or the Legislature might go so far as to develop a credential for this position.

The committee, at this time, prefers neither of these latter alternatives. We do feel, however, that consonant with policy of so-called "local option" powers over these matters, there is a strong correlative responsibility for districts to conduct their hiring practices with utmost concern for obtaining qualified personnel. It is apparent that conditions vary so from district to district that the functions of a business manager should be suited to best serve local needs; and consequently local school districts should be relatively free to structure that position as they see fit. On the other hand, the committee feels quite strongly that certain minimum standards should be recommended to all districts hiring business managers.

With regard to (b) above, the committee found again that the code was inadvertently restrictive. Whether the local board intends to restrict the business manager position to credentialed persons or not the title assignment provisions are an inhibiting factor: They automatically require credentialed persons even in cases where the job duties are strictly accounting. Where the only intent is to give a position higher prestige and/or financial rewards commensurate with the work to be done, assignment of one of the "superintendent" titles to that position will automatically restrict it to credential holders. (Again, the committee notes there may be no logical connection between the credential requirement and the nature of the job.)

The committee notes that there is a subtle irony in the fact that opposition to AB 404 was expressed on the grounds that it would interfere with "local option" powers of school districts to prescribe qualifications for the position of business manager according to local needs and desires, yet as the committee found, the latitude presently available to school districts under the code is virtually nil by reason of the Section 13055 (m), (n) and (o) provisions and the title assignment laws.

The provisions of AB 404, with one exception, are adequately designed to remove these factors, to increase the freedom of school districts in the formulation of their hiring policy, and by "opening the door" to a wider field of potentially qualified persons to enhance the interest in sound business management.

The operational principles of AB 404 are these:

- (1) Business managers are made classified positions. (As noted below, the committee disapproves this change.)
- (2) A person may not be required to possess a credential to hold this position by:
 - (a) Making a credential a prerequisite,
 - (b) The accident of title assignment,
 - (c) Defining the position so as to require a credential (under Section 13055).
- (3) Persons already holding such positions are protected from any losses that might be incurred by enacting AB 404.

The practical consequences of AB 404 are that credentialed, classified, or other persons interested are encouraged to compete for the position of business manager on the basis of qualifications as required by the self-determination of local districts through open, competitive

examinations. Assembly Bill 404 removes the artificial and unsubstantiated elimination (either accidentally because of the present structure of the code or because a local board willfully adopts a policy of elimination by utilization of the code provisions contrary to their original intent and without assuming the responsibility for engaging qualified or better qualified persons) of potentially qualified persons.

The committee does *not* believe that the business manager position should be made wholly classified. This would simply build into the position another form of restriction. A further reason was advanced by one witness:

“Our present approval (of AB 404) is now based upon the feeling that a broad field of selection would assist the school board in making a selection of the most qualified applicant . . . as much as possible discretionary authority should be written into the law to account for the complexity and differences existing throughout the State between districts. . . . The sole interest of the school governing board is to be permitted to select the best applicants available to fit the position that is open without having a board being unable to consider both classified and certified employees.”

The committee recommends that Section 13055 (m), (n) and (o) be deleted from the code for the reason that the generalities of job description, and the vagaries of arbitrary line-drawing at 50 percent or more inherent in these provisions, impose artificial and unjustified restrictions upon the “local option” of school boards and upon the ability of perfectly suitable persons to be considered for positions for which a credential requirement is not shown too relevant. Certainly business manager decisions will impinge on educational policy to a certain extent—it would seem that this is unavoidable at nearly all levels of the administrative hierarchy—but, as the committee noted above, this inherent element of the business manager’s duties will always be subject to review by the superintendent and ultimately the school board. These are the people who, in the final analysis, will actually make the educational policy decisions as they may relate to budgeting, purchasing and the like.

Concomitant with the committee’s study of the business manager position, it was brought to our attention that similar restraints prevail in the area of public information officers. Again, a lack of sound rationale is apparent. As a consequence the committee recommends that similar changes as are provided for in AB 404 be made pertinent to that position. We have in mind here amendment of the title assignment law to provide that assignment of one of the “superintendent” titles not result in the requirement that such person be a credentialed position.

EMPLOYEE BENEFITS

Assembly Bill 310 (1963)

RECOMMENDATIONS

1. The committee believes that some form of extending health and medical benefits to school employees is proper and in consonance with the general trend in private industry and government service.

2. The committee recommends that if such a plan is adopted that nonemployee contributions be equal to the level provided for other state employees.

3. Although the committee favors a health and medical care program for school employees, we believe that the cost of such a proposal must *not* be borne by the local property tax, which is already overburdened by the expanding costs of local governments.

4. Finally, the committee recommends that proposals requiring substantial state funding be considered together with similar proposals in order to develop the priorities deemed proper for expenditures for education by the Legislature.

FINDINGS

The committee heard testimony on AB 310 (Casey) in San Diego on October 8, 1964. The measure proposes that local school districts be required to establish health and medical plans for all employees, and that the district's contribution be at least \$60 annually for each employee.

The committee was presented with a new proposal by the original sponsors of AB 310. Rather than requiring local districts to adopt health plans and finance them locally, the new proposal would have the state extend health benefits to school employees using the General Fund to support the first \$72 of the annual premium.

The cost of the proposal to the state is estimated at \$20 million annually. It would be administered through the offices of the State Employees Retirement System, and policy decisions would be made by a statewide board appointed by the Governor.

The committee discussed the necessity to consider the costs and priorities of other proposals for improving the total educational system in California. The committee recommends extending medical and hospital benefits to school employees. At the same time, however, the committee feels that the Legislature may wish to assign a somewhat lower priority to this endeavor with a view to competing programs for increased retirement benefits, compensatory education, and others.

The committee also discussed the necessity of widespread public support for the possible increases in state revenue collections which might be necessitated by any enactment of such legislation. The committee was told that such support would be forthcoming. It was felt that support for necessary revenue collections should equal the support for the program's appropriations.

The committee was impressed by the research conducted by the sponsors of the new proposal. The staff of the State Employees' Retirement System, which administers the health plans for nonschool state employees, is to be congratuated for cooperating with the sponsors to develop a superior overall plan, utilizing the experience gained from the operation of the Meyers-Geddes Act.

Assembly Bill 271 (1963)

RECOMMENDATIONS

1. The committee recommends that teacher retirement allowances be adjusted to take into account the rising cost of living since 1956, the date of last adjustment of such retirement allowances.

2. It is recommended that any adjustments made in retirement allowances, on a percentage basis, be limited to the first \$300 of monthly retirement income.

3. The committee also recommends that prior to the enactment of any such legislation, the Legislature consider its appropriate priority in view of competing claims for educational programs which involve substantial state expenditures.

FINDINGS

On September 30, 1964, the committee heard testimony responsive to AB 271 (Elliott). At that hearing the proponents of the bill placed before the committee an amended bill which revised and updated the percentage schedule for adjustment of retirement allowances.

The present teachers' retirement plan was enacted in 1955 to become operative July 1, 1956. The committee found that since that date no adjustments have been made in the retirement allowances to offset or compensate for the rising cost of living, except for the adjustment in 1963 of the minimum allowance.¹

The committee heard testimony that allowances are in fair accord with living costs at the time of retirement; but that immediately upon retirement the allowance begins to fall behind the cost of living. The extent of the increased difficulty that a retired person has in paying for the necessities of life is, therefore, closely related to the length of time elapsed since retirement.

The committee found that since 1955 two adjustments were made in the State Employees' Retirement System totalling a 21-percent increase in retirement allowance for a person in the \$200 per month allowance bracket who retired prior to 1957.

The annual initial cost of this proposal to the state would be \$7,624.-633 based on the amended percentage for adjustment of retirement allowances. This is less than one half that contained in the original proposal, which would have arrived at an initial or first year total annual cost of \$16,905,807; and an actuarial obligation or present value, of \$152,040,780.

¹ In 1963 the minimum annual allowance of \$70 for each year of credited service was increased to \$80. The proposed legislation provides that the new adjustment will not be in addition to, but shall be offset by, the increase granted in 1963. Thus the retired teacher receiving the minimum would receive the adjustment made in 1963 or the adjustment herein proposed, whichever is the larger.

The committee feels that adjustments in retirement allowances, subject to certain limitations, are a legitimate concern. California and the nation as a whole have experienced several periods of significant inflation during the postwar years, noticeably in the 1946-48 period and during the aftermath of the Korean War.

This legislation provides a limitation on the benefit in that it is limited to the first \$300 of retirement income. At present, a teacher retiring at age 60 with 30 years of service and a final salary averaging \$9,000 annually would be eligible for an annual allowance of \$4,500.

The committee notes that the majority of the funds proposed for retirement augmentation would go to individuals retiring before 1956. Insofar as retirement benefits for other state employees have been increased by legislative action in past years, the committee feels that similar treatment should be afforded retired teachers, especially when allowances are such that they no longer reflect realistically the cost of maintaining a reasonably dignified retired status.

The committee realizes, however, that proposals to expend additional and substantial amounts of public monies cannot be treated in isolation. We recommend, therefore, that all proposals involving these additional and substantial state expenditures be viewed in context by the full Legislature with the object of establishing the most defensible system of priorities.

The committee considered the possibility of adopting an automatic adjustment feature similar to that of the legislators' system, but having no pertinent facts and figures available which might reveal the implications of such a measure, the committee makes no recommendation in that regard.

YEAR-ROUND USE OF HIGHER EDUCATION FACILITIES

House Resolution 244 (1964)

RECOMMENDATIONS

1. The committee recommends that the Coordinating Council on Higher Education provide increased and sufficient data on current year-round operations within and without the State of California.

2. It is recommended that reports be filed with the Education Committees of both houses of the Legislature relative to the experience of the state colleges and the University of California in initiating a quarter system at various campus locations.

3. The committee recommends that the basic decisions on matters such as a year-round calendar should be made in cooperation with the Legislature, with a view toward the fact that social, cultural and other factors will inevitably be involved.

4. The committee urges the Coordinating Council on Higher Education to study more fully the advantages and disadvantages inherent in a split-summer trimester plan, such as the one recently adopted by public institutions of higher education in the State of Florida.

FINDINGS

House Resolution 244 (Ryan) of the 1964 First Extraordinary Session of the Legislature directed a study of the feasibility of year-round operation of institutions of public higher education in the state.

The committee heard testimony in San Diego on recent developments in plans for year-round operation of higher education facilities. Much of the hearing was devoted to the pros and cons of the quarter system as adopted by the Coordinating Council on Higher Education in January 1964.

The committee noted an apparent conflict in the role played by the Coordinating Council which, as established in law, is an advisory body to the Governor and the Legislature, rather than the repository of final decisions. The committee felt that in such a basic matter as state-wide calendar reorganization, the matter should have been presented formally to the Legislature before any final or definitive statements were issued.

The committee noted that considerable opposition from faculty groups to the quarter system was manifested. It would seem that greater liaison between faculty and administration might culminate in a broader measure of agreement when such basic decisions are to be adopted.

While the committee recognizes the inherent efficiencies in year-round operation, it appeared that little consideration in the decision-making process was given to broad social and cultural impacts that might be anticipated.

The committee would hope to be fully informed in the future of the effects of shifting to a quarter system as is being planned for a few of the campuses in the public higher educational system.

Subsequent to the interim hearings held on this matter, the committee has been informed of a modified trimester plan for year-round operations recently adopted in the State of Florida. According to the available information, there is considerable opinion in that state that this plan, which differs from the plan heretofore considered by the Coordinating Council in that it calls for a split summer trimester (a 16-16-8-8 plan), has been successful and has instilled a greater academic atmosphere on Florida's college campuses. Likewise, such a plan apparently has overcome numerous faculty objections. The committee urges the Coordinating Council to investigate such a plan and its possible adaptation in California. (See Appendix C, for a reprint of an explanatory article published on this plan.)

STATE COLLEGE FACULTY RESEARCH

House Resolution 128 (1963)

RECOMMENDATIONS

1. The committee recommends that the Legislature go on record as encouraging state college faculty members to apply for both federal and private research grants as they become available.
2. The committee wishes to emphasize that it views as sound policy the provision of the Master Plan for Higher Education which designates the University of California as the "primary" state academic agency responsible for research.
3. Nevertheless, the committee believes that a modest research program in the state colleges, state funded and designed primarily to improve the instructional process, is proper. Such a program, however, should envision the granting of state research funds only for specific projects and purposes.
4. We recommend that the education committees of both houses of the State Legislature scrutinize and review yearly all research projects carried on in the state colleges for which state, federal or private moneys were obtained.
5. The committee recommends that such a state college research program include a proviso that faculty members report and disclose each year the research projects in which they are engaged, and the financial assistance, if any, which they receive from their projects.

FINDINGS

During the 1963-65 interim period the Subcommittee on Personnel Problems conducted two hearings on the subject of faculty research in the state colleges. The committee reviewed the past history of this program which most recently was refused by the Legislature in 1963 and, pending this interim investigation, again in 1964. The committee believes that the prime reason for the refusal of the Legislature to grant research funds to the colleges in the past has been the portion of the Master Plan for Higher Education (the Donahoe Act of 1960) which designates the State University as the primary academic research agency in California. That portion of the statute reads as follows:

22550. The Legislature hereby finds and declares that the University of California is the primary state-supported academic agency for research.

At the same time, throughout our study of this matter no evidence has been presented which has been used to interpret "prime" as meaning "sole" or "exclusive" in terms of the conduct of research by faculty members. Certainly the Legislature in its enactment of the

Donahoe Act did not intend to limit research *per se* to the university, as evidenced by its qualification of Education Code Section 22550, cited above, by the use of the terms "*state-supported* academic agency for research." The committee has, in fact, determined that a significant amount of private, contract and federally funded research is presently being performed at state colleges; in 1963-64 this amount totaled some \$2.6 million. Its distribution to individual colleges within the system and the disciplines for which it was made available has been fully documented by the California State Colleges.

Proposed program costs for a research program at the state colleges have been set at slightly less than \$500,000, beginning in 1965-66. These costs through 1970 are shown below:

PROPOSED ANNUAL COST	
STATE COLLEGE FACULTY RESEARCH	
1965-66	\$497,749
1966-67	622,186
1967-68	777,732
1968-69	972,165
1969-70	1,215,206

The committee is informed that these figures were arrived at by giving to each college a "base allocation," plus a sum related to size of the college, graduate enrollment, and other such variable factors. The committee has made no study of the particulars of the formulae proposed by officials of the state colleges, nor has the inadequacy or overadequacy of the proposed initial program cost been examined. Suffice it to say that the committee was more concerned with the principles and policies involved in a program of faculty research for the California State Colleges.

The committee believes that the language of the master plan, designating the university as the "primary" research agency is sound and should not be changed. We believe that it would be unwise, both from a fiscal and from a policy point of view, for the university and the state colleges to conduct research at the same level of intensity. Such a policy could only lead to unbelievable duplication of effort and a great waste of manpower and of financial resources. At the same time, the committee believes that a modest system of state college faculty research, such as has been proposed by college officials, is proper and in consonance with the master plan. The committee views such a program as primarily an aid to the teaching process; such research should have as its basic premise the design of improving instruction and of producing better teachers. A program such as we propose should involve strict legislative controls. These controls should include a provision that state research funds should be granted only for specific projects and purposes, and that the individual research projects should be evaluated periodically to determine their suitability and value. In making its recommendation for a "modest" program of faculty research the committee wishes to emphasize that it in no way endorses or rejects the specific dollar amounts requested by the state colleges, but that such a judgment should rest primarily with the committees most concerned with state finances.

The committee suggests that several additional controls over this program would be highly desirable. These would include a yearly review by the education committees of both the State Assembly and the State Senate of the research projects carried out, to include a review of federal and private, as well as state, research programs. Additionally, this committee recommends that the state colleges require their faculty members to disclose each year the research projects which they have undertaken and any financial aid which they may have derived from the project.

Finally, although the committee views state college faculty research, in terms of a "modest" program, as desirable, we are unable to conclude that such a program has a higher priority than many other new programs which may be requested by the state colleges or by higher education in general. We believe, therefore, that the colleges should be required to weigh their expressed need for research program against their oft expressed desires for increased faculty salaries, employment benefit increases, increased staff, and other elements of new or expanded program.

STATEMENT OF
ASSEMBLYMAN E. RICHARD BARNES
RELATING TO ACADEMIC FREEDOM

I find myself in substantial disagreement with the report of the Subcommittee on Personnel of the Assembly Interim Committee on Education, with reference to academic freedom.

This report grew out of a hearing held by the subcommittee in Paradise, California, on February 20 and February 21, 1964.

At the hearing I strenuously objected to the questioning of certain witnesses who were defendants in a civil action brought by a teacher, Mrs. Virginia Franklin, an employee of the Paradise school system. These witnesses were subpoenaed against their will and over the protest of their attorney who pointed out that such testimony might tend to jeopardize their legal position in the court action. The attorney specified that he had no objection to testimony by his clients after the trial, but that to compel them to testify prior to the settlement of the civil litigation involving nearly a million dollars would tend to try the matter in the press to the detriment of the defendants.

It is certainly not customary for a committee to hold a hearing where there is a pending law suit, and the Supreme Court has consistently warned against cases being tried out of court by the press.

In his final comments at the hearing, the chairman of the subcommittee made the following statement:

"I now ask the staff of the Assembly Education Committee to study this transcript closely for perjury, since I find that there is a marked difference between the statements made here and previous statements made in the controversy here in the schools. I further ask that the staff obtain copies of the transcript of this hearing for use in possible further investigation of the charges made in the last few years in this city."

Such a statement could not help but give the impression that the case was, in fact, being tried out of court.

At the hearing I made a motion to defer the subcommittee's inquiry until after the civil trial. This motion was rejected by the subcommittee.

While the subcommittee's report expresses a proper interest in freedom of expression for school officials and teachers, the report fails to take any cognizance of the difference between the legitimate interest of the taxpayers and citizens in the public schools, as opposed to what the subcommittee calls "slandorous and unsubstantiated attacks."

The report fails to differentiate between what it calls "medieval bookburning" and the legitimate attempts by citizens to inform themselves and seek improvement of the public school system.

The subcommittee report describes our teachers as the "true proprietors of our education system."

If, in fact, we have a public school system, then all of the people of the community are the proprietors of the school system, not the

teachers alone; and if, in fact, the schools do belong to the people—the voters, parents and taxpayers—then the academic freedom of the teacher and school official is not unlimited. Public institutions must be responsive to the public will, and the people of a community have a right to freedom of speech equal to that of the teachers and school officials. The subcommittee's report fails to take proper cognizance of this necessary balance.

Throughout the Paradise hearing school officials defended the right of teachers to present controversy in the classroom, yet they strenuously objected to controversy about the schools in the community. I reject this apparent application of a double standard. If unlimited discussion is not harmful to minor students in a classroom situation, it certainly cannot be harmful to adult citizens in the context of the entire community.

The subcommittee report departs from the Paradise situation to charge that "concerted efforts have been made to 'stack' local school boards with persons unrepresentative of the total community." This is a value judgment not substantiated by the subcommittee's hearing.

In a free society every citizen has a right to seek election to a school board or other public office. Those who have the most votes win. Whether or not public officials are responsive is a proper judgment which must be rendered by the electorate.

The subcommittee report also fails to take cognizance of the fact that there can be abuse of the classroom situation to present only one side of a current social problem. In this regard card stacking can occur at many different points, including the selection of materials which are to be subjected to "critical analysis." Unfair presentation to immature minds in the classroom can be bold or subtle, with a subtle approach being less readily identifiable and quite probably more effective. The testimony of Mrs. Virginia Franklin, the high school teacher about whom the Paradise controversy centered, fails to convince me that she was totally objective in her classroom presentations.

In another report of this subcommittee the recommendation has been offered that the Legislature prescribe a more comprehensive and detailed definition of "unprofessional conduct." I would also recommend that the Legislature review and more closely define "academic freedom."

STATEMENT OF
ASSEMBLYMAN E. RICHARD BARNES
RELATING TO UNPROFESSIONAL CONDUCT

With reference to unprofessional conduct, I disagree with the third recommendation of the subcommittee, which reads:

“The committee recommends that charges of ‘unprofessional conduct’ be restricted to activities of employees during the hours of their employment.”

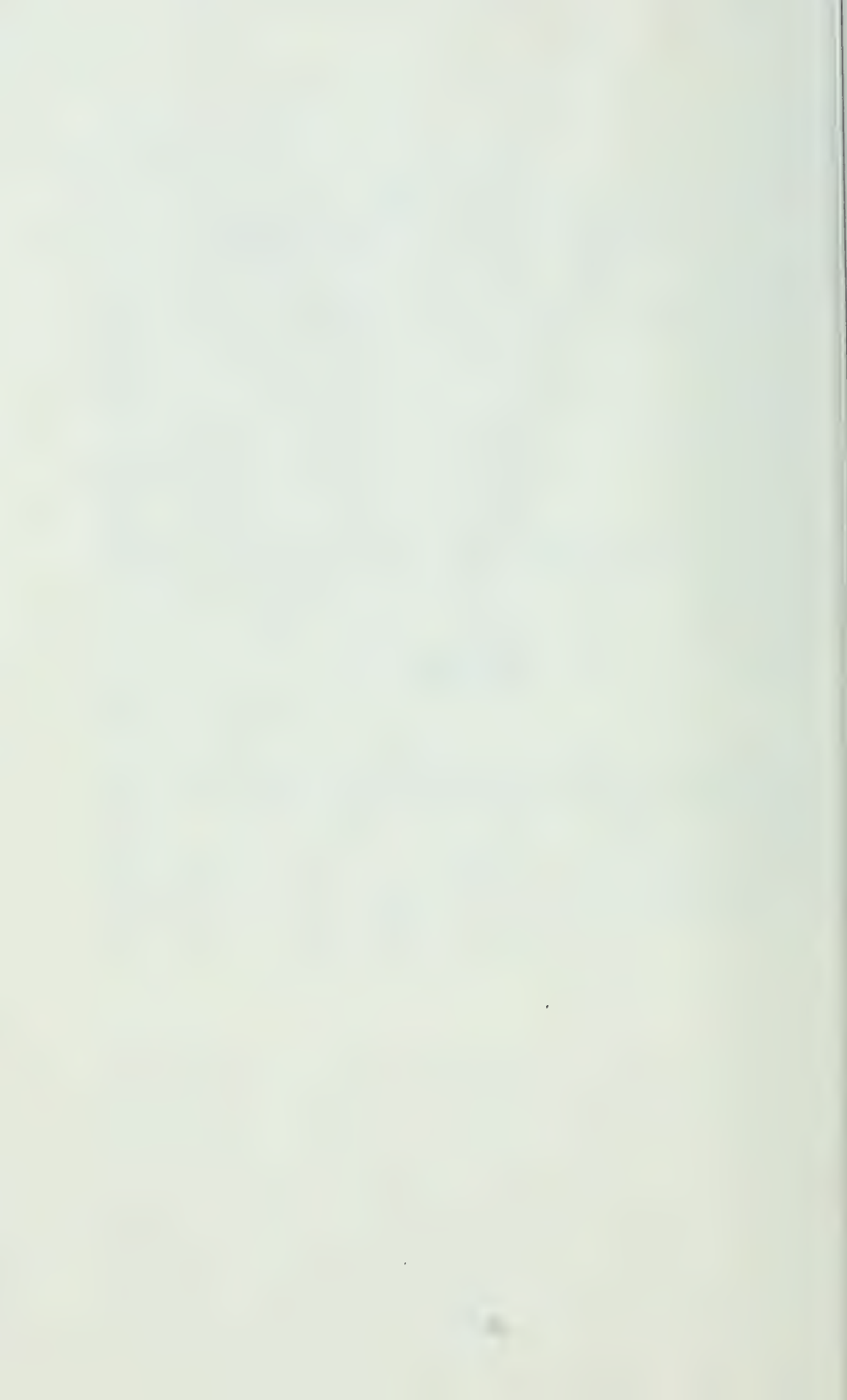
It seems to me that it is impossible for a teacher or school official to divorce his conduct during off-duty hours from his role of leadership in the classroom and from his responsibility as a professional person. Professional conduct can only be determined by a teacher’s total behavior in and out of the classroom situation.

The conduct of a teacher in the community must certainly have an influence on the students he instructs and represents a part of the total example set by the teacher in his leadership role.

A teacher who participates in an act of civil disobedience or who encourages lawless behavior, cannot help but set an unfortunate example for students. It may be difficult to prove a direct causal relationship between a teacher’s bad example and antisocial student activity, such as participation in a riot, but there can be little doubt that a relationship exists.

I further disagree with the comments of the subcommittee on the “dual master relationship, involving the professional teacher and his students on the one hand, and the school employee and his employer on the other.” If the schools are indeed public, then school officials and employees must be responsive to the public will. The job of these public employees is to do the task which the state and community prescribes. Teachers certainly have a responsibility to their students but this responsibility lies in the context of their instructions from the state and community at large, represented by the elected school board and the administrative officials whom that board appointed.

APPENDIX



APPENDIX A

LETTERS TO THE EDITOR

Letter No. 1

Chico Enterprise-Record
Monday, September 10, 1962

Dear Editor:

A letter, unanimously approved by the Paradise American Legion Post, was printed, appropriately on Washington's birthday last February by the *Chico Enterprise-Record*, criticizing the part some of the Paradise school staff members played in promoting the Asilomar Human Rights Conference, an event originally sponsored by the American Civil Liberties Union. The public response to this letter was most gratifying to the Legion: of the approximately 75 phone calls, letters and personal contacts received by Lawrence Wrobel, commander, he reported that all but three were favorable to the stand taken by the post.

With a request from the Paradise School Board for the passage of a large bond issue in the near future, the Legion feels it appropriate to review the situation today.

In 1959, according to reports, 17 students were recruited to attend the conference; in 1962, about a month after the Legion letter with its widespread response of public approval, 23 made the trip. One of the subjects presented for general discussion by these high school pupils, according to one of the returnees, was birth control, while another concerned living together and accepting other ethnic groups. Some of the people from the bay area were described as beatniks while others were heard to profess being atheists.

The Legion would also like to call attention to the type of material used by Mrs. Virginia Franklin in her teaching. As an example, copies of the magazine "The Nation" were issued to students in her classes. Members of the Americanism Committee had an opportunity to examine the publication, which is often classed as ultra-liberal, and found this issue to be filled with one long article, in eight parts, attempting to show the hazards to the United States of building up armaments. One full-page ad was for a book titled "Premarital Intercourse and Interpersonal Relationships"; another ad was for 25 books imported from Russia and translated into English; another for a magazine for atheists.

The Legion does not feel that this type of material belongs in the high school curriculum.

One student reported that so much anti-religious sentiment was thrust at them that her parents removed her from the Paradise school and enrolled her in another city.

Mrs. Franklin seems to be regarded in a somewhat different light in Chico than in Paradise. According to a school official, Chico would not give her a new contract after she had been on the staff for some time, while the Paradise school board seems to feel that she is a darling. One board member told one of the men on the Americanism Committee, "If it's Mrs. Franklin you are after, you can just forget it."

Many Legion members are beginning to feel reservations about the Paradise school board and wondering if their decisions would meet the popular approval of the people of the district. If the responses to the February letter are to any extent accurate 72 to 3, and they may well be, it does appear that many of their decisions would not meet popular support.

The Legion is also wondering if the hammer and sickle flag over the city dump, the shooting with BBs of Robert Welch of the John Birch Society in Chico by a Paradise youth, and the abortive march of a band of students with left wing slogans on banners in the Nugget Days Parade could in any way be products of the school's teachings.

These are points to ponder, the Legion feels, before voting for or against another large bond issue.

ARTHUR MILLUS
Commander

CLAUDE W. ADAMS
Adjutant

JOHN O. FINDLEY
F. G. BENNETT
C. L. TOMSCHE
Americanism Committee
Paradise Post 258
American Legion

Letter No. 2

"Regarding the school controversy in Paradise, I would like to add my voice to the dissenters. In the first place, I do not believe that those who vote against the bonds are doing so for selfish reasons. Among those dissenters I have talked to, a great majority do so because they do not have any confidence in the present school administration either financially or educationally. The problem of subversion in our school is not new or peculiar to Paradise alone. It is a problem of almost the entire United States. However, on the local level, it can be controlled through your elected administration if the public is well informed enough to do so. Indoctrination is not done in a brazen manner easy to discern, but rather by an insidious presentation such as a continued downgrading of the things that a Republic stands for, and constant upgrading of Communism, generally done under the name of Socialism. It is my belief that many parents do not find, or take the time, to even acquaint themselves with the problems. How many have read "Subversion in our Schools" by E. Merrill Root or Max Rafferty's "The Passing of a Patriot?" A friend of mine recently talked to a compara-

tively recent graduate of a Paradise High School. This young man swore by his former teachers, but on questioning, stated that they taught him very little about the history and heritage of our great country, government, and our free enterprise system. However, he was convinced that he knew all about Communism, which he considered a good thing. What he did not know was that he had idealistic concept of Communism that did not exist in actuality. Now do you think that this young man is going to recognize subversion when his own children are being indoctrinated? This, with the continued increase in juvenile delinquency, suggests that something is lacking both at home and in our schools. Communism has no moral code as understood and practiced by Christian people all over the world. No civilization has ever endured that abandoned the high standard of moral responsibility. Give us an educational system and administration we have confidence in and we will be glad to vote for any needed school bonds. We are interested in our young people.

"This letter is not meant to bring discredit on the teachers, school bonds, and so forth, as we are sure there are still many fine people in our school systems. Any hope that we can continue to exist as a free people must take into consideration the education of our young people. When some in our school administrations are not willing to salute the flag, and only do so because it is required to hold their jobs, when high government officials and some members of our school administrations advocate the use—if only by making it available—of such material as the 'Dictionary of American Slang' in our schools, it is time we are giving serious thought to some of the things that are more important than school bonds.

"In closing, I would like to quote three highly regarded Americans. Richard Arens, the Director of the House Committee on Un-American Activities, advised Congress that, 'Our American civilization is going down the drain, and not more than a handful of people are concerned about it.' General Mosley said, 'Historians of the future will marvel most of all at the nonresistance of those who had most to lose.' General MacArthur said, 'This evil force caused many Christian nations abroad to fall, and their own cherished freedoms to languish in the shackles of complete suppression. As it happened there, it can happen here.' "

APPENDIX B

THE BOARD OF TRUSTEES OF THE LASSEN UNION HIGH SCHOOL DISTRICT, Plaintiff and Respondent, v. JACK OWENS, Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Lassen County. A. K. Wylie, Judge.* Reversed.

Action to determine whether charges against a permanent teacher were sufficient grounds for his dismissal by the board of trustees of the school district. Judgment for plaintiff reversed.

PEEK, P. J.—This is an appeal from a judgment permitting plaintiff to dismiss defendant and to terminate his employment as a permanent teacher in the Lassen Union High School District on the grounds of “unprofessional conduct.” (Ed. Code, § 13403, subd. (a).)

On May 13, 1959, charges were formulated by plaintiff alleging that causes existed for defendant’s dismissal. After the written notice of plaintiff’s intention to dismiss him was received, defendant demanded a hearing upon the charges in accordance with the provisions of sections 13403 et seq. of the Education Code. Plaintiff thereupon elected to file this action asking the court to inquire into the charges, determine whether or not they were true and, if so, whether they constituted sufficient grounds for defendant’s dismissal. (Ed. Code, § 13412.)

Although the pretrial statement set the issues in dispute as to (1) whether the publication by defendant of five letters in the *Lassen Advocate* constituted unprofessional conduct or evident unfitness for service, and (2) whether the contents of the letters were false and as such constituted dishonesty, the superior court made no findings on, nor did it mention, the dishonesty or evident unfitness charges. The court found that the allegations in the letters were “unwarranted,” “unfounded,” and “unsupported by the evidence,” and that the publication of the five letters constituted unprofessional conduct of a degree justifying dismissal.

The purport of defendant’s contention on this appeal is that he has been punished solely for the expression of political ideas critical of education generally, and in Lassen County particularly, and that such is not a constitutional basis for dismissal, either under the guise of unprofessional conduct or on any other basis. Defendant further contends that inasmuch as the “warrantedness” of expressed opinions is an inquiry exceeding the court’s constitutional power to adjudicate, any inquiry into the sufficiency of the evidence to support the findings is irrelevant.

[1a] We do not entirely agree with defendant’s reasoning but for reasons later to be expressed, we hold that defendant’s conduct under all of the circumstances presented does not constitute unprofessional conduct of a nature justifying dismissal. Furthermore, the record does

not support dismissal on the grounds of dishonesty and evident unfitness. However, there would appear to be no reason to elaborate on this point, since no findings were made on these charges and no discussion was directed thereto at the trial.

Since the factual circumstances are of particular importance in a case of this nature, they will be set out at length.

Defendant was in his eighth year of teaching and was employed by the Lassen Junior College when the charges were filed against him. He had taught in both the Lassen High School and the junior college for the preceding five years and had attained tenure in his position. All of his teaching experience was in Lassen County, during which time he had been active in problems relating to education and the teaching profession.

For example, he was instrumental in the organization of the local chapter of the California Teachers Association (hereinafter referred to as the CTA); he had served as president of the Susanville Secondary Teachers Association (hereinafter referred to as the SSTA) for a period of two years; he had served for three years on the Board of Directors of the CTA Northern Section; and he had served as chairman of the local CTA chapter's professional relations committee.

The record indicates that for some time defendant had been critical of the teaching conditions in the district. In 1957, while president of the SSTA, he presented a list of proposed improvements at a meeting of the board of trustees. Defendant testified that at the meeting the representatives of the association were greeted with a great deal of hostility, and that shortly thereafter he was being considered for dismissal. A member of the board of trustees stated that the 1957 meeting had been quite cordial and the trial judge, in his memorandum opinion, accepted this testimony. It is undisputed that some of the improvements suggested by the association in 1957 were accepted by the board. However, it appears that during that year a number of teachers left the district because they thought that the efforts of the SSTA had been a failure. The board members conceded at the trial that the teacher turnover problem had been troublesome. Additionally, it appears that many of the points raised by defendant had been the source of comment among educators in some of the major universities of this state; that editorials had appeared in large metropolitan newspapers; and that the Citizens Advisory Commission on the Public Education System had recommended many of the proposals suggested by defendant.

The professional relations committee of the SSTA strongly recommended to the board that defendant be given a contract for his tenure year. Although the board replied that it would accept recommendations on personnel matters only from the administrators, defendant was given his tenure contract.

There is nothing in the record indicating the nature of defendant's relationship with the board, or his other extracurricular activities regarding education in Lassen County, until December 24, 1958. On this date defendant wrote a letter which appeared in the *Lassen Advocate*, a newspaper of general circulation in Lassen County, announcing a forthcoming series of discussions during the following three months

on education in Lassen County, which would be sponsored by the Public Affairs Forum.

The Public Affairs Forum was apparently a "town meeting" type of gathering which had been founded by defendant at some undisclosed date. Prior to the education issue, it had explored various political questions and such problems of local interest as water fluoridation at the specific request of the city council. Various Lassen County citizens, including teachers, were active in the forum presentations.

The December 24, 1958, letter, addressed to the local newspaper and signed by defendant, was critical of local educational conditions, and urged a public turnout to discuss the matter. Although this letter was not included among the five which ultimately constituted the basis of the dismissal charges against defendant, it was not unnoticed by the board. Immediately upon the appearance of the December 24 letter, at the request of the president of the board the Lassen school administrators called in a CTA representative for "advice." The results of this meeting are not of record. However, on January 10, 1959, by the time defendant had written two letters, neither of which was listed in the statement of charges later filed against him, the CTA ethics commission met with defendant in an effort to have him stop his letter writing; but, according to the commission, "Mr. Owens made known that he planned to continue his newspaper article and the Public Forum knowing full well that a group such as ours could never go along with him."

On February 4, 1959, defendant published a letter, which was the fifth he had written, but the first to be ultimately included as a basis of the charges later filed against him.¹

¹ "Wednesday, February 4, 1959 PURPOSEFUL EDUCATION To the Editor: The teacher is the best example, that I know, of the possibilities of 'purposeful education'—education subtly done for a particular purpose with scant regard for truth.

"(The term 'teacher' does not include educators who make up the personnel in the state department of education, district and county school administration, and college and university education departments.)

"Mr. Frank Lindsay, director of the state department's bureau of secondary education, was asked by the California Citizens' Commission on Education how he would go about the business of rating a high school.

"Mr. Lindsay replied that he would visit the boys' toilet and the library, question the janitor and bus driver, but implied that he didn't trust the superintendent. (Incidentally, superintendents as a group call themselves 'teachers' when it is convenient to do so.)

"Mr. Lindsay did not note the existence of the classroom thing—the teacher.

"Mr. Conner, also of the state department of education, recently did the educators' 'jargon song' (always done to obscure and confuse) before the State Citizens' Commission on Education.

"Conner is the top authority of the State Central Committee for changing the social studies curriculum. That Committee begot committees which begot committees and finally summer session workshops where teachers on the leash, as usual, could offer 'constructive suggestions' about a hodge-podge program which had probably already been decided upon.

"At that workshop some classroom teachers with doubts about the proposed changes were either seduced by grades, maneuvered, or told to shut up. Most of the teachers there recognized the true nature of the situation but are silent.

"The instilled belief, backed by salary dollars, is that a promoted teacher becomes an administrator. Yet any discerning person, not ashamed to admit the results of his observations, can plainly see that teaching and administration are two entirely different occupations. What is the position of the able teacher who wants to teach not administer?

"Teachers in excess of 100,000 pay \$22 per teacher per year to belong to the California Teachers Association. The record indicates that this organization is extremely effective in changing California's constitution and in securing appropriate laws.

"The California Teachers Association also has a legally accepted Ethics Commission which quietly covers nasty situations and controls junior administrators and classroom teachers where the power of hiring and firing fails at the local level.

"The teachers sit on committees and are counted for publicity purposes, but 'educators' sit at the controls making the world safe for their kind. Teachers are given such dubious half crumbs as tenure, minimum salary laws, and insurance programs.

"Teachers have their voices 'given' in support of local school programs which they admit privately are absurd and deteriorating. At a personal risk, some quietly teach in unaccepted ways or public education would be much further in the mire.

The CTA representative again met with the board on February 25, 1959, to discuss the situation. It was suggested that the board ask defendant to appear before it, thrash the matter out, and *stop the letters*. This idea was not adopted. Although defendant apparently had never approached the board with his grievances at any time between the inauguration of the letter-writing campaign and the trial, nor had he been requested to do so, he did, on February 5, invite the board to participate in the education forums. However, in its letter of *February 13* declining this invitation, the board commended the "very American principle of the Public Forum and the very great local interest it has inspired," and thanked defendant for his "kind" invitation.

The next letter deemed "unprofessional" was written on March 4.²

On March 10, a meeting of the Lassen Junior College faculty was called by the acting director of the college to question defendant on the exact nature of his grievances. The acting director testified that

"Teachers are publicly, therefore, led to stamp and make their own chains and those for others.

"As undergraduates, teachers are required to take a number of education courses, the content of which is junk and repetition. We return to college from time to time at great personal (and taxpayer) expense to take more of the same required trash and repetition! We spend time that could be used to take academic courses that would help us unswaddle ourselves eventually.

"Now we teachers are about to lend our passive voices to increasing the misery. A teacher certification change is being pushed through the usual organizations, following the usual process of 'taking' the teachers and the public.

"In summary, I offer for consideration the ethically and intellectually castrated American, first echelon—the teacher in the classroom.

"In the past our only solution for the above problems has been to run or bow, and conditions have become worse.

"Now the public desperately needs us. We have a moral obligation as citizens and as professionals to that public.

"Let us not run from the California Teachers Association and our districts of employment. Stand and reform! Help wrest the power of decision from the few (the California Teachers Association and the districts) and give it to the many.

"We must do this now or forever be the ethically and intellectually altered American or Russian national as the force of unhappy circumstances may dictate.

"Now is the time for us to attempt to stand and be the professionals that the 'educator' for propaganda reasons has said that we are.

"Stand with dignity and strength before and with the public so that we may have the chance to be with dignity and courage in the classroom.

"Thus we may teach.

"Jack Owens, Teacher

"Lassen Junior College"

² "Wednesday, March 4, 1959 CHANGES NEEDED To the Editor:

"The Lassen Union High School and Junior College administration and a part of the board of trustees have well illustrated a disease that is rapidly sinking American public education, California first, that of autocracy. These people have had and believe that they still have absolute and final authority over their 'empire,' the high school and junior college. That time is no more.

"They have created, mainly through ineptness and indifference, a mess obviously and primarily beneficial and desired only by themselves, if by anyone. They have created and permitted situations and conditions in those schools that does gross violence to the dignity and decency standards of many teachers and students. They have created and maintained a situation in which the possibility of reasonable education is seriously hampered. How can teachers teach and students learn under conditions distasteful and shameful to both?

"The public is now seriously and justifiably questioning the type of school and educational situation that these people insist on protecting. The administration and some of the board members are obviously and naturally reluctant to meet the public in a space large enough to contain all those people of Lassen County who obviously wish to ask questions and who will expect straight and complete answers; large groups are more difficult to bluff and confuse. Neither does the Forum have an 'executive session' into which the board and administration can retreat when questions seek revealing answers; nor does the Forum permit rudeness as a means of squelching persons who ask questions. The administration, and probably some members of the board, are fully aware that pertinent questions would be asked for which they have no decent answer.

"The need for reasonable changes is a desperate one and the public, who really own the schools, have a right to question even those who have been a part of the failing school situation. This is the only way to make changes based on reason.

"With this in mind, let us go forward then to the March 20 Forum on the High School and Junior College District dedicated to action guided by judgment and tempered with reason and firmness.

"Jack Owens"

the group was not satisfied with defendant's answers, but decided not to take any group action other than to publish a letter in the *Lassen Advocate*, dated March 18, to indicate that defendant was not representing the faculty in his letter-writing campaign. Two more letters, later adjudged "unprofessional," followed on March 11 and March 18. While the letter of March 11 is set forth in full, only portions of the letter of March 18 appear in the record before us.³

³ "Wednesday, March 11, 1959 CTA ORGANIZATION To the Editor:

"My efforts to help effect changes in public education that are desired by both teachers and the public led me into the ranks of the California Teachers Association and then into office in that organization. I have served as a member of the board of directors for the CTA Northern Section during the past three years and was recently reelected for another three year term. Most of the people on this board and in other key positions are educators—administrative people and education professors.

"For us lower echelon people (teachers), the CTA channels of communications are as clogged and confused as they are for the public in the local school districts; efforts to reform are simply ignored and the energy of reformers is dissipated with 'side projects.' My energy and time was used in among other things, organizing a credit union for the approximately 9,500 school people of the CTA Northern Section.

"The entire CTA is a powerful thing; it has a membership of over 100,000 and an annual budget of over \$2,200,000. The efforts of its lobbyists are extremely effective in the passage of taxes and other laws; it can and does elect and defeat candidates for public office. It also quickly and almost automatically protects and assists the administration in any local district where difficulty with the public or subordinates is encountered; if two administrators quarrel the senior one is supported.

"Thus, through the CTA and other organizations, local and public control of education has been practically eliminated; the educator is in charge of hiring and firing and he pretty much controls policy (if any) and curriculum. My present campaign was designed to show among other things the CTA in action.

"After my letters to this paper were started the local educators, as expected, sought and obtained CTA assistance. The local teachers association (people who can be fired locally) were urged to investigate; Mr. Howlett, CTA field man whose home office is in San Francisco, was called in and met secretly with the administration and board. He recommended, apparently early in February, that I be dismissed, for unprofessional conduct, probably because of my public criticism of education. Plans have subsequently been made to accomplish this.

"This is the usual way that situations such as this are handled and teachers are kept from talking publicly. Now do you understand why teachers complain bitterly in private but refuse to talk or take a stand in public in opposition to the educator?

"The CTA has a 'long arm' and can permanently affect the job opportunity of any teacher.

"Mr. Greenleaf had talked with Howlett when he expressed, in this paper, compliments about the Forum of which I am a part.

"The appearance and activities of Mr. Howlett and Mr. Greenleaf demonstrate an interesting attitude toward the people of Susanville and the teachers of the Lassen High School and Junior College; neither knew that he was here.

"Who really owns and controls the local schools?

"Jack Owens"

"[March 18, 1959] In my letters, I have taken the opposite and badly needed stand; here in Lassen County we have serious problems in education. These should be cured; it is more important to talk of the problems than to continue the bouquet-tossing game. After all, who would be interested in remedying anything that is already nearly perfect? If we don't see and cure our problems the Russians quite probably soon will; they also will cure us of the "liberty" habit. Certainly we cannot cure all the problems of education in the United States but let us at least do our share.

"Fourth, every issue is confused by fence sitters who insist that they see no reason to act. We have tried to knock down the fence and thus clarify the issue; local education either does or does not need changing. It is time to decide.

"Fifth, we have hoped to illustrate that the board, the public, and the teachers have all been isolated and cannot, under present conditions, communicate adequately; they cannot meet and discuss current issues in education. The educators have created, for their own interest, a strong wedge of distrust between these groups. Thus problems in education cannot be cured. Events during the past years, highlighted by the high school board and administration refusal to appear in the Forum, justify this viewpoint.

"Sixth, that administrators backed by large state organizations and the board-given authority to hire and fire have deprived the teacher of the dignity and security necessary for independence and adequate public responsibility.

"Finally, that the people here in Susanville and Lassen County have been unable to secure reasonable and badly wanted changes in their own educational system. Regardless of the law, the administration has the authority but escapes the responsibility; the boards have the responsibility but no real authority (the administration has that—it is on the job all the time and has effective control over the faculty), the public has tax bills and a mess but no control (the recent furries in school meetings, curriculum construction, etc., are pacification gestures; something that will, it is thought, lull the public back to sleep).

"Where shall we go from here? All interested people should come to the Forum Friday night and talk it over."

The final letter, also adjudged "unprofessional," was published on May 13, the same date that the charges were formulated against defendant by the board.⁴

It should be noted that one of the directors of the forum, who also had been a speaker at one of the sessions in the education series, was a successful candidate in the school board election alluded to in the letter of May 13.

Before discussing the additional evidence presented at the trial of this cause, primarily because we feel the trial court erred in its approach to this problem, we believe it necessary to discuss the concept of "unprofessional conduct."

[2] Basically, the word "unprofessional" is a relative expression without technical meaning, and the phrase "unprofessional conduct" as used in the Education Code has been given no legislative definition. (*Board of Education v. Swan*, 41 Cal.2d 546 [261 P.2d 261].)

[3] In the judicial determination of whether the precise facts presented constitute "unprofessional conduct" the trial courts enjoy a great deal of discretion. (*Board of Education v. Swan*, *supra*, 41 Cal.2d 546.) [4] However, in exercising this discretion they are bound by the limits placed by the appellate courts upon the concept of the scope of "unprofessional conduct." Defendant, in effect, argues that one of those limits applicable to his case is his constitutional right to publicly criticize the educational process, including his superiors, without fear of losing his teaching position.

[5] However, this is too broad a proposition, and has been answered by the California Supreme Court in this manner: "One employed in public service does not have a constitutional right to such employment and is subject to reasonable supervision and restriction . . . to the end that proper discipline may be maintained, and that activities among the employees may not be allowed to disrupt or impair the public service. [Citing cases.] (*Board of Education v. Swan*, *supra*, 41 Cal.2d at p. 556.)

[6] Thus, the trial court's primary inquiry in the present case where the sole basis of the charges were letters critical of education should have been to the questions of whether there had been any dis-

⁴ "Wednesday, May 13, 1959 TUESDAY'S ELECTION To the Editor:

"The school boards in this area have been guilty of a practice that would be more fitting in Russia than in the United States; that of permitting or placing unlimited and unsupervised authority in the hands of the administration. This practice has cost the people of Lassen County untold sums of money, many excellent teachers, and it has deprived our children in most cases of an adequate school system. The price has been very high.

"Boards have become little more than rubber stamps for administrators, their authority is simply being used. These administrators apparently use the board and its authority as they wish. After a few board sessions over the conference table board members see both the public and the teachers as enemies and are quite ready to rubber stamp the administrator's autocracy or one man rule.

"The basis of administrative supremacy is (1.) He is on the job every day—the board member is there just once each month. (2.) He has with the board consent, a service staff to do research and to back him along with the CTA and other such administrative protective associations—the board member has no one.

"If the people of this area want decent high school and Junior college education, I strongly urge that they elect the maximum number of new board members. Elect people who have the strength to be responsible to the public, then go to each board meeting and back the persons you elect. Require that your board use the intelligence of everyone, teachers and public, to construct and use a basic curriculum of fundamentals—with the frills left out.

"One person rule in the schools has produced a mess and this should be changed.

"See you at the polls.

"Jack Owens,

"Susanville."

ruption or impairment of discipline or the teaching process as a result of defendant's letters.

Instead, the trial proceedings and the findings comprise a meticulous attempt to establish that the statements in defendant's letters were "unwarranted" or "unsupported by the evidence." The result of this approach is that the court often ended up weighing its opinion against that expressed by defendant in his letters. The following excerpt from the findings is illustrative: "The court feels that there is nothing in the record to show any apparent deep concern, or concern of any kind, by the people of Lassen County over poor results of public education locally . . . because the record in this case abounds with irrefutable evidence that the junior college and the high school are functioning in a *proper* manner, have been and are obtaining good results and have good rating as such . . .

" . . . the record shows that the junior college and high school . . . are being conducted, managed and *properly* handled, in a careful and *proper* manner . . ." (Italics added.)

[7] It was not the court's function to debate the subject of *proper* administration of the school system. Within the limitations previously discussed (disruption or impairment of discipline or the teaching process), defendant had the constitutional right to differ with the court and the administrators over what is *proper* management, at least in a responsible manner.

Furthermore, as a matter of record, the only substantial evidence indicates that the people of Lassen County *had* expressed concern over the results of local education. For example, the board's letter of February 13 to defendant noted the "very great local interest" in the forum, petitions requesting the withdrawal of the superintendent were circulated by the public at the time of the forums, and a "reform" candidate who had defendant's backing was elected to the board. Since we have mentioned the comment of the board, we should also note the testimony of the principal of the high school that the median in one of the high school English classes was "way down" to 9, and that of 150 incoming freshmen, 14 were not tested in English because of their inability to read and "because we felt it was a waste of the test."

We will not further examine the court's findings, except to indicate that the evidence presented relevant to a properly framed inquiry, as delineated above, will not support the general finding of "unprofessional conduct." That small amount of relevant evidence revealed by the record is uncontradicted. This dearth of pertinent information is partially due to plaintiff's predilection to excoriate defendant for his letters, and to effectually place the burden upon defendant to justify them. Plaintiff might more profitably have spent its time in attempting to establish what effect harmful to education in Lassen County had been engendered by the letters.

[1b] The uncontradicted evidence reveals that defendant violated no board or school policy by publicly airing his grievances; indeed, it appears that the board and school had no written grievance procedures. Neither did defendant violate any other ascertainable school rule.

There is no issue of disobedience or insubordination. (Cf. *Board of Education v. Swan*, 41 Cal.2d 546 [261 P.2d 261] and *Midway School Dist. v. Griffeath*, 29 Cal.2d 13 [172 P.2d 857].) As previously noted, the board made no direct demands upon, nor any contact with, defendant concerning the letters, except to decline his invitation to discuss the charges at the public forum lecture.

Furthermore, there is nothing in the facts presented to support plaintiff's sole contention on this appeal that the judgment finds "incontrovertible" support in the decisions of *Board of Education v. Swan*, 41 Cal.2d 546 [261 P.2d 261] and *Pranger v. Break*, 186 Cal.App.2d 551 [9 Cal.Rptr. 293].

The defendant in the *Swan* case repeatedly violated various school district rules, refused to accept teaching assignments, was insubordinate, refused to conform to the instructions and requirements of her superiors, continuously refused to attend required meetings, and told a Parent Teachers Association Meeting that when she had been called before the Los Angeles City Board of Education she had "spit in their faces." In addition, before a regularly scheduled meeting of the local Parent Teachers Association, defendant had made derogatory remarks concerning the superintendent of schools and criticized the board of education for bringing him to Los Angeles. The Supreme Court affirmed the trial court's finding of unprofessional conduct, and we agree. However, the case is in no way "incontrovertible" support for the judgment in the present case which is based on completely dissimilar facts.

Nor is the *Pranger* case in any way controlling. That case involved the dismissal of a civil service employee for "conduct unbecoming a public employee." The basis for the dismissal was an editorial written by defendant, an employee of a county air pollution control board, which could be interpreted as sanctioning, and even advocating, a strike for higher pay. The court concluded that public employees have no right to strike against the government, absent legislative authority. In that context, defendant was advocating illegal action.

Defendant in the instant case is advocating the perfectly legal and laudatory "action" of public debate on vital issues, and in the letter of May 13, exhorts the people to vote in the school board election. These pleas bear no similarity to the advocacy which the court in the *Pranger* case labeled illegal.

Reference must be made to the evidence supporting the court's finding that defendant's conduct was "unethical and unbecoming a person in the profession of teaching." The question of ethics, although seemingly germane to this inquiry into "unprofessional conduct," suffers from a difficulty of definition. This unfortunate fact was reflected in the trial proceedings.

In response to questioning, defendant testified that prior to his resignation from the CTA on April 14, 1959, he generally subscribed to the association's recommended code of ethics, but since his resignation he subscribed to his own code of ethics. Other teachers, including the acting director at Lassen Junior College, testified that they followed their own personal code of ethics.

The record indicates that approximately 102,000 of the potential 120,000 teachers in the state belong to the CTA, but that they take no oath to support it, nor do they agree to subscribe to the CTA code of

ethics when they join. The CTA code is in no way embodied in any California legislation.

Nevertheless, a report of a CTA professional ethics panel was introduced into evidence without opposition. Section 13417 of the Education Code, which seems to authorize this procedure, reads in part: "Upon any such trial [such as the case before us], the court or any party may call and examine expert witnesses to testify as to any matter of professional or personnel standards . . . or other such professional matters as may be involved in the subject matter at issue.

" . . . the court may also receive and consider as evidence any report . . . submitted by such expert witness . . . or a panel . . . maintained by a statewide professional and educational association.

A CTA panel member testified that the panel believed defendant's conduct to violate the CTA code of ethics, and the panel's written report so deciding was filed with the court.

An examination of this report indicates that defendant's act of *publicly* criticizing the board's policy, once it had been established, was a prime factor in its decision. This is consistent with the uncontradicted testimony that the CTA representative had told defendant in January that the CTA could "never go along" with his letter-writing campaign (which merely urged public discussion).

It is clear that defendant, even while a member of the CTA neither subscribed to nor agreed with this part of the CTA code of ethics. It is likewise clear (from their testimony and conduct) that the several teachers who assisted in the preparation of the letters and in the administration of the public forums did not subscribe to this "maxim."

Nevertheless, the court concluded that defendant had ignored "all codes of professional ethics," when he chose to publicly criticize aspects of local education. This conclusion is not supported by the uncontradicted testimony mentioned above and thus, the investigation of ethical codes in the teaching profession was of little assistance.

However, this is not to say that the phraseology of defendant's letters can be looked upon as a model of scholarly clarity, nor that the somewhat intemperate language employed therein is commended to the teaching profession. But it is a matter of record that a great deal of public debate on the subject of education was occurring, both in California and nationwide, at the time of the Susanville public forums. It is not surprising that many of the arguments were not temperately phrased in terms of universal clarity, and that much of the logic employed was flavored by personal experience. [8] Defendant, a father of school-age children, was not precluded from joining in this great public debate because of his status as a teacher. Nor was he precluded from criticizing education in the course of his electioneering in support of his choice of a candidate for the school board in the coming election. Furthermore, in the case before us, plaintiff had the opportunity to meet publicly with its protagonist for the purposes of clarification and rebuttal. However, the choice was to postpone this encounter until the trial of defendant on the charges presented.

At the trial, defendant's conduct of partially basing his opinions on material published in California newspapers was rejected by plaintiff

as unsatisfactory evidence because it was not "personal knowledge." Indeed, plaintiff required that defendant name any teacher expressing views similar to his, and bring the teacher into the trial to testify first-hand if he wished to rely upon his statement as "justification" for his opinions. Few teachers so designated were named by defendant and few appeared as witnesses. Considering the quasi-inquisitorial nature of plaintiff's trial tactics and the fact that charges had been filed against defendant, it is not surprising that more of this "evidence" was not presented.

As we have previously indicated, plaintiff's and the court's exhaustive examination of the "evidence" to "warrant" defendant's statements (for example, in regard to "purposeful education," "injustice to the teacher," "autocracy" or "proper handling of the school system") was not a helpful approach to the problem of "unprofessional conduct."

The only scintilla of evidence bearing on the decisive issue raised by the facts of this case, whether defendant's conduct had resulted in an impairment of the teaching process or had raised disciplinary problems, is found in the CTA panel report previously mentioned. That report contains the following statement:

"The panel concludes that Mr. Owens' continued employment in this district is untenable and would lead only to embarrassment to himself and the district. The antagonism created by his actions has caused a rift, which if continued, would undermine the educational program to a degree which could not be compensated for even by effectiveness as a classroom teacher."

This statement is boldly set forth in the record without explanatory comment. Accordingly, the basis for the statement, the nature of the "rift," the "embarrassment," or the "undermining," are not before us. Nor was it before the trial court. It is not surprising then, that no mention of this aspect of the report was made by the court, nor were there any findings on the matter.

The flat prediction that the continued employment of defendant "would undermine the educational program" is similar to a charge levied against a school principal after a particularly acrimonious Florida school election campaign. The Florida Supreme Court answered: "This apprehension is necessarily speculative . . . [and] there is no logical reason now to determine that because of animosity growing out of the election the relator will inevitably be so recalcitrant that she should be excluded from a position of authority [as school principal]." (*Adams v. State* (Fla.) 69 So.2d 309, 311.) This statement is most appropriate to the record we have examined in the present case.

On the basis of the record before us, and for the reasons above discussed, the judgment allowing dismissal because of "unprofessional conduct" is reversed.

APPENDIX C

THE TRIMESTER PLAN OF UNIVERSITY OPERATION ¹

Florida's Answer for Year-round Education

By J. B. CULPEPPER

(From *State Government*, Summer 1964)

The rapid increase in enrollments all over the United States and the geometric expansion of knowledge have led many institutions of higher learning, as a means of meeting the challenge, to adopt or to consider year-round plans of operation. In fact, if we are to educate all our youth to their highest potential, then, as a result of the pressure of numbers and the increasing demands for expanded and improved offerings in higher education, the institutions must function under some pattern of year-round operation. Thus far more than fifty colleges and universities in the country are engaged in year-round operation under an extended school year of one sort or another, and at least another hundred institutions are considering adoption of such a plan.

In Florida, because of these pressures, the State University System after careful study has chosen to initiate a program under which it has used a trimester plan since September 1962.

Genesis of the Plan

Florida has proceeded systematically, beginning in 1954, to make provision for its rapidly growing college enrollments. Following carefully formulated plans, the state has established a statewide system of locally controlled community junior colleges, and it is expanding and developing the State University System in an effort to provide needed educational opportunities for the increasing numbers of students who are both willing and able to profit from education beyond the high school.

Concurrently there has developed an awareness that the state's ability to provide for all of the students who want to attend college in Florida is contingent in part upon the attainment of a fuller utilization of existing and new institutional facilities. While steps were being taken to increase the utilization of instructional space under the semester plan, the Board of Control, which governs the State University System, developed an active interest in the utilization of the university plants throughout the entire year. Accordingly, the board in November 1959 directed that a careful study be made of the feasibility of operating the State University System on a year-round basis. Following preliminary examination of the possibility for year-round operation, a system-wide committee proposed that serious consideration be given to a trimester plan.

Members of the Florida legislature were advised that the study of possible year-round operation was being made. The 1961 session of the

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legislature indicated its great interest by providing for each of the universities a supplementary appropriation for the biennium, the receipt of which was contingent upon "the full implementation of a trimester or quarter plan including the requirements that the Universities undertake whatever steps . . . may be necessary to encourage a uniform level of enrollment throughout each of the instructional periods."

Upon the recommendation of its Executive Director, the Board of Control in its July 1961 meeting determined that all institutions in the State University System would operate under the same type of year-round plan, and that the several institutional calendars would be uniform with respect to dates set for the opening of each of the terms. At that same meeting the board instructed its Director, working with the Council of Presidents and a system-wide committee on calendar, to provide it with recommendations concerning the plan for consideration and action by the board at its October 1961 meeting.

Rationale for Year-round Operation

While the widespread interest in year-round operation was occasioned in part by the need to serve larger numbers of students, there were also academic considerations which called for such calendar reform. With the recognition of our cultural dependence upon the college-educated segments of the population, it has become imperative that students complete the initial phases of their professional preparation in time to assume professional responsibilities at the age of their greatest strength and energy. The availability of full programs of instruction on a year-round basis will make it possible for society to obtain longer periods of service from its professional educated manpower, as well as to have that service available at an earlier time. Although the demand is insistent for professionally trained manpower, there is also a clear recognition in many specialized fields today that professional education must be thoroughly integrated with liberal education. Under year-round operation it is possible for both liberal and professional educational experiences to be completed within the period traditionally devoted to one or the other.

Apart from academic consideration, year-round operation has significant administrative advantages. Since under the year-round plan a given student body can complete a traditional four-year program in less than three years, the acceleration under such a plan has the effect of permitting the enrollment of the equivalent of one additional class without additional instructional or residential space. Also, year-round operation permits the spreading of university overhead costs over the larger output resulting from operation of an additional term in the year. Utilization of instructional faculty services over a longer period each year is a decided advantage in the face of the critical shortage of well-qualified teachers. At the same time, the year-round operation will enable faculty members to increase their earning power.

For these and other reasons which space does not permit delineating here, the State University System of Florida is undertaking a year-round operation. In summary, it does so because this makes possible a more effective use of resources to accomplish educational objectives

which are consistent with the demands and pressures of the times and which are in harmony with the maturation of college students.

In considering the various possibilities it was felt that the plan must allow a maximum amount of time for instruction, with the least time possible devoted to carrying out efficiently such related activities as registration of students, examinations, reporting of grades, and changing of schedules. It was judged that the plan must accomplish as nearly as possible a uniform distribution of the instructional load through the several terms of the year, and it was agreed that it must make provision for the summer enrollment of teachers employed during the regular academic year in the public schools.

The Plan Recommended

After careful review and many meetings of University Presidents and interinstitutional committees, the following plan of year-round operation was adopted upon their recommendation by the Board of Control, to be effective September 1, 1962. It provided:

That the trimester plan would include three ninety-four-day trimesters (fifteen two-third weeks);

That not more than eight days during any trimester would be devoted to final examinations, registration and advisement, commencement, and recesses occasioned by legal holidays occurring within the term;

That the first trimester would begin immediately following Labor Day and end before Christmas; that the second trimester would begin immediately following New Year's Day; and that not more than five days would intervene between the close of the second trimester and the opening of the third trimester;

That the third trimester would provide a full program for all of those students for whom it would be advantageous to attend throughout the term;

That the third trimester may include in the first half a period of not less than forty-seven days for students who might be unable to enroll for the entire trimester;

That the third trimester would include a period of not less than forty-seven days scheduled at such time as will permit the enrollment of teachers employed in the elementary and secondary schools;

That not more than four days of either forty-seven-day term would be devoted to final examinations, registration and advisement, and recesses occasioned by legal holidays occurring within the term;

That the unit of credit would be the semester hour;

That there would be a system-wide committee to advise the Board of Control through the Council of Presidents concerning the ways in which a uniform distribution of the instructional load throughout the three trimesters could be attained and maintained, and to devise ways of evaluating and improving the year-round plan of operation.

Implementation of the Plan

Adoption of the trimester plan outlined above provided a framework within which the objectives of year-round operation could be achieved. But full implementation of the plan required a number of steps beyond

the development of institutional calendars in the universities. Among other factors which required consideration were faculty morale, fatigue factors, administrative changes, cost to students, curriculum changes, effects on research, impact on students' social and recreational patterns, and others. Perhaps the most pressing of the decisions which had to be made related to faculty salaries and conditions of faculty employment. The Council of Presidents, after consideration of at least five possible courses of action, recommended that the Board of Control adopt the following plan for adjusting salaries of administrators and faculty members under the trimester organization:

Each regularly employed faculty member engaged in teaching and/or research was assured employment for two and a half trimesters of each year, or for five trimesters in two years.

The salary received by each faculty member for two semesters (nine months' instruction) was increased by 11 percent effective September 1, 1962, to compensate for the additional month of work time occasioned by being employed two and a half trimesters (10 months' instruction).

Each regularly employed faculty member who was employed for three trimesters in the year was to be paid during the two months of the additional one-half trimester at the same monthly rate as was established for the two-and-a-half trimester period.

Academic administrators being employed for the full twelve months' period were allowed only merit increases, which were recommended by the Presidents.

Where librarians, student personnel officers, and nonacademic administrators were involved in part-time teaching or were so closely related to instruction that adjustments in salary should be made, such adjustments were recommended by the Presidents to the board.

Agricultural extension and agricultural experiment station faculty personnel employed for the full twelve months' period were allowed only merit increases justified by the Presidents for these individuals.

The single most important factor which was judged and later found to be true in realizing uniform enrollments in the three trimesters was the impact of increasing enrollments.

The administrations of the several universities would have preferred to initiate the plan in September 1963, when enrollment increases advanced sharply. However, as the additional money was advanced by the legislature for the term beginning in September 1962, all agreed, for obvious reasons, that the plan should be initiated at that time.

In this initial year the percentage of enrollments in the third as related to the first trimester varied in the several institutions. Even with the interest of students in attending Trimester III-A (or the first half of the third trimester) and with large numbers of public school teachers attending Trimester III-B (or the second half of the third trimester), enrollment declined in one university, having the highest third trimester enrollment, to 70 per cent of the enrollment of the first trimester; and in the university having the lowest third trimester enrollment, it declined to 55 per cent of the enrollment of the first trimester. As the pressures of enrollment mount it is judged that, by careful administrative planning, more and more students will register

in the third trimester, thus realizing a more equal distribution in enrollment among the three trimesters. To date in subsequent third trimesters, enrollments have increased by approximately 6 per cent in each year.

Suggested Advantages of the Plan

Among the advantages which may be stated for the trimester plan of operation are these:

The plan allows a shift from a semester operation to a trimester operation more smoothly and rapidly than alternative means of accomplishing year-round operation would allow. The same length of time can be given in the classroom by lengthening the daily class period five to ten minutes, and the same semester credit can be earned. No massive reorganization of semester instructional materials by the professors is required, though in time it may be desirable.

Under the trimester plan, less time is taken in registration and in examinations.

With the lengthening of the class period by ten minutes, a longer block of instructional time is gained, thus allowing desirable innovations in instruction, such as use of modern teaching aids.

The trimester plan as it operates in Florida will allow many students to find employment at peak periods of job demand and still permit them to finish in a four-year period.

The plan has all of the advantages of the semester system plus allowing completion of the undergraduate degree in a period slightly under three years.

The concentration of fifteen weeks of instruction into fourteen weeks is an incentive to students to work harder and to utilize their time more efficiently.

The plan allows more effective use of faculties and facilities.

It eliminates the post-Christmas lame duck session, when students and faculty are in a furor, preparing for examinations.

Suggested Disadvantages

Various objections to the plan also have been offered since its implementation. Some examples of what has been said by critics follow:

Trimester operation fails to provide sufficient time for assimilation, reflection, digestion, maturation.

A trimester course cannot be the equivalent of a semester course. A decrease in the student's course load and/or a decrease in the amount of material in a given course is imperative.

The increased pressure under trimester operation has resulted in lower quantity and/or lower quality education.

Under the trimester system there is less time for faculty research and creative work.

There is increased exhaustion and fatigue under the trimester operation, accompanied by a prevailing attitude among faculty and students that education and teaching have been reduced to a harried, frantic race.

Trimester operation forces students to neglect reading and thinking.

Random Reactions from Students and Faculty

Comments on the plan from students and faculty have ranged from highly favorable to strongly critical. Examples of the reactions have included these:

"The students are under terrible pressure; I don't see how they can stand it."

"The trimester system is geared to IBM and dehumanization."

"About the time I learned where classes were, we had midterms, and now finals are here."

"The trimester makes a handy excuse for the students. They blame everything on the 'trimonster' now."

"Students are seen sitting on the floor of the library for the first time this fall because they don't have enough room to study at the tables."

"Most of the kids have just too much to do, with no time for extracurricular activities."

"It's rugged. It has ruined my social life. I am going to have to graduate so that I can get reacquainted with the opposite sex."

"It is a good thing the trimester gets you through school more quickly; my beauty is fading fast."

"A student dropped his pencil, and by the time he had picked it off the floor he was two weeks behind the rest of the class."

"There are still those who just plain don't like it, don't want it, and there have even been allegations that some university people are deliberately intent on seeing to it with all in their power that it will be scuttled."

"Fears of massive dropouts and flunkouts are largely unfounded."

"The teachers are having to spend more time in class and less time doing private work or outside work. But apparently they are not leaving the university, as was predicted."

"Reevaluation of the trimester may show that a lot of dead wood may need to be cut out of many courses."

"One conclusion is obvious. The universities have taken on more of an academic atmosphere under the trimester plan than at any time in the remembered past."

"The trimester plan gets more work out of the professors for very little increase in pay."

"The trimester system is undoubtedly an advantage for students."

"I believe that everyone benefits from the ending of the first trimester before Christmas. Now, no one has to face the mad rush of exams when he returns."

"I hate it. It rushes things too much and doesn't really prove beneficial."

"The trimester system encourages students to go through college too rapidly."

"Now that we know what the trimester is, we are ready to begin really testing and judging the system. Those who condemn it now are merely admitting their own inability to adapt with changing conditions. We know what to expect. There is no excuse for repeating the mistakes of the previous trimester. It is time to make the system work."

Conclusion

The trimester plan has been in operation in Florida since only September 1962. There has not been time, therefore, to permit a full, comprehensive, and honest evaluation of its merits and demerits. Preliminary investigations show that there has been no increase in the over-all dropout rate. Studies also indicate that grade point averages are approximately the same as before. The average number of hours carried per student has dropped slightly at the undergraduate level. However, the average reduction amounts to not more than one semester hour at any level. The number of disciplinary cases for all causes in all of the universities is down.

The trends pointed up by these and other reports are contrary to rumors and assumptions which have been rather widely circulated among faculty members, who perhaps feel the pressure of the trimester more than do students. There is sufficient evidence to assume that students under the trimester system are studying harder than under the semester plan. Certain midweek and weekend social activities have been eliminated, in most instances on the suggestion of the students themselves.

The trimester plan of operation is one of several means being employed to use more effectively the faculties and facilities of the universities. It is true that the plan has certain disadvantages, but it has many advantages. Opposition to it is to be expected, since opposition thrives on every new idea, concept or plan. Careful study of the plan as it now operates in Florida is under way. After a student generation has passed through the universities under the plan, perhaps evaluation will lead to some adjustments, some modifications, which will improve the system. In any event, it seems safe to predict that some type of year-round plan of operation is here to stay.

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ASSEMBLY INTERIM COMMITTEE REPORTS

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Report of the ASSEMBLY INTERIM COMMITTEE ON EDUCATION

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Report of the SUBCOMMITTEE ON SCHOOL FINANCE

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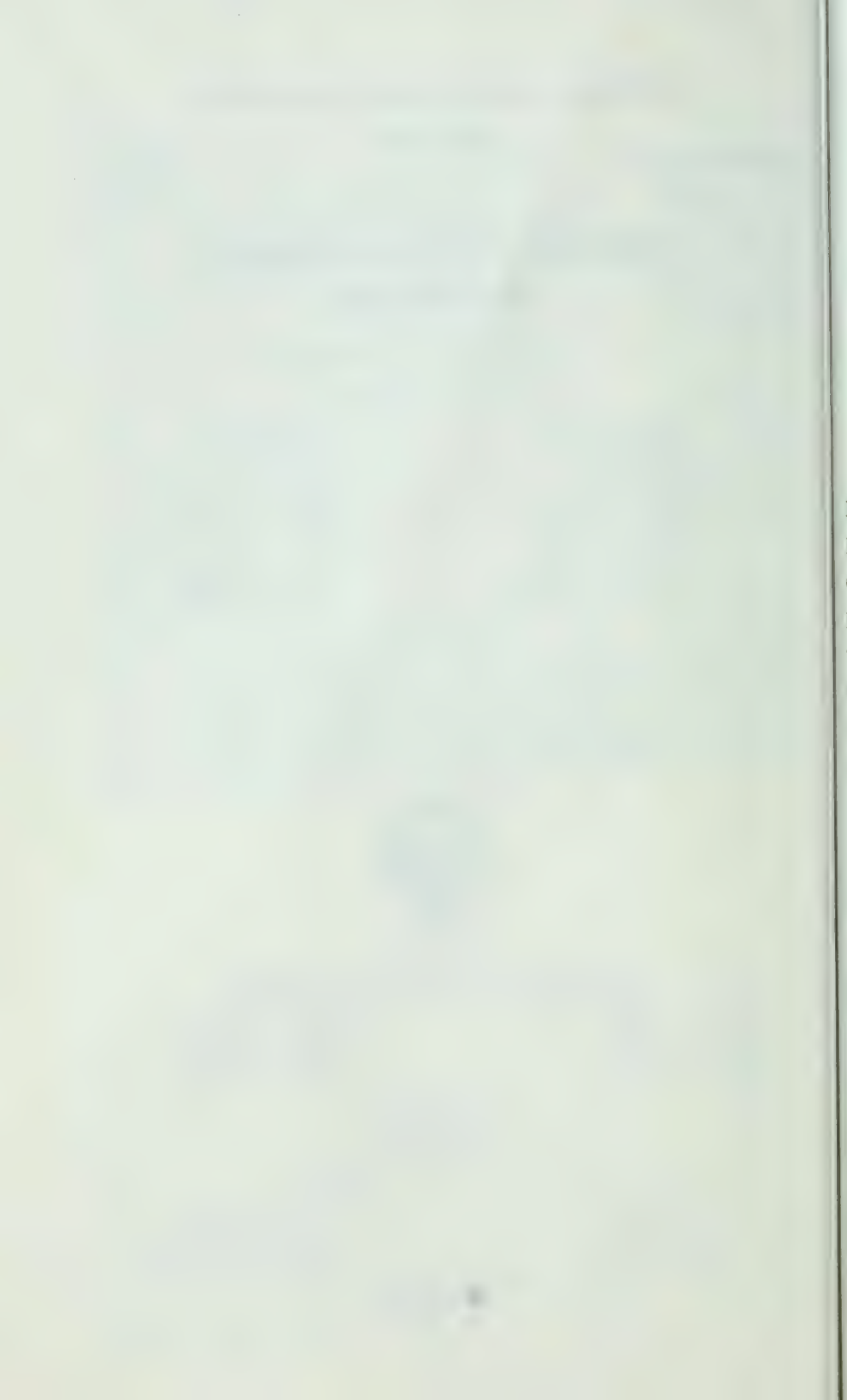
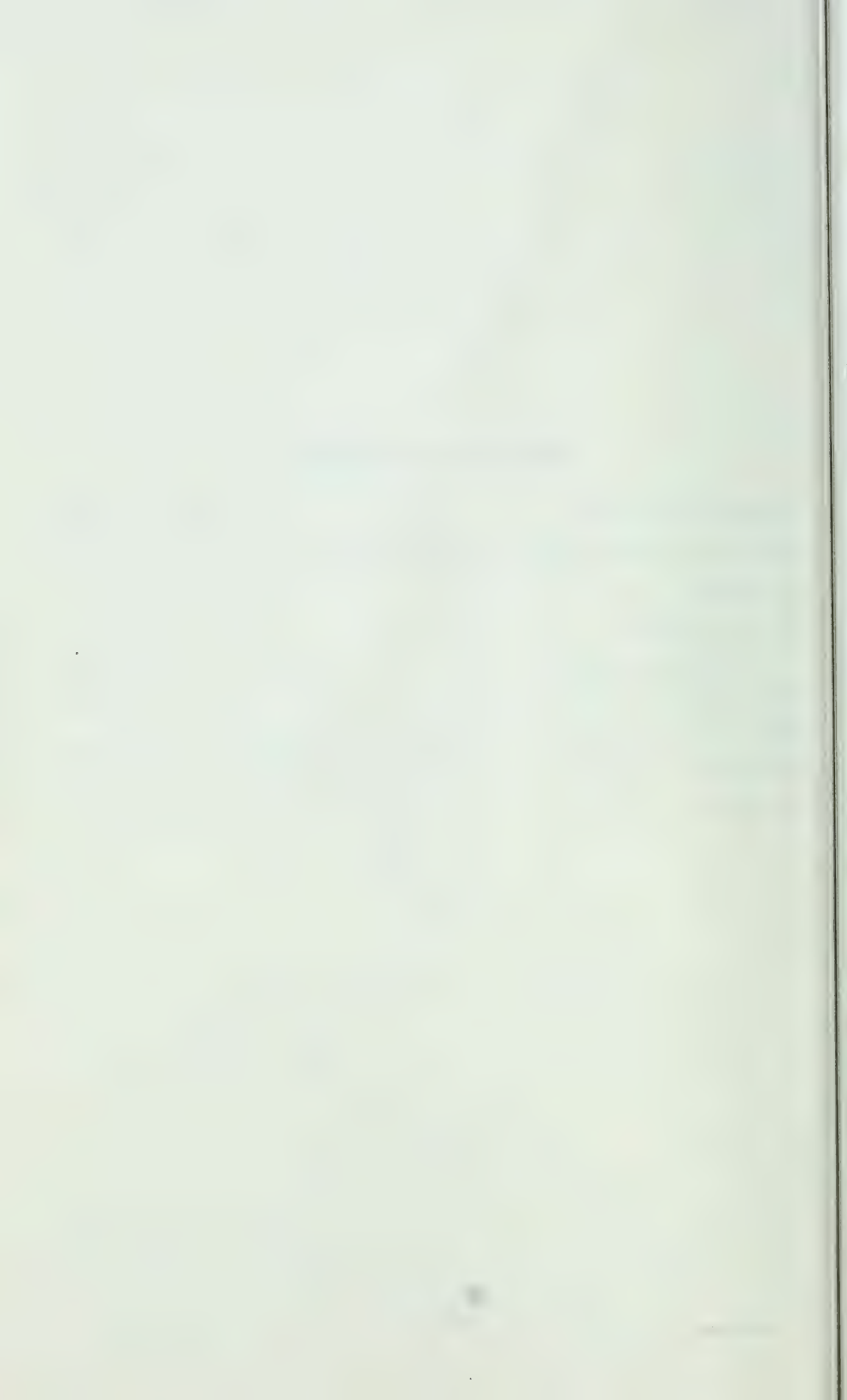


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LETTER OF TRANSMITTAL

January 8, 1965

HON. JESSE M. UNRUH
Speaker of the Assembly, and
Members of the Assembly
Assembly Chamber, Sacramento

Gentlemen :

Pursuant to House Resolution No. 500.5, adopted on June 21, 1963, the Assembly Interim Committee on Education herewith submits its final report of the Subcommittee on School Finance.

Respectfully submitted,

CHARLES B. GARRIGUS, *Chairman*

LEO J. RYAN, *Vice Chairman*

Subcommittee on School Finance

Garrigus, *Chairman*

Collier

Flournoy

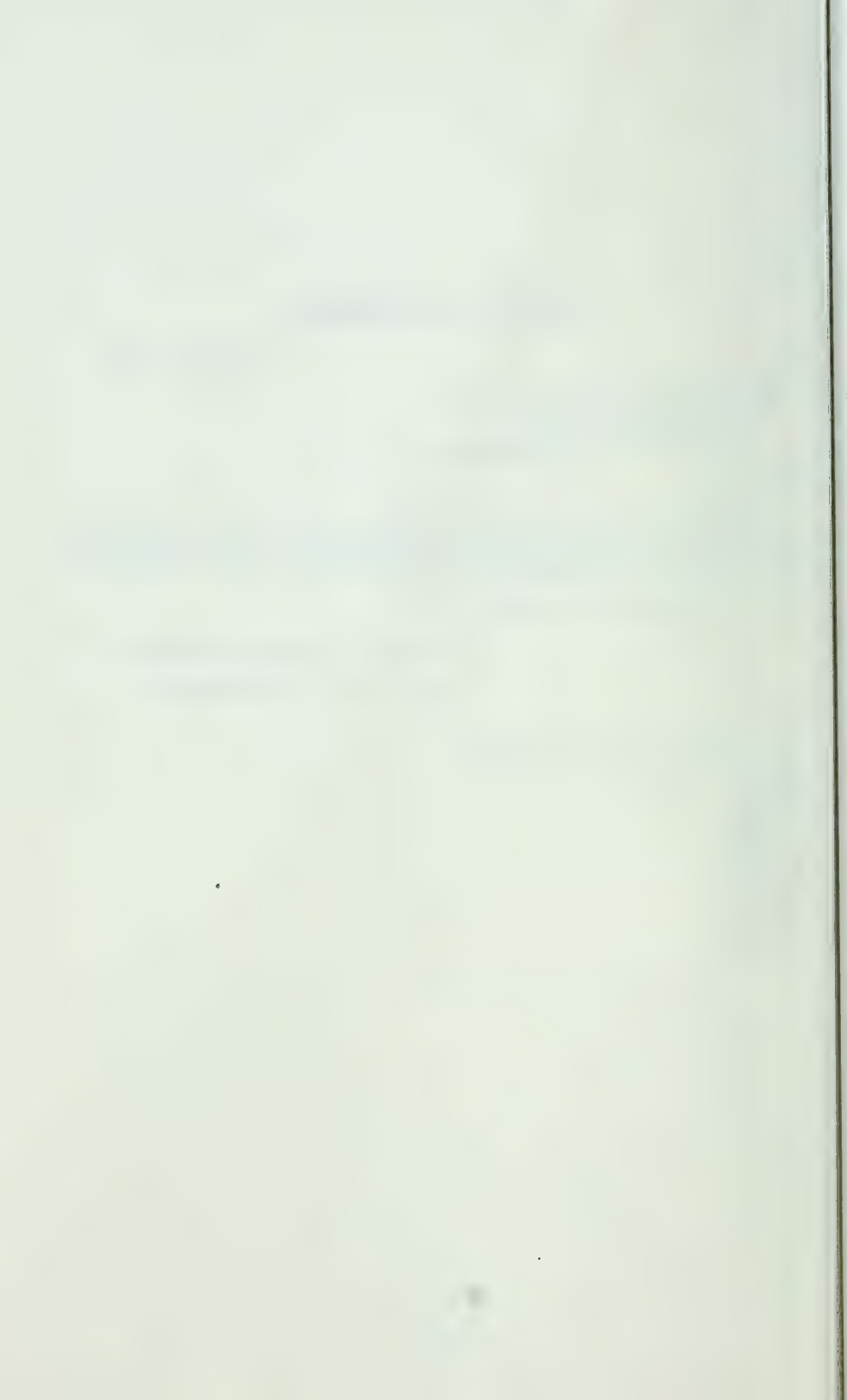
Greene

Monagan

Porter

Whetmore

Winton



Report of the

SUBCOMMITTEE ON SCHOOL FINANCE

of the

Assembly Interim Committee on Education

Members of the Subcommittee

CHARLES B. GARRIGUS, *Chairman*

JOHN L. E. COLLIER *

HOUSTON I. FLOURNOY

LEROY F. GREENE

ROBERT T. MONAGAN

CARLEY V. PORTER

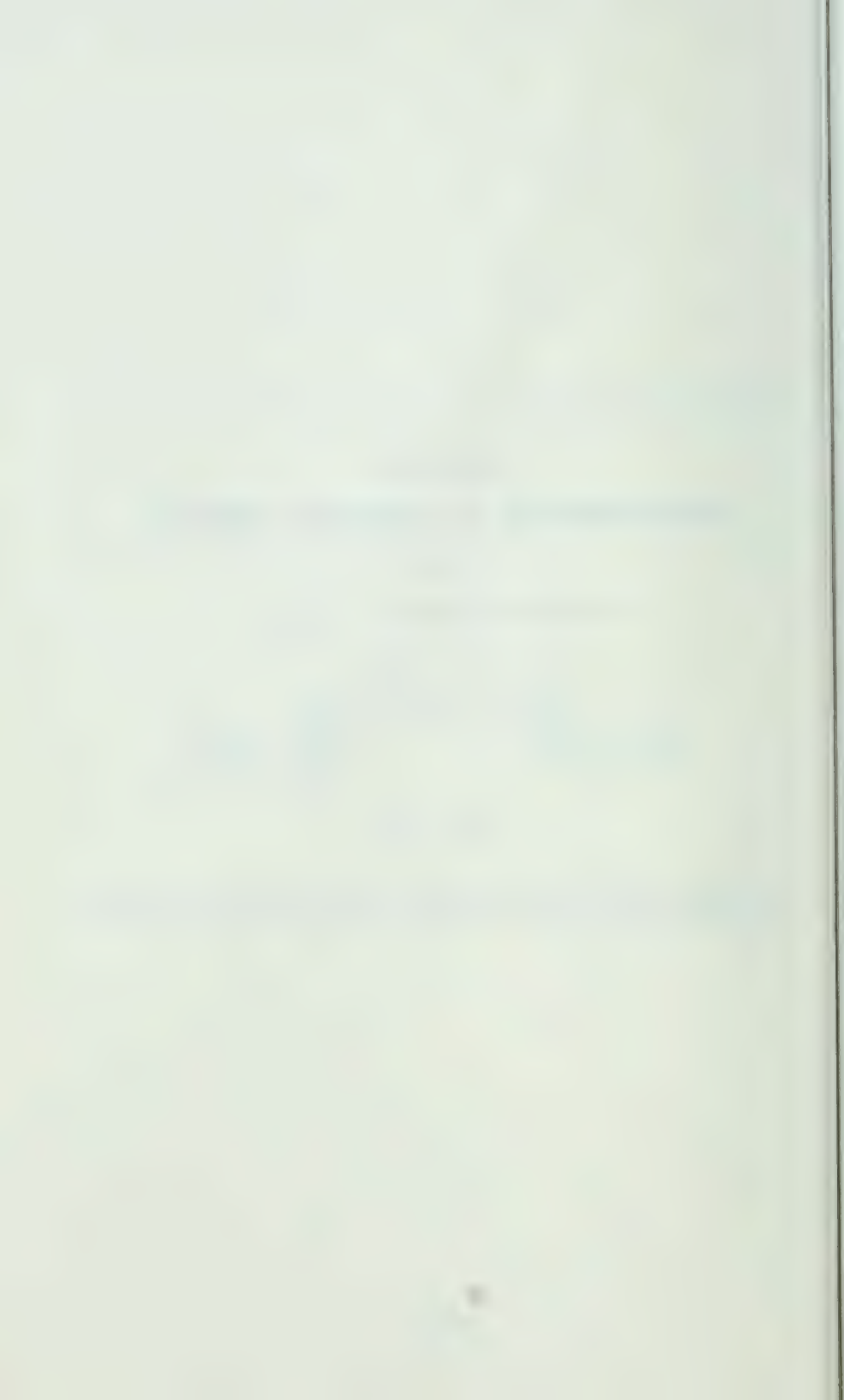
JAMES E. WHETMORE

GORDON H. WINTON, JR.**

January 1965

* Assemblyman Collier concurs in the report, but "with several serious objections."

** Assemblyman Winton concurs with footnotes and comments made to this report by Assemblyman Flournoy.



SUBCOMMITTEE ON SCHOOL FINANCE

CONCLUSIONS

1. The committee concludes that a reasonably small classroom size is directly related to pupil achievement. The committee believes that the available evidence shows that small pupil-teacher ratio and relatively generous teacher salary scales have a directly beneficial relationship to the achievement of pupils in the public schools.

2. The committee has found no evidence to support the thesis that administrative staffing patterns, noninstructional personnel staffing or other nonteaching staffing have a marked effect upon the achievement of pupils in school.

3. It is concluded by the committee that under the present system of school finance the Legislature has little control over the expenditure of funds by local school districts. It is further concluded that this lack of control results in a wide variation in patterns of employee staffing, class size, salary ranges, and philosophies of curriculum development.

4. The committee believes that the present system of allowing a minimum amount of state "basic aid" to all school districts regardless of their wealth mitigates against equal educational opportunity for all children.

5. The committee concludes that there is no particular relation between the numbers and percentages of nonteachers employed by school districts and the wealth of those districts.

6. The committee finds that class size, or pupil-teacher ratio, is directly related to district wealth and, in fact, is more responsive to the financial ability of a school district to support an educational program than any other single factor.

7. It is the committee's conclusion that nonteaching staffing in school districts has no relation to any of the normally used district criteria, such as size, wealth, location, and so forth. Rather, such staffing outside the classroom is dependent primarily upon the decisions of local school boards and administrations.

8. It is concluded that teachers' salaries are directly responsive to school district wealth. Administrative and nonclassroom salaries, however, while responsive, are not nearly so variable. Further, the committee finds that a slowly increasing dollar gap exists between salaries of classroom teachers and administrators.

9. Considerable doubt exists among educators and members of the public as to the educational value of the vast numbers of publications, curriculum guides, study outlines, and course guides produced by school districts. The committee is appalled by the unbelievable duplication which exists in the production of this material. The committee has found no evidence to show that pupil achievement is in any way connected with the absence or presence of such material.

10. The committee finds that the absence of one single standardized statewide test at the 5th-, 8th-, and 11th-grade levels makes it difficult to properly evaluate the effectiveness of various districts' educational programs.

11. The committee believes that the foundation program levels established by Assembly Bill 145 of the 1964 First Extraordinary Session are reasonably adequate for the immediate future. The committee believes, however, that the present system of two separate foundation programs, each established to support "a minimum acceptable educational program," is contradictory. The committee is disturbed by a financial system which allows a higher level of foundation program to supposedly "impoverished" school districts, while guaranteeing a lower "minimum program" for those districts technically nonimpoverished. The committee is not convinced that many districts presently classifying as "impoverished" are truly as destitute as one might believe.

12. The committee believes that efforts should be increased to place excess administrators and nonclassroom employees in newly unified school districts into the classroom in order to lower classroom size and to avoid administrative overstaffing.

13. It is concluded that a long range, experimental study will be necessary if the foundation program is to be adequately defined in substantive terms. The committee does not believe that varying foundation program levels can or should be devised to take into account the myriad of differing local situations and problems.

14. The committee concludes that a continuous effort must be made to increase the prestige of the classroom teacher, as well as the school administrator.

15. It is concluded that the existing system of legislatively established maximum tax rates for school districts, together with numerous "permissive override" tax rates authorized by the Legislature for specific purposes, detracts from local control and school district governing board fiscal responsibility.

16. Maximum tax rates, established by the Legislature in 1937 and not substantially revised since then, are unrealistically low.

17. Continual recourse by school districts to local tax elections represents a considerable expense to the property taxpayer.

18. Legislatively established maximum school district tax rates no longer serve the prime purpose for which they were originally intended—the control of school district expenditures.

19. Permissive override taxes, adopted each year by the Legislature, serve to frustrate the original purpose of the statutory maximum tax rates in establishing expenditure control.

SUMMARY OF RECOMMENDATIONS

1. The committee recommends the adoption of legislation which requires unified school districts with less than 25,000 pupils in average daily attendance to make use of county-produced curriculum publications rather than produce their own, when such county publications are available to meet the needs. Conversely, county boards of education should be required to review the curriculum publications produced by school districts within their counties and, if they meet the needs, to adopt them as county publications in lieu of producing separate documents on the same subject.

2. The committee recommends that the Department of Education be directed to study and implement methods of disseminating as widely as possible information relating to the availability of curriculum publications produced by various educational agencies and subdivisions in the state.

3. The committee recommends that a system of upgrading the teaching profession which utilizes the Master Teacher concept be adopted. The committee also recommends legislative consideration of the cost involved in such a program and the state's responsibility in sharing the cost.

4. The committee urges that school districts give thorough study to proposals which presently base administrative salaries upon a factor of what the administrators would earn if they were classroom teachers.

5. It is recommended that present requirements for an administrative credential be reviewed so that other avenues of entrance for qualified individuals into school administration may be developed, in addition to the present exclusive avenue of classroom teaching. The committee believes that the best and most qualified individuals must be found to administer the school system, whether from within the ranks of teachers or from without.

6. It is recommended that the Education Code be amended to provide that in the case of newly unified districts the state will pay the difference between what a school administrator or certificated nonteacher would have earned out of the classroom and what he would earn as a teacher, for the life of the existing contract, if the district will agree to place the individual into the classroom on a full-time basis.¹

7. The committee recommends that a research design be developed with the objective of defining in a substantive manner the foundation program of school support. Such a design should include participants

¹ Assemblyman Flournoy dissents from this recommendation, and states: "I dissent completely from the recommendation that the state ought to provide a special contribution to school districts who place administrators in the classroom after a unification takes place. Whether or not it is advisable for any particular administrator to return to the classroom is, I think, a local decision to be made by the district locally, and without regard for a special financial benefit which they might obtain by such action from the state."

Assemblyman Monagan does not concur in recommendation number 6, believing that such a procedure would merely substitute what might be considered one wrong for another wrong.

Assemblyman Porter states: "I take exception to this recommendation. This should remain a local matter."

10. The committee finds that the absence of one single standardized statewide test at the 5th-, 8th-, and 11th-grade levels makes it difficult to properly evaluate the effectiveness of various districts' educational programs.

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Assemblyman Monagan does not concur in recommendation number 6, believing that such a procedure would merely substitute what might be considered one wrong for another wrong.

Assemblyman Porter states: "I take exception to this recommendation. This should remain a local matter."

from all segments of society, including public educators. It might include, but should not be limited to, the establishment of an experimental school.

8. It is recommended that no action to substantively define the foundation program be taken until the results of such research becomes known and evaluated.

9. The committee recommends that any increases in state aid through the foundation program which may be made in the near future be allocated with full consideration to its effect upon class size and in light of the experience under Assembly Bill 145 of the 1964 First Extraordinary Session.

10. The committee strongly recommends that a proposal to abolish state "basic aid" be approved by the Legislature and placed upon the ballot for voter approval. It is further recommended that the funds thus "freed" be applied to increase the foundation program for all districts in the form of equalization aid.²

11. It is recommended that the State Board of Education be required to adopt one standardized achievement test yearly at each of the appropriate grade levels for use in the statewide testing program. The use of various approved tests *in the statewide testing program*, as determined by the individual school districts, should be halted.³

12. The committee recommends that no further "permissive override" taxes be approved by the Legislature.⁴

13. It is recommended that all present statutory tax ceilings and all existing "permissive override" taxes be repealed.⁴

14. In place of the above expenditure control devices, legislation should be enacted which requires voter approval of exceptionally high expenditure proposals for the current expense of education.⁵

² Assemblyman Whetmore dissents from this recommendation, stating that he would favor lowering basic aid rather than abolishing it completely.

³ Assemblyman Winton dissents from this recommendation. His views on the subject are included in a statement at the conclusion of this report.

⁴ Assemblyman Porter comments: "I believe that these recommendations are acceptable provided that their implementation is accomplished simultaneously."

⁵ Assemblyman Flournoy comments: "While I agree with the committee's conclusion that the present statutory tax ceilings are unrealistically low, I do not concur with the committee's proposal for the method of reinstituting a "voter approval of exceptionally high expenditure proposals for the current expense of education." The method proposed by the committee appears to be unduly cumbersome and of dubious value as a control. I feel that we should either establish more realistic statutory tax ceilings in conjunction with the elimination of the permissive override taxes, or grant full local control over school budgets, subject, if possible, to the normal referendum procedures."

Assemblyman Monagan does not concur with recommendation number 14, and states: "I find this recommendation to be too cumbersome and unrealistic in approach."

Assemblyman Porter states: "I take exception to this recommendation. I believe that the recommendation, as stated, is too involved and may well be self-defeating."

THE FOUNDATION PROGRAM

Introduction

Two years ago this committee concluded an extensive study of the State School Fund and of state assistance to local school districts in general, largely concentrating upon the technical methods by which moneys are apportioned to school districts and upon methods of overcoming the massive differences in local district financial ability or wealth. The committee notes with pleasure that numerous of its recommendations were considered at length by the Legislature in 1963 and several were adopted.

One of the major achievements of the Legislature in 1964 was the adoption of Assembly Bill 145, a measure with far-reaching significance to the public schools of California. Assembly Bill 145 made available to the schools of this state the largest single increase in state aid ever authorized by the California Legislature. In the 1965-66 fiscal year the state will for the first time expend simply for local assistance to school districts more than one billion dollars. Assembly Bill 145 also attacked several problems with which this committee has long been concerned: inequality of financial resources, and hence educational opportunity among school districts, and the growing numbers of children in our elementary classrooms.

As significant as this measure was, and will be for education in California, it did not attempt to solve, however, what is perhaps the most difficult and evasive problem having to do with support by the state for the public schools. For years responsible groups both in and out of state government have bemoaned the fact that the Legislature has really very little control over or knowledge of how the funds which it apportions to school districts are spent. Two years ago this committee recognized this fact when it reported to the Legislature:

"The foundation program is the basic unit of support for the public school system in California. California has, however, failed to accomplish the first step in the process of establishing a satisfactory foundation program, the establishment of a meaningful definition of the program. Present definitions of the foundation program ordinarily employ terms as 'minimum acceptable level of education' and 'essential educational opportunities.' These terms might be satisfactory as generalizations but unfortunately no specific and detailed content has been agreed upon. Thus, what for some is essential is nonessential for others; what some would say a minimum level must include, others would exclude."

Today this situation remains essentially unchanged. Until it is clarified it will be impossible for the Legislature to determine with any degree of exactitude precisely what its obligation is to support the public school system. As we stated in our 1963 interim report: "When the Legislature does not see clearly what this obligation is, the likelihood is that the public school system will suffer."

Realization of this lack of substantive definition led the committee to recommend that the Legislature grant it authority to study during the 1963-65 interim period the problems inherent in defining the foundation program. Such authority was granted through the adoption of House Resolution 303 by Assemblyman Casey⁵ which directed the committee to study the foundation program, its adequacy and the possibilities of recognizing varying factors and school district characteristics which might be recognized through a foundation program.

The Study

The foundation program study authorized by HR 303 comprised the large portion of the deliberations of the Subcommittee on School Finance during this interim period. During the study, which was spread over a period from December 1963 through November 1964, the committee was ably and capably assisted by the Office of the Legislative Analyst, represented by Messrs. Clinton M. Jordan, Michael A. Manley, and James Murdoch, and by the Office of the Auditor General, represented by Mr. Albert L. Monighan. In addition, the committee wishes to express its appreciation to officials of the seven school districts which were studied in depth and visited, together with members of the staff of the State Department of Education who took part from time to time.

This study began in the final months of the 1961-63 interim period with the issuance by the Assembly Interim Committee on Education, through the Office of the Legislative Analyst, of a salary and personnel questionnaire to all school districts and county offices in the state. The returned questionnaires, representing approximately 90 percent of the districts in the state and nearly 95 percent of the pupil enrollment, provided specific data not previously available on staffing patterns and salary scales for public school employees. Tabulation of the questionnaire results by the Department of Education revealed, however, that a mere statistical summary, with statewide averages and medians, would be insufficient to provide data necessary to define a foundation program. The committee quickly became aware that statewide averages were no measure of "minimum acceptable educational opportunities." The committee believes that a summary of the average of the existing situation does not necessarily indicate that that situation is proper, minimal, acceptable or measurable.

In consequence, it was determined that a number of individual school districts would be examined in depth and visited personally by the committee. Seven school districts, chosen because they were believed to represent nearly every type of conceivable problem which faces a large number of school districts, and because of their varying financial, organizational, socioeconomic and educational characteristics, were chosen for this study. The first such district was visited in December 1963; the final district was surveyed in September 1964. Implicit in this decision to study a small number of districts intensively, rather than broadly survey a large number of districts, was a belief that while major problems facing school districts could be isolated and were perhaps capable of recognition in a defined foundation program, the myriad of small, less significant problems were incapable of solution through a statewide system of school aid. This is not to say that these

⁵ See Appendix A for a text of HR 303.

problems do not loom large for the particular district which experiences the problem. Rather, this approach recognizes that there are limits to even the state's ability to recognize in a financial way all the difficulties faced at the local level. Consequently, the committee rapidly came to the conclusion that it would be impossible and dangerous to adopt a series of differing foundation programs for schools in various locations and situations in the state. Rather, the committee believes that the program, emphasizing true "minimum" characteristics, should be developed and applied to *all* school districts, rich or poor, and the normal equalization program should be applied to each such district.⁶

Study of the selected districts included a one or two week advance staff visit and study of the district and all aspects of its programs and problems, followed by the preparation by the two legislative agencies involved of a complete report on the district's staffing patterns, financial and socioeconomic characteristics, pupil achievement as measured by test scores, and admittance to institutions of higher education, hiring and personnel practices, administrative policies, curriculum development policies, and accounting records and books. Investigating personnel held discussions with administrators, teachers, board members, officers of local employee organizations and community leaders. Following preparation of the report, this committee held a hearing in the district, hearing first from the persons making the study and then from the school administrators involved. It is the committee's belief that this format provided for members a valuable insight into the workings of school districts. Certainly the committee is much better informed as to how state money is expended and for what purposes.

School districts chosen for this study exhibited characteristics of extreme wealth and poverty, and several were technically "impoverished." Some districts were of only average wealth. Elementary, high school, and unified school districts were studied. One school system exhibited the somewhat rare characteristic of being operated by a common administration, while legally existing as two districts. Districts were studied in all parts of the state. In terms of district size, the smallest district studied had an average daily attendance of less than 3,000; the largest district exceeded 50,000.

General Committee Findings

The committee noted throughout its study a general lack of correlation between the wealth of school districts and the numbers of nonteaching employees, expressed as a percentage of total teachers, employed by districts. Table I below indicates that at the elementary levels alone percentages of nonteachers have very little to do with a school district's financial ability. At the same time, as Table II shows, when the same districts are compared in relation to their ADA/teacher ratios, we note a very definite relationship between district wealth and this "class size" measurement. Statewide data, obtained through an analysis of the school district questionnaire, support both these observations. The committee has therefore concluded that while nonteaching or administrative staffing decisions are not based upon financial ability of school districts, the staffing of classroom teachers is. This, in the com-

⁶ Assemblyman Flournoy does not concur in the general conclusion stated here and has submitted a statement of his views at the conclusion of this report.

mittee's view, is a conclusion full of alarming import for public education in California. If, as we suggest, school administrations are more desirous of creating generous administrative staffs, without relation to the available financial resources, than they are to maintain a reasonably average class size, then the quality of public education in this state will most certainly be threatened. The committee wishes to state that it has been shocked by the statements of some school administrators encountered during this study concerning their beliefs regarding the "essential" character of specialized services and increased nonteaching staffs. The following exchange from one of the school district hearings may help to illustrate the committee's dismay:

- Q. Dr. —, some of us have viewed with some concern the drop in the ratio of administrators or nonteaching personnel to teachers in the state. In the last thirty years it has gone down from about one to 22 to a point where the statewide average is now about one to seven. These figures we are looking at this morning indicate that the — district has a ratio of something like four nonteachers for every five teachers, and yet you say you need still more?
- A. Yes, the school systems that I have worked closely with have had more administrative help than we have here in — and I realize that this is shocking news to you but nevertheless it is true.
- Q. Do you really feel a need for that much nonteaching personnel?
- A. Yes, sir. This is an age of specialization. I haven't found this school system to be overstaffed. I might suggest to you that maybe the other districts are understaffed.
- Q. Well, we are reaching a point here in California where the figures for our educational costs are going to reach astronomical figures and unless we find some way of reducing the unit costs of education, I don't know where we are going to find the money.
- A. I agree with you, Assemblyman. I consider it a very critical question in America. I will defend, however, the number of administrators and supervisors working in the typical school systems of America. I think they are needed.

TABLE I

Foundation Program Study

District number	Assessed valuation per ADA (1)	Elementary Level		Average daily attendance (3)	Percent of nonteachers to teachers (4)
		District tax rate (2)			
10	\$121,443	\$1.66		2,632	66.5
13	14,928	4.24		11,045	82.8
9	14,535	1.83		3,787	37.5
4	7,730	3.87		30,428	64.2
15	4,500	1.86		9,142	61.3
8	1,660	2.56		4,072	58.3
Statewide median ----	\$12,212				40.0

TABLE II

District number	Elementary School Level	
	Assessed valuation per ADA (1)	ADA:teacher ratio (class size) (2)
10	\$121,448	19.7:1
13	14,928	28.1:1
9	14,535	26:1
4	7,730	31.3:1
15	4,500	28:1
8	1,660	34.8:1
Statewide median (questionnaire)	\$12,212	26:1

These tables state clearly that although as a district becomes poorer and its class sizes grow, there is not necessarily a consequent decrease in nonteachers as the school district grows less wealthy. The committee might well assume, then, that many school boards and administrations consider items other than classroom teachers to be of higher priority.

The committee also attempted to draw substantive conclusions from its study in terms of relating educational achievement, so far as it is measurable, to the several characteristics of district staffing patterns. For analytical purposes, the districts were ranked statistically as to how they performed on statewide tests at the various grade levels (Appendix B, contains a complete explanation of the methods used in comparing districts). The test rankings were then analyzed against the various staffing and salary categories used in the district by district analysis. This "quality index," and the staffing and salary factors against which they were measured, appear below:

	Index
A. ADA/teacher ratio -----	0.87
B. Nonteacher/teacher ratio -----	0.26
C. ADA/certified <i>non</i> instructional ratio -----	-0.06
D. ADA/certificated instructional ratio -----	0.64
E. ADA/all positions ratio -----	0.55
F. Certificated <i>non</i> instructional salaries/ADA -----	-0.03
G. Certificated instructional salaries/ADA -----	0.90
H. All positions salaries/ADA -----	0.81

The inferences which the committee has drawn from this analysis include the conclusion that the two most important factors which affect pupil achievement are the ADA/teacher ratio (A), and the salaries of certificated instructional personnel, most of whom are teachers (G). Conversely, the least important factors, both showing a *negative* correlation, are the ratio of ADA to certificated *non*instructional persons (largely administrators), and the salaries of these individuals (C and F, respectively).

The committee also wishes to state that it has been amazed at the volume of curriculum publication material, eventually referred to at each school district hearing as "the stack," produced by some school districts. The committee is left with the impression that a great many of the coordinators, specialists, supervisors, and consultants employed by school districts to "develop curriculum" spend a majority of their time writing publications of this sort. Conversations with members of the staff and teachers in many of the districts studied indicated that much of this material is never used by teachers and, indeed, is held in

mittee's view, is a conclusion full of alarming import for public education in California. If, as we suggest, school administrations are more desirous of creating generous administrative staffs, without relation to the available financial resources, than they are to maintain a reasonably average class size, then the quality of public education in this state will most certainly be threatened. The committee wishes to state that it has been shocked by the statements of some school administrators encountered during this study concerning their beliefs regarding the "essential" character of specialized services and increased nonteaching staffs. The following exchange from one of the school district hearings may help to illustrate the committee's dismay:

- Q. Dr. —, some of us have viewed with some concern the drop in the ratio of administrators or nonteaching personnel to teachers in the state. In the last thirty years it has gone down from about one to 22 to a point where the statewide average is now about one to seven. These figures we are looking at this morning indicate that the — district has a ratio of something like four nonteachers for every five teachers, and yet you say you need still more?
- A. Yes, the school systems that I have worked closely with have had more administrative help than we have here in — and I realize that this is shocking news to you but nevertheless it is true.
- Q. Do you really feel a need for that much nonteaching personnel?
- A. Yes, sir. This is an age of specialization. I haven't found this school system to be overstaffed. I might suggest to you that maybe the other districts are understaffed.
- Q. Well, we are reaching a point here in California where the figures for our educational costs are going to reach astronomical figures and unless we find some way of reducing the unit costs of education, I don't know where we are going to find the money.
- A. I agree with you, Assemblyman. I consider it a very critical question in America. I will defend, however, the number of administrators and supervisors working in the typical school systems of America. I think they are needed.

TABLE I

Foundation Program Study

District number	Assessed valuation per ADA (1)	Elementary Level		Average daily attendance (3)	Percent of nonteachers to teachers (4)
		District tax rate (2)			
10	\$121,443	\$1.66		2,632	66.5
13	14,928	4.24		11,045	82.8
9	14,535	1.83		3,787	37.5
4	7,730	3.87		30,428	64.2
15	4,500	1.86		9,142	61.3
8	1,660	2.56		4,072	58.3
Statewide median ----	\$12,212				40.0

TABLE II
Elementary School Level

<i>District number</i>	<i>Assessed valuation per ADA (1)</i>	<i>ADA:teacher ratio (class size) (2)</i>
10	\$121,443	19.7:1
13	14,928	28.1:1
9	14,535	26:1
4	7,730	31.3:1
15	4,500	28:1
8	1,660	34.8:1
Statewide median (questionnaire)	\$12,212	26:1

These tables state clearly that although as a district becomes poorer and its class sizes grow, there is not necessarily a consequent decrease in nonteachers as the school district grows less wealthy. The committee might well assume, then, that many school boards and administrations consider items other than classroom teachers to be of higher priority.

The committee also attempted to draw substantive conclusions from its study in terms of relating educational achievement, so far as it is measurable, to the several characteristics of district staffing patterns. For analytical purposes, the districts were ranked statistically as to how they performed on statewide tests at the various grade levels (Appendix B, contains a complete explanation of the methods used in comparing districts). The test rankings were then analyzed against the various staffing and salary categories used in the district by district analysis. This "quality index," and the staffing and salary factors against which they were measured, appear below:

	<i>Index</i>
A. ADA/teacher ratio -----	0.87
B. Nonteacher/teacher ratio -----	0.26
C. ADA/certified <i>non</i> instructional ratio -----	-0.06
D. ADA/certificated instructional ratio -----	0.64
E. ADA/all positions ratio -----	0.55
F. Certificated <i>non</i> instructional salaries/ADA -----	-0.03
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The inferences which the committee has drawn from this analysis include the conclusion that the two most important factors which affect pupil achievement are the ADA/teacher ratio (A), and the salaries of certificated instructional personnel, most of whom are teachers (G). Conversely, the least important factors, both showing a *negative* correlation, are the ratio of ADA to certificated noninstructional persons (largely administrators), and the salaries of these individuals (C and F, respectively).

The committee also wishes to state that it has been amazed at the volume of curriculum publication material, eventually referred to at each school district hearing as "the stack," produced by some school districts. The committee is left with the impression that a great many of the coordinators, specialists, supervisors, and consultants employed by school districts to "develop curriculum" spend a majority of their time writing publications of this sort. Conversations with members of the staff and teachers in many of the districts studied indicated that much of this material is never used by teachers and, indeed, is held in

To illustrate, in one particular district visited by the committee we were informed that teachers' salaries had recently been increased by five percent. Obviously, such an increase in the base for teachers' salaries also increases administrative salaries since these are based upon a factor multiplied by what the individual would earn if he were a teacher. However, the committee was further informed that less than a month later the school board of the particular district was given a request by the administration to further increase the factors themselves. The school board complied and, in effect, the administrators and other nonteachers in the district had a double salary raise for the year in question. Thus, the gap between teachers and administrators was further widened. The committee believes that this practice must cease as soon as possible. It believes that it is the responsibility of local school boards to act in this area. The committee is thoroughly aware of teachers' shortages which were especially acute some years ago, and with the current shortage of teachers in some rural districts. However, there has never been a shred of evidence to suggest that a shortage of school administrators has ever existed, and special salary increases for this group cannot be justified by any accepted standards of good business practices or sound economics.⁸

One additional development which could equalize to a greater degree the status level, and the compensation levels between teachers and nonteachers in the public school system would be the creation of a system whereby able nonteachers might enter the profession of school administration. Such a system would entail extensive amendment to the "Fisher Bill" of 1961, as well as changes in the implementing administrative regulations adopted by the State Board of Education. In view of our conclusions that many qualified classroom teachers leave their profession for administrative positions purely for the added financial compensation, we believe that the creation of such a program could aid in the retention of many of these individuals in the classroom. In addition, such a development might result in the recruitment of more qualified individuals for school administration than is presently possible because of the requirement that the individual applying for the administrative credential must first be a teacher. Although the committee has heard often the argument that the administrator should be a former teacher in order to be familiar with classroom problems, we have seen numerous cases and situations (such as in specialized areas of business administration and public information) where the duties of the administrator have very little relation to the problems of the classroom. Essentially, the qualities necessary for an effective manager or administrator of any public function or activity do not differ

⁸ Assemblyman Flournoy states: "While I have no objection to urging school districts to study proposals which base administrative salaries on a factor of what the administrators would earn if they were classroom teachers, I do object to the implication that 'special salary increases' for administrators in any school district under any circumstances cannot be justified. I think the committee is hardly in a position to base such a statement on any evidence."

Assemblyman Monagan states: "I have no objection to recommendation number 4 that would propose a study of administrative salaries. I do not concur with the language appearing in these paragraphs, however, that indicates there 'never has been a shortage of administrators' or that 'special salary increases for this group cannot be justified by any accepted standards of good business practices or sound economics.' I believe there is a shortage of 'good' administrators and certainly these administrators are entitled to additional salary considerations."

greatly. Obviously, the proposed master teacher concept must be included as a part of this program, in that it will help to upgrade both status and salary levels for teachers, which is an integral part of any proposal such as this.

Several of the school districts visited by this committee were newly unified and the committee was impressed by the problem of effectively utilizing excess administrators and other nonclassroom persons from former component districts in the new unified systems. We are aware that one of the major arguments for increased unification of school districts is greater efficiency and economy of operation. However, because current state law regarding unifications requires that the newly unified district retain all component district employees on the payroll for at least two years, the affected administrative persons are often placed in meaningless, or at least nonessential, positions for this two-year period. In addition, at the expiration of the two-year period they are often retained indefinitely in these positions, having by that time been able to justify their activities. In order to remedy this situation, and to provide additional financial assistance to districts which desire to unify but express concern over this problem, this committee recommends adoption by the Legislature of a plan whereby the state agrees to pay to the new district the difference between what the nonteacher would have earned out of the classroom and what he would earn as a teacher, provided the district places him in a full time teaching occupation. As proposed, this guarantee by the state would extend for the life of the existing contract. At the end of the contract the district could then make a clear determination as to where to place the individual. The committee notes that in addition to increasing district efficiency and economy, such a plan would aid in the reduction of class size in unified school districts.

Defining the Foundation Program

Although this study under HR 303 represented an attempt to substantially define the foundation program in terms of elements of education which the state believes are truly adequate and necessary, the committee has been impressed by the wide variation in patterns of employee staffing, class size, salary ranges, and philosophies of curriculum development which exist in public schools in California. We have concluded that under the present system of school finance, the Legislature has little, if any, actual control over the expenditure of the approximately \$1 billion per year which it apportions to local school districts for support. As useful as the studies in depth of the seven school districts conducted by this committee throughout the 1963-65 interim period have been, the committee does not believe that any proposal to substantively define the foundation program of school support can be drawn from the experiences gained in these seven studies. The problem is simply too broad and has suffered from a paucity of thorough study for too many years. At the same time, the committee does believe that such a definition must be developed. As we pointed out earlier, until the foundation program is defined in terms other than dollars per child in average daily attendance, which is really nothing more than a device by which to apportion state money to school districts, it is likely that the school system will suffer financially.

The Legislature, in our view, will be hesitant to appropriate money for a function when it has no idea of how that money is to be spent.

The committee notes that the Office of the Legislative Analyst has recommended that an experimental school be established in order to obtain data necessary to define the foundation program.

In a report entitled *Foundation Program Study: Summary, Conclusions and Recommendations*⁹ prepared by the Office of the Legislative Analyst on October 15, 1964, it is stated:

It is recommended that an experimental program be conducted for the purpose of evaluating the different approaches to obtaining quality education at various expenditure levels. This experiment should be associated with the state college laboratory teaching schools and should be fully state supported. The design of this program should include a school situation with a minimum number of nonteaching positions and relatively high teaching salaries and small class size. Such an experiment should be designed to produce standards which would make it possible to measure the extent to which the annual state appropriation of nearly \$1 billion for support of the public schools is being efficiently spent. The culmination of such an experiment could result in definitions of the foundation program in more precise terms than is presently possible.

Although the committee has discussed this proposal it was unable to reach agreement on the specifics of such a school. The committee believes, however, that more research needs to be done in this important area; when it is considered that more than 40 percent of the total state budget each year goes to comprise the State School Fund the need to insure that funds are efficiently expended becomes obvious. Consequently, the committee recommends the development of a research design directed at substantively defining a foundation program in terms of those items which can be shown to be "minimal" and yet "acceptable." Such a project should be participated in by representatives from all areas of society and should not be limited to educators alone. Research such as we suggest might include as a part of the methodology an experimental school; it should not be limited to this type of approach.

In the absence of any firm definitions of the foundation program the committee recommends that any increases in state aid which may be made in the near future by the Legislature be allocated with consideration to the reduction of class size through the mechanism created by Assembly Bill 145 of the 1964 First Extraordinary Session. Consideration should be given to the extension of this class size provision throughout the elementary grades.

Basic Aid

In our 1961-63 interim report this committee strongly urged the repeal of the existing guarantee to all school districts in the state, regardless of their wealth, of a set amount of basic aid. Under current law each school district receives \$125 per unit of average daily attendance. Of this amount \$120 is required by the Constitution to be distributed, and not less than \$2,400 per district shall be so distributed.

⁹ See Appendix B for this report.

The remaining \$5 per ADA was added through a statutory amendment made in 1957.

The committee strongly recommends that basic aid be reduced by \$5 through a statutory amendment to a total of \$120 per unit of average daily attendance and that the funds thus made available be added to equalization aid to be distributed to all school districts. The committee further recommends that the Legislature adopt a constitutional amendment to be placed before the voters repealing the basic aid currently guaranteed in the Constitution. Such an amendment for repeal of basic aid might well be linked with an *increase* in the constitutional guarantee of money per ADA which must be transferred into the State School Fund for distribution. Currently this guarantee stands at \$180 per ADA, although state law provides that \$235.64 per ADA shall be so distributed. It appears, therefore, that the constitutional guarantee could be raised to an amount substantially more than \$200 per ADA.

It hardly seems necessary to document the need and the reasons for the repeal of basic aid. In the past several years the Legislature has considered this proposal several times. Each time the proposal has been fully documented. Each time the Legislature has been shown that the financial ability of districts vary widely. The committee notes that in California school districts with less than \$3,000 of assessed valuation per pupil exist; we have seen districts of this nature compared in the past with school districts with hundreds of thousands of dollars behind each pupil. This committee is not convinced that school district reorganization procedures and safeguards made by AB 145 will be sufficient to completely overcome these differences in school district wealth or financial ability. To properly complete the job it will be necessary to repeal basic aid and to place school apportionments on a strict equalization basis. The committee is well aware that there are practical political difficulties in this proposal. However, we also realize that the increases in foundation programs made by AB 145 have placed many districts formerly receiving only basic aid on equalization aid. Thus much opposition to the repeal of basic aid has been reduced.

As an example of the need for the repeal of basic aid, the committee wishes to cite the experience of one school district which it visited with an extremely high assessed valuation behind each pupil, an extremely low tax rate and an excellent educational program. The committee noted that in this district the repeal of basic aid would have resulted in the loss by that district of only 16 percent of its current operating income. This loss would consequently have resulted in an increase in the tax rate which would have left that district's tax rate still substantially below the unified district tax rates prevalent in this state. The committee is convinced that the excellent educational program offered by this district would not be adversely affected by the repeal of basic aid, nor would the taxes become burdensome. At the same time the funds released or freed for increased equalization aid would result in an increase in the foundation programs of less wealthy school districts. Such an increase could only be to the benefit of public education in California. The committee strongly urges that its proposal in this area be carefully considered.

Pupil Achievement Measurements

Throughout this school district study this committee has utilized the available measurements of pupil achievement. These have included results of district testing, results of statewide testing and accomplishments of school district graduates in institutions of higher learning. Throughout the study it has been difficult for the committee to find and use comparable data. We are convinced that such data can only be made available when the statewide testing program is revised so that one uniform test is used at each grade level tested in the statewide testing program. Consequently, this committee recommends that the State Board of Education be required to adopt each year one standardized achievement test for each of the appropriate grade levels tested in the statewide testing program. The use of the several approved tests in the statewide testing program, each chosen individually by school districts, should be halted immediately.

In addition the committee wishes to state that it has been disturbed by reports that school districts have instituted "cram courses" for their pupils in preparation for the yearly statewide tests. The committee recalls that when the statewide testing legislation was considered by the Legislature school districts strongly opposed the publication of such data on the basis that school districts would be unfairly compared with one another. However, the institution of "cram" programs in school districts makes it appear that districts *are* comparing one another despite the fact that they are not allowed to publicize the results. If the statewide testing program is to have any validity in terms of measuring the school districts' instructional effectiveness, school districts must voluntarily cease these cramming courses. Such policies are inconsistent with the intent of the Legislature in adopting a program of statewide academic testing. It is the opinion of this committee that if districts do not voluntarily halt these practices that publication of test results should be made mandatory. If school administrators are intent upon comparing their various school systems on a privileged basis, we see no reason why taxpayers supporting these school districts should not likewise be informed of their district's effectiveness.

SCHOOL DISTRICT PROPERTY TAX RATES

The committee considered two measures which dealt with school district property tax rates and the legislatively set limitations on these rates. Assembly Bill 2511 (Garrigus) would establish several additional so-called "permissive override" tax categories; that is, categories of school district expenditure exempted by the Legislature from the statutory maximum tax rate limitation. The bill stated that expenses for teachers' salaries, for teaching (but not for administrative) space and overhead, and for pupil transportation shall be established as categories for which school district governing boards may levy taxes not subject to the legal tax limits. House Resolution 161 (Flournoy) called for an extensive study of property taxation for school districts, with particular emphasis on the problem of the numerous "permissive override" taxes.

Testimony offered on these two measures revealed that the entire field of school district taxation, particularly the district tax rates themselves, has become confused to a point where the average property taxpayer has little idea of how much of his yearly tax bill supports his schools and cannot have much knowledge as to which agency of government has established the various portions of the school district tax rate. To the committee's astonishment, a representative of the State Department of Education revealed that there are presently 28 individually authorized purposes for which the maximum school district tax rates established by statute may be overridden by a vote of the local board. These are listed below.

PERMISSIVE OVERRIDE TAXES

<i>Purpose</i>	<i>Limit</i>	<i>Education Code Section</i>
1. District contribution to Retirement Annuity Fund	None	14210, 14214
2. District contribution to S.E.R.S. (classified employees) -----	None	Gov. Code 20532
3. District contribution for O.A.S.D.I. -----	None	20801.5
4. Meals for needy pupils -----	None	11706
5. Health and welfare benefits -----	None	20806
6. Community services -----	\$0.05 per level	20801
7. Adult Education -----	\$0.10	20802.8
8. Education of mentally retarded minors -----	None	6913.1
9. Payment to County School Service Fund for education of mentally retarded minors -----	\$0.10	8955
10. Payment to County School Service Fund for education of severely mentally retarded minors -----	None	8955.1
11. Educationally handicapped minors -----	None	20807
12. Payment of junior high school tuition by elementary or unified district -----	None	20808
13. Excess cost of educating 7th and 8th graders in elementary or unified district -----	None	20808
14. Education of 7th and 8th graders by high school district maintaining a junior high school -----	None	20808.5

PERMISSIVE OVERRIDE TAXES—Continued

<i>Purpose</i>	<i>Limit</i>	<i>Education Code Section</i>
15. Payment of retirement or health or health and welfare contributions as part of junior high tuition -----	None	20810
16. Junior college interdistrict attendance -----	Contained in E.C. 25541.5	25541.5
17. Payment for education rendered in county institutions -----	None	6854, 6855
18. Payment to county superintendent for education provided in youth conservation and training program -----	None	Pub. Res. Code 4997
19. Payment to county superintendent for education provided in technical, agricultural and natural resource conservation schools -----	None	6741
20. Fire prevention systems as directed by State Fire Marshal -----	\$0.10	15517
21. Annual repayment to State School Building Fund -----	None	19443
22. Annual repayment to State School Building Fund -----	None	19619
23. Payment to original district for acquisition of property -----	None	1828
24. Bond interest and redemption payments -----	None	---
25. Operation of child care centers -----	None	16633, 16635
26. Operation of child care centers for mentally retarded and physically handicapped -----	None	16645.12
27. District contribution to local employee retirement plan -----	None	14657, 14758
28. Annual charge for use of property of component district -----	None	3347

In general, witnesses expressed their opposition to the particulars of AB 2511, stating that they felt the measure would be cumbersome and unworkable from an accounting point of view, but noted with appreciation the author's purpose in bringing before the interim committee, together with the broad study requested in HR 161, the subject of property taxation for the public schools and particularly the various legislative limitations placed upon these tax rates.

The committee noted that every organization appearing before it on this subject stated that it would support either an increase in or the complete removal of the legislative maximum tax rates. In addition, several experts proposed, together with complete elimination of these limits, the repeal of every existing permissive override tax enacted by the Legislature. The testimony of the representative of the State Department of Education seemed to the committee particularly illuminating on this point.

The use of the statutory maximum tax rate device to control school expenditures has perhaps outlived its usefulness. This fact is demonstrated by the action of local electorates in voting to permit tax rates far in excess of those provided by statute and by the action of the Legislature in permitting taxes for special purposes to be levied in excess of statutory or voted maximum tax rates. The remnant of this expenditure control system is a maze of confusion providing a protective facade behind which local governing boards may reject responsibility in the budget adoption procedures and which administratively has created an expenditure con-

trol system that can be neither accurate nor precise, and which adds considerably to the complexity of school finance and budget adoption problems and the cost of administrative control.

This witness proceeded to point out that, in the department's view, the place to control school district expenditures is at the local school district level. The committee must agree that as a practical matter governing boards presently have very little discretion in matters involving budget control and the setting of a tax rate. As a result, there is ample evidence to prove that many school district governing boards have become weak and lacking in their responsibility for adopting district expenditure programs and setting tax rates. In effect, many of them defer to county boards of supervisors, or indeed to their state legislators in attempting to explain soaring school property tax rates. This committee, in its year-long study of seven selected school districts, discovered several districts in which as much as 40 percent of the total actual tax rate was represented by permissive override taxes allowed by the Legislature and, hence, granted by the local board. This situation must be reversed. In urging this action one witness noted that "actual responsibility for control of school district expenditures cannot be assumed by a governing board until its actions, without limitations, make it responsible for the tax rate that is levied in the district."

The committee questions how such responsibility is to be determined when the tax setting, and hence the expenditure, authority emanates from several, unconnected authorities. We note that at the present time (1) the Legislature adopts certain maximum tax rates for general operations which may not be exceeded without a vote of the people in the school district; (2) the electors of the district authorize their governing board to exceed this "maximum" rate by a specified amount; and (3) the Legislature again permits districts to exceed even these rates by certain amounts, or by unlimited amounts, for various specified purposes. Testimony presented to the committee indicated that on an average daily attendance basis only 1.6 percent of the ADA reside in districts taxing less than the present maximum rates, 6.2 percent attend districts taxing at the maximum, while 92.2 percent are in attendance in school districts which presently exceed the statutory maximum tax rates. Further, until the passage of the limited increase in tax rates for low-expenditure districts contained in AB 37 (Donovan), 1964 First Extraordinary Session, no change had been made in the maximum tax rates since 1937. There is no need to document the increase in the general price levels since that year. The table below shows the present statutory ceilings. It should be remembered that AB 37 did not change these ceilings for the vast majority of school districts but allowed only districts expending an extraordinarily low amount per pupil to exceed the limitations.

TABLE IV

<i>District</i>	<i>Tax Limit</i>
Elementary:	
Grades 1-8.....	\$0.80
Grades k-8.....	.90
High school:	
Grades 9-12.....	.75
Grades 9-14.....	1.10

<i>District</i>	<i>Tax Limit</i>
Unified:	
Grades 1-12	\$1.55
Grades k-12	1.65
Grades k-14	2.00
Junior college:	
Grades 13-14	.35

Against these generally low tax rate limitations, the committee found that increasingly large portions of district tax rates are devoted to purposes for which "permissive override" taxes are authorized. Data presented indicated, for example, that while in 1963-64 the Berkeley, Garden Grove and Castro Valley school districts devoted 13, 15 and 14 percent, respectively, of their total tax rate to such "special" purposes, in 1964-65 the same districts allocated 20, 25 and 26 percent of their tax rates to the exempt category. The committee concludes from these data that the present statutory maximum tax rates, coupled with the numerous "permissive override" authorizations, are useless as devices by which to control expenditures. Table V shows the number of districts, and the ADA in those districts, which were in 1963-64 taxing below, at or above the present statutory maximum tax rates.

TABLE V

	<i>Under</i>		<i>At</i>		<i>Above</i>	
	<i>Maximum</i>		<i>Maximum</i>		<i>Maximum</i>	
	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>
Districts						
Elementary	90		289		788	
High school	3		15		183	
Junior college	5		37		7	
Unified	4		18		133	
Total	102	6.5	359	22.8	1,111	70.7
Average Daily Attendance						
Elementary	5,396		99,278		1,213,296	
High school	2,074		15,085		576,073	
Junior college	54,784		103,240		35,589	
Unified	5,855		44,825		2,060,539	
Total	68,109	1.6	262,428	6.2	3,885,497	92.2

Finally, the point should not be overlooked that if the principle of local control, of which this committee has heard much in recent years, is to be truly effective and observed by the state and by local school districts, it becomes extremely difficult to argue that the state should attempt, by artificial means, to control local district educational tax rates and expenditures. This committee submits that local control can be operative only if local boards have complete authority over the expenditure of local funds and the setting of local tax rates. Local control, in our view, implies local fiscal responsibility. It is time that this responsibility was recognized and exercised at the proper level.

Although the committee believes that the present legal tax limits should be repealed, together with all existing permissive override taxes, it also believes that expenditure controls must be reestablished at the local level where they rightfully belong. To grant immediately to local governing boards a responsibility which has not been exercised for years, without *any* checks by the local electorate, could be dangerous.

Consequently, the committee has studied several methods by which electorates might be given a chance to express themselves on a district's total current expenditure program, in lieu of legislatively established maximum tax ceilings.

The committee's subsequent recommendation entails a proposal that would require local voter approval of a district governing board's proposed budget which would expend, on a per ADA basis, in excess of one-third more than the average statewide current expense of education (excluding transportation) for the second preceding fiscal year. Put in the simplest terms, this proposal would mean that if a unified district desired to expend in 1964-65 more than \$603.53 per ADA on current expense of education, excluding transportation, it would be required to gain a majority vote of its voters. (The figure of \$603.53 represents the 1962-63 average current expense, minus transportation, plus one-third of that amount.) Further, in order that school districts not be encouraged to raise taxes immediately to a level which would produce a program equal to this amount, the committee proposes that over a four-year period the "cap" or limitation on expenditures be gradually increased to the one-third level, as follows:

- 1st year: one and one-twelfth of average current expense
- 2nd year: one and two-twelfths of average current expense
- 3rd year: one and three-twelfths of average current expense
- 4th year: one and four-twelfths (one-third) of average current expense

The committee realizes that such a proposal raises some difficulty with relation to the current school district budget adoption schedule, but it is assured that these technical obstacles are not insurmountable. The current expense of education, less pupil transportation, of a number of large unified school districts has been examined, and the committee has found few large unified districts of low or middle wealth which would be at all hindered by this requirement. Obviously, school districts presently spending more than this limitation for current expense would have to be considered to be at their authorized expenditure limit (although some leeway for normal year-to-year increases might well be allowed). Any substantial increase above that limit should require voter approval. Under this proposal, voter approval, once obtained for a general expenditure level, should be permanent. The committee believes that the salutary effect of requiring voter approval for exceptionally high expenditure programs which voters can relate directly to the district's educational program is obvious. Under the present system the average citizen is unable to link the override tax election with educational programs being offered. Thus, such elections are often decided on other than educational grounds.

Finally, in lieu of the previously cited recommendations, the committee strongly urges that no additional "permissive override" taxes be authorized by the Legislature. We believe that such authorizations have been used to subvert tax rate limitations and that they encourage questionable financial practices and thinly veiled justifications for tax rate increases on the part of school administrations. The committee fears that if this practice is allowed to continue, widespread public opposition to school expenditures of any kind and for any purpose is likely to ensue.

SEPARATE VIEWS OF ASSEMBLYMAN HOUSTON I. FLOURNOY

I disagree with the committee's concept of the ultimate purpose of a substantive definition of the foundation program. In my view, the purpose of the foundation program is primarily to provide a standard of evaluating the adequacy of the state's financial support for public education, not to create a category of required expenditures, or to standardize the programs of local school districts.

In order to help the Legislature determine the appropriate level of state support, I feel that a substantive definition will be quite useful. However, I do *not* feel that it should be used as the basis for anything like the creation of separate categories of school expenditures—one appropriate for state funds or local funds, and another appropriate for local funds only; nor do I feel that it should prescribe the particular program which each school district must offer.

California is a state of diversity, and our school districts in their local environments reflect a variety of conditions and circumstances. The committee recognizes this factor in pointing out the impossibility of adapting the foundation program to the "various locations and situations of the state." As a result, I think we should explicitly consider the foundation program as a guide primarily for the state in considering the adequacy of its financial support—not as a required program for every school district.

The administration of education in California, like the financing, is a partnership between the state and the local school district. Within the outlines of state law, I believe our educational program will be best served if we retain the authority of the local school districts to establish the particular priorities which serve their local circumstances and needs.

STATEMENT OF ASSEMBLYMAN GORDON H. WINTON

While I was unable to attend all of the meetings of the committee, I do not believe the matter of pupil achievement measures was the subject of direct testimony before the committee. I think the proposal to institute "standardized statewide tests at the 5th, 8th and 11th grades" is absolutely contrary to the best interests of education. In the text there is a statement, "The committee wishes to state that it has been disturbed by reports that school districts have instituted 'cram courses' for their pupils in preparation for the yearly statewide tests." I have seen no evidence that there are such cram courses, and I believe that the committee should not use the old dodge of "anonymous reports" as the basis for a statement.

In 1960-61 I made a very comprehensive study of the situation and found that in New York where the board of regents tests were uniform and comparison was easy that there was very definite evidence of "cram courses" for these tests. I realize that comparison of educational achievement is difficult under the present system. However, this difficulty is minor compared to the damage that might be done to education by instituting standardized tests. There is general agreement that tests at best are only an indication of achievement levels, that they fail to take into consideration many factors which are inevitably present such as the economic and social backgrounds of the students, etc. These factors play an important part in a child's ability to achieve. In fact, it is for this very reason that the Legislature has looked with favor upon compensatory education programs. The very word "educataion" comes from the Latin meaning "to lead forth", and I believe that the basic purpose of education is to develop the mind of the child into an instrument of reason, not to create a machine which can regurgitate facts and figures without the ability to analyze or understand. I am sincerely afraid, and I believe the experience in other states as shown by our study in 1961, will substantiate this fear, that standardized tests or any drive to compare so-called "educational achievement" will lead to the very "cram courses" which the committee so rightly condemns.

Tests are but one instrument which can be correlated with many others in guidance of an educational program. They cannot and should not be used as an end in themselves nor as a definitive yardstick by which the caliber of a school or educational program is to be judged. It was for this reason that in my legislation in 1961 setting up the statewide testing program that I deliberately provided the safeguards which tend to eliminate the possibility of these tests being used for any other than valid educational purposes.



APPENDIX



APPENDIX A

HOUSE RESOLUTION NO. 303

(By Assemblyman Casey)

Relative to the foundation program of
support for the public schools

Resolved by the Assembly of the State of California, That the Committee on Rules is directed to assign to an appropriate interim committee for study the subject of the foundation program levels of support for the public schools, with particular reference to: (1) the elements or phases of the educational programs for which it should be formulated, including curriculum and the particular individual courses of study included therein, and textbooks and necessary materials, supplies and equipment required to provide an adequate educational program; and (2) whether factors including geographical situation, local economic structure, population composition, and others, should form a basis for its formulation; and that such interim committee shall report its findings and recommendations to the Assembly no later than the fifth legislative day of the 1965 Regular Session of the Legislature.

APPENDIX B

FOUNDATION PROGRAM STUDY:

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

Prepared by the Offices of Legislative Analyst and Auditor General for the
Assembly Interim Committee on Education, October 15, 1964

PART A

(Part A prepared by Office of Legislative Analyst)

Background

This is the final report of a foundation program study conducted under the authorization of House Resolution No. 303 of the 1963 Legislative Session. This report will present summary staffing, curriculum and financial data obtained from seven selected school districts which were surveyed between December 1963 and August 1964 by the Legislative Analyst's Office and the Auditor General's Office for the Assembly Interim Committee on Education. From this data we hope to present significant comparisons and conclusions concerning the ways in which the education dollar is being spent by these respective districts. On the basis of these findings we will try to identify the essential educational factors which we believe the state should support financially in order to provide a minimum acceptable level of support.

Basically, House Resolution No. 303 called for an examination of the various educational, financial and personnel factors necessary for "an adequate educational program," along with the identification of those key factors for which the state should assume financial responsibility. It also asked for recommendations concerning the application of such key elements in the formulation of the school foundation program.

During the first portion of the study, comprehensive position and salary questionnaires previously distributed to each of California's 1,586 school districts were analyzed in order to find out how funds were actually being spent by local school districts for these purposes. These documents had been originally prepared and distributed in February 1962 for the Assembly Interim Committee on Education by the Legislative Analyst, the Auditor General and the Department of Education. The returned questionnaires provided specific data heretofore unavailable regarding staffing, salary schedules, pupil teacher ratios and pupil administrator ratios.

Between November 1962 and the spring of 1963 the results of these surveys were tabulated and edited by the Department of Education. After this initial tabulation the questionnaire results were broken down to determine statewide medians and highs and lows for district staffing expenditures as determined by lowest and highest quartile figures.

In December 1963 the Legislative Analyst and Auditor General presented a joint progress report to the Legislature which analyzed the

results of the questionnaires and established expenditure models based on these documents. Although the report provided local school district expenditure levels previously unavailable this data was deemed insufficient for defining a foundation program in terms of items which the state should support.

For this reason it was necessary to go beyond the questionnaires and examine representative school districts in order to find out for what specific items money was being spent and the relationship of such expenditures to the districts' overall educational programs. Seven districts were selected for examining in depth based upon their unusually high or low current expenditures for various items or upon their unusual programs or problems, or upon a combination of both. The actual field work was done between December 1963 and September 1964. The evaluation of each district included an examination of its social and ethnic characteristics, staffing patterns, personnel and administrative policies, financial records and books, amount of state and federal aid received and testing results. These surveys were followed by a visit and examination of each of the districts by the subcommittee on school finance.

School Districts Examined

The following is a list of the school districts examined and includes a brief summary of the community and district characteristics:¹

District No. 15—Elementary district located in a "bedroom community" of middle class origins; extremely rapid pupil growth; relying upon state aid for nearly 80 percent of its current support; building all schools out of state building aid funds. Technically, an "impoverished" school district with low local wealth.

District No. 4—Unified district located in suburban, unincorporated area; community of largely middle class characteristics; rapid pupil growth; state aid provides more than 60 percent of operating income and also builds all schools; also an "impoverished" school district with low wealth; the largest district surveyed.

District No. 9—Elementary district; a small, rural-oriented city elementary district of middle wealth and very slow pupil growth.

District No. 20—High school district; taking in a large rural area; governed by a common administration; largely a middle class community with slow growth. Middle wealth, but receiving state building aid.

District No. 10—A very wealthy unified school district located in an urban area; population of higher socioeconomic characteristics; low growth; schools all built by local funds; the district experiments and attempts many unusual and very high-quality and high-cost educational programs.

District No. 8—One of the state's poorest school districts, located in a poverty-stricken and economically depressed unincorporated community; very high minority population; an elementary school district which has been unable to unify with its wealthier neighbors, although it desires to do so.

District No. 13—A middle wealth unified district of moderate size located in a largely residential community with a generally middle class population although every segment of society is represented; possessing large minority segments in its population; low growth.

¹ District numbers have been changed in the reprint of this report in order to maintain anonymity for the districts studied.

Current Expense of Education Per ADA

The sample districts' expenses of education for 1962-63 are presented below. The districts are ranked in terms of their district wealth.

Unified Districts		
<i>District number</i>	<i>Current expense per ADA</i>	<i>State average</i>
10 -----	\$784.09	} \$462.19
13 -----	520.15	
4 -----	398.26	

Elementary Districts		
<i>District number</i>	<i>Current expense per ADA</i>	<i>State average</i>
9 -----	\$427.77	} \$378.90
15 -----	327.67	
8 -----	304.84	

High School Districts		
<i>District number</i>	<i>Current expense per ADA</i>	<i>State average</i>
20 -----	\$528.40	\$570.58

Before examining this table it should be noted that these figures obtained from the Bureau of Education Research are not strictly comparable with the per-ADA cost breakdown in Part B of the report. Certain items (driver education, special education and adult education) included in the above statistics have been subsequently deleted in order to obtain a true per-ADA cost of the regular instructional program.

However, the table is useful for illustrating the wide range in district unit cost expenditures and it also shows the direct relationship between district wealth and current expenditures per ADA. Unified district number 10 with a current expense of education of \$784.09: ADA spends more than twice as much as elementary district number 8 (\$304.84: ADA) for educating a pupil. This wide range based on district wealth is also apparent within both the unified districts and elementary districts. Unified districts number 13 (middle wealth) and number 4 (impoverished) each spend proportionately less than the wealthy district number 10. In examining this table it is helpful to place these figures in perspective by noting the dollar percentage of the district's educational expenditures supported by the state.

Unified Districts		<i>State's share of current expenditures</i>
<i>District number</i>		
10 -----		16%
13 -----		31
4 -----		60
Elementary Districts		
9 -----		39%
15 -----		80
8 -----		98
High School Districts		
20 -----		39%

This table shows that the districts surveyed received state funds in an inverse ratio to their district wealth. Elementary district number 8 (extremely poor) received 98 percent of its education dollar from the state, whereas in unified district number 10 (wealthy) the state's share of current expenditures was only 16 percent. Even though wealthy district number 10 could easily afford a current expense: ADA well in excess of the state average it still received \$125 per ADA in basic aid.

General Reference Data

The basic staffing and salary data derived from our visits to the selected school districts is presented below with statewide medians obtained from the salary and personnel survey questionnaires. This data is ranked in descending order according to each district's assessed valuation and is included here for general reference purposes. Much of it has been subsequently broken down into tables on the following pages of the report in order to facilitate understanding. These various ratios will be defined as they are used.

A. ADA: teacher ratio

Elementary level	
District No. 10 (unified)	19.7:1
District No. 13 (unified)	28.1:1
District No. 9 (elementary)	26:1
District No. 4 (unified)	31.3:1
District No. 15 (elementary)	28:1
District No. 8 (elementary)	34.8:1
Statewide median	26:1
High school level	
District No. 10 (unified)	21.6:1
District No. 13 (unified)	24.3:1
District No. 20 (high school)	25.5:1
District No. 4 (unified)	27.4:1
Statewide median	21:1

B. Percent of nonteaching positions to teachers

Elementary level	
District No. 10	66.5%
District No. 13	82.8%
District No. 9	37.5%
District No. 4	64.2%
District No. 15	61.3%
District No. 8	58.3%
Statewide median	40.0%
High school level	
District No. 10	72.7%
District No. 13	71.6%
District No. 20	48.6%
District No. 4	56.9%
Statewide median	64.0%

C. ADA: each certificated noninstructional position ratio

Elementary level	
District No. 10	1,360:1
District No. 13	3,224:1
District No. 9	940:1
District No. 4	571:1
District No. 15	1,180:1
District No. 8	1,357:1
Statewide median	800:1

High school level	
District No. 10	1,279 : 1
District No. 13	3,294 : 1
District No. 20	948 : 1
District No. 4	570 : 1
Statewide median	800 : 1

D. ADA : Each certificated instructional position ratio

Elementary level	
District No. 10	16.3 : 1
District No. 13	21.6 : 1
District No. 9	23.7 : 1
District No. 4	26.8 : 1
District No. 15	22.5 : 1
District No. 8	32.6 : 1
Statewide median	23 : 1

High school level	
District No. 10	16.3 : 1
District No. 13	19.3 : 1
District No. 20	22.9 : 1
District No. 4	26.7 : 1
Statewide median	18 : 1

E. ADA : All positions ratio

Elementary level	
District No. 10	11.1 : 1
District No. 13	15.4 : 1
District No. 9	19.3 : 1
District No. 4	18.2 : 1
District No. 15	16.7 : 1
District No. 8	22.4 : 1
Statewide median	17 : 1

High school level	
District No. 10	11.3 : 1
District No. 13	14.2 : 1
District No. 20	16.6 : 1
District No. 4	18.2 : 1
Statewide median	11.5 : 1

F. Salaries for all certificated noninstructional positions per ADA

Elementary level	
District No. 10	\$24.02
District No. 13	3.77
District No. 9	6.96
District No. 4	7.07
District No. 15	7.66
District No. 8	9.58
Statewide median	10.00

High school level	
District No. 10	25.80
District No. 13	6.04
District No. 20	9.50
District No. 4	8.88
Statewide median	12.00

G. Salaries for all certificated instructional positions per ADA

Elementary level	
District No. 10	529.40
District No. 13	325.35
District No. 9	331.47
District No. 4	241.63
District No. 15	265.08
District No. 8	216.36
Statewide median	230.00

High school level	
District No. 10	568.47
District No. 13	487.46
District No. 20	376.11
District No. 4	354.91
Statewide median	340.00

H. Salaries for all positions per ADA

Elementary level	
District No. 10	684.87
District No. 13	385.54
District No. 9	380.23
District No. 15	317.00
District No. 8	216.36
Statewide median	290.00
High school level	
District No. 10	735.41
District No. 13	577.65
District No. 20	591.85
District No. 4	441.76
Statewide median	450.00

Findings

The major district findings are presented in the following five tables in the interest of brevity and in order to make significant district comparisons.

District Financial Capability, Tax Effort, Average Daily Attendance and Percent of Nonteachers Employed by District

This table illustrates the relationships among district wealth, local tax rates, average daily attendance and the percent of nonteachers to teachers employed by the districts.

TABLE I
Elementary Level

District Number	Assessed valuation per ADA (1)	District tax rate (2)	Average daily attendance (3)	Percent of nonteachers* to teachers (4)
10	\$121,443	\$1.66	2,632	66.5
13	14,928	4.24	11,045	82.8
9	14,535	1.83	3,787	37.5
4	7,730	3.87	30,428	64.2
15	4,500	1.86	9,142	61.3
8	1,660	2.56	4,072	58.3
Statewide median	\$12,212			40.0

High School Level

District Number	Assessed valuation per ADA (1)	District tax rate (2)	Average daily attendance (3)	Percent of nonteachers* to teachers (4)
10	\$84,207	\$1.66	1,825	72.7
13	31,484	4.24	5,237	71.6
20	26,672	2.00	3,847	48.6
4	23,001	3.87	10,226	56.9
Statewide median	\$34,362			64.0

* Nonteachers includes all nonclassroom personnel such as administrator, clerks, secretaries and custodians.

The first two columns of Table I illustrate district wealth in terms of assessed valuation and the local tax rates. The wide variances in district financial capacity to support educational programs become apparent when it is noted that district number 10 has an AV/ADA of \$121,443 with a tax rate of \$1.66, while district number 8 has an AV/ADA of \$1,660 with a tax rate of \$2.56. It is interesting that of the three unified districts visited (numbers 10, 13, 4) district 13, a middle wealth district, has the highest tax rate (\$4.24). These figures clearly illustrate that certain districts surveyed are much more financially capable of supporting educational establishments than are others but also that some districts are willing to tax themselves in greater proportion to their ability than others.

When we compare column 4 (percent of nonteachers to teachers employed by each district) with column 1 we note a lack of correlation between a district's assessed valuation:ADA and the number of nonteachers employed at both elementary and high school levels. Stated another way, it would seem reasonable to expect poorer districts to employ a lower percentage of nonclassroom personnel in order to use their limited funds for direct classroom purposes. However, this is not the case. For example, in the elementary table it is interesting to note that district number 13 possesses one-eighth the assessed valuation per ADA of district number 10 and yet it actually employs the highest percentage of nonclassroom personnel of all elementary levels surveyed. One might expect district number 8 to have a very conservative staffing ratio because of its low wealth. However, it employs nearly the same percentage of nonclassroom personnel as does district number 4.

This lack of correlation between district wealth and nonteachers employed by the districts is also apparent in the high school table. Once again we note that district number 13 has very generous nonclassroom staffing; it is almost the same as district number 10 although it possesses less than one-half the other district's assessed valuation per ADA at the high school level. Undoubtedly a considerable portion of district 13's high tax rate is supporting this liberal staffing.

The sparse nonteacher staffing ratios of elementary district number 3 and high school district number 20 should be noted. Both districts possess middle wealth characteristics and could probably afford richer nonteacher:teacher ratios and yet they employ fewer nonclassroom people than any of the districts surveyed. This staffing pattern which appeared to be adequate greatly impressed the interviewers and will be examined more thoroughly in later sections of the report.

No fixed relationship is apparent between the percent of nonteachers:teacher ratio and district size as determined by ADA (average daily attendance) although one might contend that a large unified district would require a greater percentage of nonclassroom personnel (administrators, clerks, janitors, etc.) than does a smaller district because of additional facilities, services, and supervisory requirements.

Comparing the elementary levels of districts number 4 and number 13 in terms of their average daily attendance (30,428 and 11,045 respectively) and nonteacher staffing ratios shows that the former district which has a much larger ADA actually employs fewer nonclassroom personnel per ADA than does district 13.

These findings reinforce our view that nonclassroom staffing has little relationship to district wealth and size.

Class Size as a Function of District Wealth

This table shows the relationship between class size and wealth.

TABLE II
Elementary School Level

District number	Assessed valuation per ADA	ADA: teacher ratio (class size)
	(1)	(2)
10 -----	\$121,443	19.7 : 1
13 -----	14,928	28.1 : 1
9 -----	14,535	26 : 1
4 -----	7,730	31.3 : 1
15 -----	4,500	28 : 1
8 -----	1,660	34.8 : 1
Statewide median (questionnaire) --	\$12,212	26 : 1

High School Level

District Number	Assessed Valuation Per ADA	ADA: teacher ratio (class size)
	(1)	(2)
10 -----	\$84,207	21.6 : 1
13 -----	31,484	24.3 : 1
20 -----	26,672	25.5 : 1
4 -----	23,001	27.4 : 1
Statewide median (questionnaire) -----	\$34,362	21.1 : 1

Table II illustrates that there is a general relationship between district wealth and ADA : teacher ratio (class size) in that class size diminishes as wealth increases. With the exception of elementary districts numbers 9 and 15, which will be examined later in the report, this relationship exists at both school levels. These findings reinforce our position that classroom size is more responsive to district wealth than any other factor.

Overall Staffing

Before examining the table which deals with district staffing patterns we would like to make some general comments regarding the different central staffing philosophies found in the various districts visited. It should be stated that the seven sample districts examined are too few in number and too varied in district wealth to definitely determine any fixed relationship which may exist between district staffing policies and the size of the district. However, the two largest unified districts visited, namely number 13 (middle wealth) and number 4 (impoverished), appeared to us to have extremely generous central office staffs relative to their district wealth. Both districts were staffed with all types of "coordinators," "specialists" and "consultants." These districts also maintained extensive curriculum staffs for the formulation and dissemination of teachers guides, school publications and new curriculum materials. It appeared that in district 13 many of these nonclassroom services were added gradually and subsequently became institutional-

ized, whereas in district number 2 the administration seemed determined to establish a large central staff for its growing school system as soon as possible. While we do not question the districts' prerogative to determine the number of nonclassroom staff, we do question the extent to which the state should support such activities as basic to an adequate foundation program.

As mentioned previously, we were very favorably impressed by the limited central and district staffing found in middle wealth districts numbers 9 and 20. The administrators in the commonly administered districts told us that they believe in placing primary emphasis on the classroom teacher. These districts employed fewer "curriculum coordinators" and none of the full-time counselors found in districts 13 and 4. This conservative staffing philosophy will be clarified by subsequent data in Table III.

Overall Staffing Patterns

This table illustrates the relationship between district wealth and district staffing policies.

TABLE III
Elementary Level

<i>District number</i>	<i>ADA: teacher ratio</i> (1)	<i>ADA: certificated instructional position ratio</i> (2)	<i>ADA: all positions* ratio</i> (3)
10 -----	19.7:1	16.3:1	11.1:1
13 -----	28:1	21.6:1	15.4:1
9 -----	26:1	23.7:1	19.3:1
4 -----	31.3:1	26.8:1	18.2:1
15 -----	28:1	22.5:1	16.7:1
8 -----	34.8:1	32.6:1	22.4:1
Statewide median -----	26:1	23:1	17:1

High School Level

<i>District number</i>	<i>ADA: teacher ratio</i> (1)	<i>ADA: certificated instructional position* ratio</i> (2)	<i>ADA: all positions† ratio</i> (3)
10 -----	21.6:1	16.3:1	11.3:1
13 -----	24.3:1	19.3:1	14.2:1
20 -----	25.5:1	22.9:1	16.6:1
4 -----	27.4:1	26.7:1	18.2:1
Statewide median -----	21:1	18:1	11.5:1

* This category includes not only teachers but also consultants, specialists, vice principals, principals and counselors. It excludes the personnel of a school district who are strictly administrative and are generally found in the district office such as superintendents and assistant and associate superintendents, etc.

† Total number of persons employed per district ADA.

Table III illustrates that central and district nonclassroom staffing patterns are not necessarily dependent upon district wealth. Note the difference between the ADA: teacher ratio of 28:1 and the ADA: Certificated instructional ratio of 21.6:1 in elementary district number 13. This comparison tells us that although district number 13's elementary teacher: pupil ratio is relatively favorable, there are also a large number of certificated nonteachers employed to work at these grade levels. We

previously noted in discussing Table I that district number 13 (middle wealth) employed a greater percentage of nonteachers to teachers at the elementary level than did district number 10, the wealthiest district surveyed. Comparing these two districts in terms of their ADA:all-positions ratio shows that district number 13 is exceeded only by the wealthiest district studied in terms of the total number of persons employed. Obviously district 13 believes that a generous nonclassroom staffing policy is necessary in order to provide a good education.

A comparison of middle wealth elementary districts number 13 and number 9 in terms of their ADA:teacher ratios, ADA:certificated instructional ratios, and ADA:all-positions ratio also substantiates the former district's liberal nonclassroom staffing policies. Such a comparison shows that district number 9 has a more favorable classroom size, employs a smaller percentage of nonclassroom personnel, and employs fewer employees overall.

Similarly, if middle wealth high school districts number 13 and number 20 are compared in terms of the same ratios, district 20 also demonstrates a more sparse staffing policy although this district's classroom size is not quite as favorable as district 13's classroom size.

When comparing elementary district number 4 (impoverished) with district number 9 (middle wealth) we find that the former district has a higher average classroom size and yet employs more employees per ADA overall than its more wealthy neighbor. Furthermore, at the high school level, district number 4 also employs a higher percentage of nonclassroom teachers to teachers. (Table I)

District number 15 (impoverished) also exhibits liberal nonclassroom staffing; it employs more certificated instructional personnel who support the classroom teacher and it employs more individuals per ADA to run the district than does middle wealth district number 9. However, the ADA:teacher ratio of 28:1 is quite favorable. It appears that this district has been able to maintain this low ADA:teacher ratio because of a proportionately large number of new teachers hired at beginning salaries. The "savings" are then used to maintain a lower class size.

These findings regarding district staffing policies reinforce our position that such staffing is primarily dependent upon the desires of individual district administrators rather than on district wealth or any other discernible factors.

Before proceeding to the salary data in Table IV, it should be explained that the ratios in general reference item C (the ADA:each certificated noninstructional position) have not been included in this analysis. These ratios attempt to establish a relationship between the ADA and the number of certificated administrators employed by the districts. This ratio for district number 13 implies that the district has a sparse central office staffing. This is misleading since district number 13 employs numerous noncertificated administrators who do not appear in this ratio but in the all-positions ratio.

District Salary Schedules

This table presents district salary schedules for 1962-63 and relates them to district wealth.

TABLE IV
Elementary Level

<i>District number</i>	<i>Teachers' salary range (1)</i>	<i>Principals' salary range (2)</i>
10 -----	\$5,300-\$11,000	\$12,439-\$14,300
13 -----	5,001- 9,969	9,159- 12,309
9 -----	5,100- 9,900	6,987- 14,553
4 -----	4,800- 9,025	6,384- 12,003
15 -----	5,120- 8,220	8,712- 11,508
8 -----	4,732- 7,956	8,511- 10,296

High School Level

<i>District number</i>	<i>Teachers' salary range (1)</i>	<i>Principals' salary range (2)</i>
10 -----	\$5,300-\$11,000	\$15,309-\$17,600
13 -----	5,001- 9,969	11,488- 14,598
20 -----	5,100- 9,900	6,987- 14,553
4 -----	4,800- 9,025	7,680- 14,480

Table IV presents teachers' salary schedules and principals' salary schedules for 1962-1963, and it also illustrates the overall disparity between the maximum salaries which individuals in these two categories may earn.

As one would expect district number 10 (wealthy) has the most generous over-all salary scales for teachers and principals and district number 8 (poor) has the lowest. With the exception of district number 9 (principals' salaries) the table also illustrates a direct correlation between district wealth and teachers' and principals' salary scales.

Most of the districts surveyed have a considerably higher maximum salary step for principals than for teachers. This gap between the two categories is perpetuated because principals' salaries are based on a "factor formula" (based on the teacher salary scale) which is normally used in determining administrators' salaries. For example: A beginning principal's position might be assigned a factor of 1.5. If the beginning teacher's salary in our hypothetical example is \$5,000 the principal would make 1.5 times \$5,000, or \$7,500. Every time the teachers' salary scale is improved, salaries of others which are based upon a factor of that base schedule also improve. Thus, for every dollar added to the teachers' salary schedule, the district must add \$1.50 to increase salaries of high school principals.

Two districts examined, district number 8 and district number 13, do not base administrative salaries on a factor basis; rather, such salaries are established by the local boards of education. Although this method would appear to be independent with respect to the teacher, its value is negated by general salary increases which both districts grant their administrators when the teachers' salary scale is raised. The practice of employing a factor basis to establish administrative salaries which range from a factor of slightly more than "one" to greater than

"two" at various districts shows a great variation among districts in the use of this method. It also shows a rigidity which does not permit adjustment of the salary levels between the two salary categories from year to year. Furthermore, if increasing teachers' salaries is intended to "professionalize" teaching, the effect is minimized when administrators' salaries are thereby automatically boosted to higher level.

It is interesting to compare the similarity in principals' salaries at the elementary level in district number 13 (middle wealth) and in district number 4 (impoverished). This latter district pays its principals at the top of their salary range only \$300 less than does district 13, but the maximum teacher's salary in district 4 is more than \$900 less than in district number 13.

One of our more interesting findings was the unique teacher salary incentive program which exists in district number 10 (wealthy). This program established this year enables an instructor who has attained the maximum step on the salary scale to earn an additional \$2,000 by completing extra course work and by undergoing a periodical teacher evaluation.

There follows a table which deals with the average salaries paid by each of the districts examined.

Salaries As a Function of District Wealth

This table presents actual salaries paid teachers, principals, and administrators for 1962-63.

TABLE V
Elementary Level

District number	Average teacher's salary	Average principal's salary	Average certificated administrator's *
	(1)	(2)	(3)
10 -----	\$7,881	\$13,602	\$20,075
13 -----	6,828	11,800	18,234
9 -----	7,568	11,555	18,141
4 -----	6,453	11,608	18,125
15 -----	5,812	10,360	15,522
8 -----	6,440	9,794	12,999

High School Level

District number	Average teacher's salary	Average principal's salary	Average certificated administrator's *
	(1)	(2)	(3)
10 -----	\$9,469	\$17,600	\$20,075
13 -----	7,417	13,264	18,234
20 -----	7,861	14,137	18,141
2 -----	7,065	14,440	18,125

* This category includes top district administrators: i.e., district superintendent and assistant superintendents.

The first column of the elementary and high school levels in Table V shows a general correlation between district wealth and average teachers' salaries paid in 1962-63. Once again we note that district number 10 leads the other districts. Especially interesting is its high school salary which is \$1,600 more than the next closest district. This accounts in large measure for this district's \$529.40 cost per ADA for certificated instructional salaries. (General reference item G.) This

district also has much higher per ADA salary costs for certificated non-instructional positions (certificated administrative personnel such as superintendents, business managers, etc.) and per ADA salary costs for all positions (all employees of district) than does any other district. (General reference items G and H.)

One of the more interesting findings of our survey was that district number 8 (very poor) did not employ any provisional teachers. There exists little staff turnover in this district because these minority group teachers despite their fine qualifications, have difficulty in seeking employment in many other districts. Consequently the average length of time that the teacher has been with the district is quite high; this accounts for the average teacher's salary being higher than one might expect considering the low wealth of the district.

The extremely low teachers' salaries paid in elementary district number 15 were the result of the district's rapid growth over the past few years. Large numbers of new teachers have been hired thus depressing this district's salary averages.

It is interesting to compare middle wealth districts numbers 9, 20 and 13. At the elementary level the average teacher's salary in district number 9 is over \$700 higher than in district number 13. For each district the salaries paid for certificated instructional positions per ADA were \$331.47 and \$325.35 respectively. (General reference item G.) These comparable figures tell us that district number 9 is putting much of its educational dollar in the classroom rather than in other consulting positions such as curriculum directors, subject matter specialists, etc. The difference in average high school salaries between districts number 20 and number 13 was over \$400. However, at the high school level, district number 13 has a much higher per ADA cost for certificated instructional position than does number 20. (General reference item G.) These figures tell us that district number 13 has many non-classroom personnel who support its high school teachers, thus further contributing to the high nonteacher:teacher ratio previously presented (Table I). We may conclude from these comparisons of districts 9, 20 and 13 that districts 9 and 20 place a higher priority on teachers' salaries than they do on the generous central and district staffing policies of district number 13.

In examining the second column of Table V showing average principals' salaries at the elementary level, there is noted a similarity in principals' salaries in districts numbers 13 and 9 (middle wealth) and district number 4 (impoverished). It is interesting that district number 4 paid its teachers \$1,100 less than district number 9 and yet the principals in district number 4 earned slightly more (\$11,608) than those in district 9 (\$11,555).

In column three of the table the similarity of salaries paid top administrators of the various districts is shown. It is interesting that the highest administrators' salaries are paid by the three unified districts and the two commonly administered districts. At the elementary level in districts number 13 and number 9 (middle wealth) and district number 4 (impoverished) average administrative salaries paid superintendents and their assistants are only slightly below the district number 10 level. Impoverished district number 4 has a considerably lower average elementary teacher's salary than district number 10 (\$6,453 versus \$7,881) but in terms of percentage district number 4 pays its

administrators an average salary only slightly below the district number 10 level (\$18,125 versus \$20,075). These findings reinforce our belief that administrative salaries are not nearly as responsive to district wealth as are teachers' salaries.

Educational Quality in Surveyed Districts

Drawing substantive conclusions from a sample of seven school districts is admittedly a hazardous affair, but there is enough evidence of strong character to warrant tentative judgments, subject to more extensive study.

One unfortunate aspect of the analysis is that all surveyed districts did not use the same statewide tests. Three districts used the California Achievement Test at the elementary level, one each for the Science Research Associates Test and the Stanford Achievement Test, and one administered a nonapproved test. Nevertheless, statistical inferences can be drawn and tentative judgments made, subject to those inferences.

In the future, however, it would be most helpful for statewide analysis if all school districts were required to use the same battery, at least for 5th and 11th grade levels. The necessity of this is buttressed by communications from all recognized test publishers who attested to the fact that scores on one test have not been, and probably cannot be, integrated with scores on other tests. There are shortcomings in this nonuniform approach, and lengthy conversations with test experts lead us to believe that a state-sponsored test might properly be substituted. It appears, for example, that private test publishers create tests to suit district wishes, and these purposes may not coincide with state purposes. District wishes may seek to distinguish among individual students, whereas state purposes may seek to distinguish among separate districts.

We would also say that statewide test results ought not to be legally proscribed from publication. We feel that local district taxpayers have a right to know the local results, such that generalized misrepresentations are not encouraged. We understand that many local districts have peculiar circumstances which may often explain high or low statewide standings partially—for instance, a high percentage of suburban residents or an equally high proportion of poverty-afflicted students. However, we do not feel that comparisons ought to be automatically prohibited.

It has come to our attention that a number of districts appear to misrepresent (perhaps unintentionally) the relative quality of district achievement, and we have yet to encounter an administrator from an average district who did not insist that his district was above average.

For analysis, we have ranked the surveyed districts in the following order for the elementary level.

<i>District</i>	<i>Statistical rank</i>	
No. 10	1	First in state by far.
No. 13	3½	Above average 5th on S.A.T. (Stanford Achievement Test)
No. 9	2	Top 5th on C.A.T. (California Achievement Test)
No. 4	3½	Above average 5th on C.A.T.
No. 15	5	Average 5th on C.A.T.
No. 8	6	Test not approved, but I.Q. scores indicate such would be the ranking.

These rankings have been correlated with the various categories included in the district-by-district analysis. The relationship between this quality index and the substantive factors affecting education are as follows:

A. ADA/teacher ratio .....	.87
B. Nonteachers/teacher ratio .....	.26
C. ADA/certificated <i>non</i> instructional	(-0.06)
D. ADA/certificated instructional .....	.64
E. ADA/all positions .....	.55
F. Certificated <i>non</i> instructional salaries/ADA	(-0.03)
G. Certificated instructional salaries/ADA .....	.90
H. All positions salaries/ADA .....	.81

A correlation of 0.87 for this quality factor and the ADA:teacher ratio means that educational achievement is very closely associated with a small class size. The higher the correlation factor the more difficult it is to obtain statistically; therefore, the 0.87 correlation of the above item and the even higher factor of 0.90 for the relationship between quality and certificated instructional salaries are of great significance. The negative figures are caused by the statistical method and mean that the ratio has no effect on pupil achievement.

These data bear out conclusions which have been reached on national and statewide surveys. Category D, for instance, includes the teachers of category A. Hence, if the teachers in category A were separated out of category D leaving only the instructional nonteachers, the correlation coefficient would be diminished.

The gist of the analysis, based on these six districts operating elementary levels, is that the ADA:teacher ratio is highly correlated with district quality, that nonteaching instructional ratios bear an indeterminately positive relationship to district quality, and that noninstructional central office administrators bear no relationship at all to district quality.

By reversing the analytical process, it would be possible to predict that policy decisions to reduce teacher ratios, add more nonteaching instructional personnel, and add more central office administrators should show results ranging from excellent, to moderate, to nil in determining future student achievement in the district.

The following table shows the grade point average of first year freshmen entering the University of California from the districts surveyed.

**University of California
(1962-63)**

District No. 10	2.64
District No. 13	2.61
District No. 20	2.54
District No. 4	2.34
Universitywide average	2.37

Care must be exercised in attempting to derive conclusions from these averages because they represent results for only one year. However, the table does illustrate a direct correlation between college achievement and both class size and district wealth.

Conclusions

1. In the introduction of this final report we stated that we would attempt to identify the essential educational factors which we believe

the state should support in order to maintain a minimum acceptable foundation program. These essential educational factors are identified in Part B of this report.

2. Perhaps the most significant conclusion that can be drawn from the district survey is that a small classroom size is the single most important educational factor necessary for an assured minimum acceptable educational program. This belief has been supported by our survey which discovered a high correlation between pupil achievement and small classes. It should be noted that the Legislature through AB 145 has already recognized the desirability of striving for class sizes of no more than 30 students (grades 1-3) by 1968-1969. For these reasons we believe that the state should devote an increasing proportion of its support for the maintenance of small classes.

3. The foundation study has also substantiated the widely held belief that the Legislature has little control over school district expenditures and thus it cannot directly influence the quality of education administered at the elementary and high school levels except through influence over maximum class sizes and minimum teachers' salaries. Our survey has pointed out that the unrestricted nature of local expenditures permits wide-spread differences in the districts' educational programs, curricula, staffing and expenditure patterns. Many of these factors such as classroom size and teachers' salaries are generally dependent upon district wealth. However, it has been demonstrated that many other differences (i.e., central and district staffing and administrative salaries) appear to be based primarily on local administrative desires rather than on district wealth, size or any other discernible factors. District administrators contend that all nonclassroom positions and services are essential and they are reluctant to establish priorities for such functions. However, it has been pointed out that administrators in different districts of comparable wealth do in fact establish priorities for items such as central and district staffing policies and teachers' salaries.

4. It is concluded that because of the almost infinite number of conditions reflected in the factors of geographic location, local economic structure and population composition, it would be neither feasible nor advisable to attempt to construct an infinite number of foundation programs which could take each of these factors into independent consideration. As mentioned above, the foundation program concept as it now operates does consider local wealth and effort generally, but still permits districts to provide more than a minimum acceptable program if they have the desire and the ability.

5. It has been noted that districts vary greatly in their financial capacities to support local school systems. Many basic aid districts still receive substantial amounts of state educational funds even though they can finance their ambitious educational programs with local taxes. Thus, under the present foundation program the state is not using its education dollar as efficiently as possible since basic aid districts are receiving funds which might be used more beneficially in impoverished districts.

6. It can be concluded that there is a wide gap between the level of teachers' salaries and administrators' salaries. We do not dispute the

contention that school administrators should earn more than school teachers. However, it is inequitable that overall administrative salaries are disproportionately higher relative to district wealth than teachers' salaries. Furthermore, it appears that low teachers' salaries do not contribute to good education. It is interesting that districts numbers 10 and 9 paid the highest average teaching salaries and that the students tested in both districts demonstrated the highest achievement levels. In order to keep experienced, competent teachers in the classroom this gap between teachers' salaries and administrators' salaries should be reduced. Otherwise many experienced teachers may leave the classroom for higher salaried administrative careers. If this situation should persist, overall teaching quality in the public school system would suffer. This condition can best be corrected by adopting incentive payment methods to permit the most highly qualified teachers to remain in the classroom and be paid accordingly.

7. It is concluded that the present lack of a standardized statewide achievement test prevents the Legislature from making adequate district comparisons and from evaluating the educational quality of the state school system with respect to various levels of expenditure. Without such tests it is impossible for the Legislature to measure the efficiency of the state's share of the foundation program.

Recommendations

1. It is recommended that with respect to the next increase in the state's apportionment to the State School Fund emphasis be given expressly to lowering class size as incorporated in Sections 17506 and 17507 of AB 145 (Unruh), Chapter 132, 1964 First Extraordinary Session.

2. It is recommended that the basic aid guarantee to all school districts be returned to the \$120 per ADA level specified in the Constitution by repealing the statutory guarantee of the additional \$5 per ADA. The funds "freed" should then be applied to equalization aid.

3. It is recommended that consideration be given to furthering incentive pay programs for the most highly qualified teachers to permit them to remain in the classroom rather than to be forced into administration because of salary differentials.

4. It is recommended that a standardized statewide test be administered to give a more objective yardstick for measuring the quality of education relative to the various items of expenditure. Care must be exercised, however, in the use of such a yardstick and any analysis must consider the socioeconomic characteristics of the various school districts along with the cost and quality factors.

5. It is recommended that an experimental program be conducted for the purpose of evaluating the different approaches to obtaining quality education at various expenditure levels. This experiment should be associated with the state college laboratory teaching schools and should be fully state supported. The design of this program should include a school situation with a minimum number of nonteaching positions and relatively high teaching salaries and small class size. Such an experiment should be designed to produce standards which would make it possible to measure the extent to which the annual state appropriation

of nearly \$1 billion for support of the public schools is being efficiently spent. The culmination of such an experiment could result in definitions of the foundation programs in more precise terms than is presently possible.

6. It is recommended that substantive evaluations be made of the results obtained by the use of funds made available for reducing class size (under recommendation number one and recommendation number five). The other supplemental uses of funds such as are employed in the existing compensatory education programs and are contemplated in proposed expansions of the McAteer Act programs should also be evaluated so that comparisons can be made of the results produced by both approaches and priorities can be established.

7. It is recommended that at this time no changes be made in the amounts of the existing statutory foundation programs since the cost analysis in Part B of this report indicates an existing level of support which is reasonably adequate for minimum acceptable programs. However, should additional funds for schools be made available, class size should receive first priority.

PART B

(Part B prepared by Office of Auditor General)

Summary of Study in Seven Public School Districts

The office of the Auditor General was requested in December 1963 by the Assembly Education Committee's Subcommittee on Finance to participate in a study of the public school foundation program pursuant to House Resolution 303 of the 1963 General Session of the Legislature. This study was made jointly with the Office of the Legislative Analyst which prepared Part A of this report. Our participation covered primarily the financial reporting, accounting, and auditing aspects of the study. Our studies were made in the same seven districts for the same period of time indicated by the Office of the Legislative Analyst in Part A of this report. Following is a summary of our findings and conclusions based on the seven detailed reports issued on the individual school districts from December 1963 to September 1964.

The state foundation program has been described as a minimum acceptable level of school support which is to be shared in a partnership of state and local district funds. This description indicates that such a partnership arrangement should be sufficient to guarantee an adequate education for each child in the state. However, a partnership arrangement also implies that there should be excluded from the partnership those district costs which are not intended to be shared or those which provide activities beyond the regular instructional program.

Our study was thus directed toward determining the objects and programs for which the districts were incurring expenditures, and determining what expenditures could be considered as not pertaining to foundation program support. We also tried to determine which expenditures, even though pertaining to foundation program support, were in excess of those needed to provide a minimum adequate level of education to be shared by the state and local districts. The results of our analysis of district expenditures are summarized for each district in Tables I and II from our reports on the individual school districts

for the elementary and high school levels. These tables show the comparative costs per ADA for the regular instructional program as distinguished from programs which are supported by the state on a basis other than the foundation programs, such as special education and driver training. Also included are Tables III and IV, which show for each level the comparative average salaries which were paid for the majority of positions common to the districts studied.

Tables I and II present the same costs as were shown in our individual district reports, but summarized by functional positions and their support rather than by individual positions. As in the previous reports, the classroom unit, with a teacher and necessary books and supplies, is presented as the primary unit around which all other expenditures for the current expenses of education are shown as support units. These support units consist of instruction, health, administration, utility, fixed charges, and transportation. The instruction support unit includes those functions of instruction which are performed outside of the classroom, such as coordinators, supervisors, principals, and deans. Health support consists primarily of the nurses and their supplies. Administration support includes the districtwide administrators, their clerical assistants, and supplies. Utility support includes both operations activities, such as custodial and gardening, and maintenance activities, which encompass the repair and maintenance of buildings, grounds and equipment. These two activities are shown separately within the utility unit. Fixed charges as presented here consist almost entirely of insurance costs. In the conventional school district financial statement, fixed charges also include district expenditures for retirement contributions. We have allocated these retirement costs to the support units which contain the related salaries. The transportation support unit excludes those transportation costs for which a state allowance is made for special education pupils. Tables III and IV show average salaries paid without regard to the support unit in which they are included.

It should be noted that in Table I the cost per ADA for the regular instructional program ranges from a high of \$775.25 in district number 10 to a low of \$299.98 in district number 8. In that these districts also represented the high and low with regard to wealth measured in assessed valuation per ADA; this was not unexpected. In the other districts (numbers 15, 4, 9, and 13), the cost per ADA was, in the same manner, generally related to each district's wealth per ADA. We concluded that the wealthier the district the greater the expenditure for the total education program for each child. However, an analysis of the detail in the various units contained in the table shows that this relationship did not in all cases continue to hold true. In district number 9, \$270.37 per ADA was spent on classroom teachers' salaries, while in district number 13 (a wealthier district), only \$242.09 was expended for the same purpose. At the same time, district number 13 expended \$66.78 per child for instruction functions (primarily supervision of classroom), while district number 9 spent only \$44.69. Thus we conclude that with total expenditures of approximately the same for the combined purposes, it was the policy of district number 9 to place emphasis on support for the primary unit (the classroom), while district number 13

concentrated on out-of-the-classroom instruction (supervisory) support. Our actual observations and analyses in these districts reinforced this conclusion.

It should be noted regarding the administration support unit in Table I, that the cost per ADA for the district superintendent fluctuated sharply between districts, and with the exception of district number 10, bore no particular relation to wealth. Since the actual salaries paid to the various district superintendents were relatively the same, we concluded that these per ADA fluctuations were a result primarily of district size. For example, the district superintendent in district number 4 and district number 13 received exactly the same annual salary, \$21,500. However, district number 4 had an elementary ADA of 32,000 while the district number 13 ADA amounted to only 8,700. This resulted at the elementary level in a cost per ADA for the district superintendent in district number 4 of only \$0.48, while in district number 13 it amounted to \$1.46.

Total administration costs per ADA did not, in most cases, follow the pattern observed for the district superintendent. District number 4, which had 10 times the ADA of district number 9, showed an administration cost of \$14.10 per ADA, while district number 9 had a cost of \$10.83 per ADA. From analyses of the number of administrative personnel and our observations in the districts, we concluded that district number 9 operated with fewer administrators and clerical personnel per ADA than district number 4.

TABLE I
(Summary)
FOUNDATION PROGRAM STUDY
Comparative Costs per ADA
Elementary Level
Regular Instructional Program

	District					
	No. 15	No. 4	No. 9	No. 10	No. 8	No. 13
Classroom unit.....	\$206.69	\$226.91	\$289.09	\$463.88	\$197.17	\$263.45
Instruction support unit.....	41.89	42.84	44.69	132.55	25.57	66.78
Health support unit.....	4.54	3.18	3.40	14.68	2.88	5.57
Administration support unit.....	16.83	14.10	10.83	31.89	19.25	22.79
Utility support unit.....	39.50	52.09	38.90	125.93	51.09	79.55
Fixed charges support unit (other than retirement)*.....	3.82	2.53	2.93	5.23	4.02	4.22
Total current expense of education for regular instructional program (exclusive of transportation).....	\$313.27	\$341.65	\$389.84	\$774.16	\$299.98	\$442.36
Transportation support unit.....	6.42	12.59	7.35	1.09	-----	.78
Total current expense of education for regular instructional program.....	\$319.69	\$354.24	\$397.19	\$775.25	\$299.98	\$443.14

* Retirement costs have been allocated to the various support units.

TABLE I—Continued
(Detail)
FOUNDATION PROGRAM STUDY
Comparative Costs per ADA
Elementary Level
Regular Instructional Program

	District					
	No. 15	No. 4	No. 9	No. 10	No. 8	No. 13
Classroom unit						
Teachers.....	\$197.83	\$212.26	\$270.37	\$419.12	\$191.93	\$242.09
Books, supplies, audiovisual.....	6.73	9.77	10.39	31.95	4.09	13.60
Retirement.....	2.13	3.88	8.33	12.81	1.15	7.76
Total classroom unit.....	\$206.69	\$226.91	\$289.09	\$463.88	\$197.17	\$263.45
Instruction support unit						
Principals and vice principals.....	\$20.31	\$22.46	\$34.40	\$38.33	\$12.90	\$23.78
Supervisors—curriculum services.....	4.92	2.41	5.98	23.49	-----	5.57
Supervisors—other instruction services.....	-----	.31	-----	-----	2.53	2.80
Library services.....	4.19	3.11	-----	22.79	2.41	6.26
Psychology, guidance and testing services.....	1.99	1.64	1.56	10.94	2.26	6.56
School secretarial and clerical.....	7.02	8.07	4.06	9.51	4.82	8.27
Supervisor secretarial and clerical.....	1.30	1.87	.29	9.34	.92	5.72
Miscellaneous instruction support.....	1.18	2.41	.79	11.20	1.01	8.34
Retirement.....	1.79	1.62	1.85	6.95	.69	3.96
Less—proration to other support programs.....	(.81)	(1.06)	(4.24)	-----	(1.97)	(4.48)
Total instruction support unit.....	\$41.89	\$42.84	\$44.69	\$132.55	\$25.57	\$66.78
Health support unit						
Nurses.....	\$3.97	\$2.67	\$3.39	\$10.59	\$2.72	\$5.52
Other health support.....	.55	.58	.75	3.69	.19	.58
Retirement.....	.08	.07	.10	.40	.02	-----
Less—proration to other programs.....	(.06)	(.14)	(.84)	-----	(.05)	(.53)
Total health support unit.....	\$4.54	\$3.18	\$3.40	\$14.68	\$2.88	\$5.57
Administration support unit						
District superintendent.....	\$2.08	\$0.48	\$1.74	\$5.10	\$3.97	\$1.46
Assistant superintendents.....	4.86	1.14	1.34	4.21	6.31	2.24
Supervisors—business services.....	.96	.59	.59	1.72	-----	1.25
Supervisors—other administration.....	.82	2.19	.68	3.54	-----	1.56
Secretarial and clerical, business services.....	3.35	4.04	1.21	1.53	2.75	4.34
Secretarial and clerical, other administration.....	2.46	2.92	3.97	8.35	3.82	7.29
Supplies, equipment rental, mileage.....	.68	1.36	1.11	1.22	1.18	2.22
Miscellaneous.....	.70	1.15	-----	4.32	.69	.82
Retirement.....	1.12	.82	.76	1.90	.74	1.92
Less—proration to other programs.....	(.20)	(.59)	(.57)	-----	(.21)	(.31)
Total administration support unit.....	\$16.83	\$14.10	\$10.83	\$31.89	\$19.25	\$22.79

TABLE I—Continued

(Detail)

FOUNDATION PROGRAM STUDY

Comparative Costs per ADA

Elementary Level

Regular Instructional Program

	District					
	No. 15	No. 4	No. 9	No. 10	No. 8	No. 13
Utility support unit						
Operations						
Custodial and gardening ..	\$22.01	\$25.16	\$23.32	\$49.38	\$24.01	\$34.22
Delivery, warehouse switchboard ..	1.24	1.49	-----	2.30	2.27	1.88
Other operations labor ..	-----	.07	-----	-----	-----	-----
Utilities, fuel, supplies ..	10.13	12.65	9.28	19.80	9.53	14.50
Miscellaneous operations expense ..	.61	.21	.14	.44	.85	1.13
Subtotal operations ..	\$33.99	\$39.58	\$32.74	\$71.92	\$36.66	\$51.73
Maintenance						
Maintenance men ..	\$1.25	\$5.30	\$3.32	\$21.10	\$7.55	\$10.56
Maintenance and repair contracted ..	1.67	4.40	2.23	16.81	4.88	8.01
Equipment replacement ..	.21	1.50	.24	4.99	1.23	3.21
Miscellaneous maintenance expense ..	-----	-----	-----	2.30	-----	.50
Subtotal maintenance ..	\$3.13	\$11.20	\$5.79	\$45.20	\$13.66	\$22.28
Retirement ..	\$2.85	\$2.74	\$2.90	\$8.81	\$3.66	\$6.69
Less—proration to other programs ..	(.47)	(1.43)	(2.53)	-----	(2.89)	(1.15)
Subtotal retirement ..	\$2.38	\$1.31	\$0.37	\$8.81	\$0.77	\$5.54
Total utility support unit ..	\$39.50	\$52.09	\$38.90	\$125.93	\$51.09	\$79.55
Fixed charges support unit (other than retirement)						
Insurance ..	\$3.88	\$3.21	\$3.20	\$5.06	\$4.04	\$4.01
Miscellaneous ..	-----	.08	.01	.17	.05	.41
Less—proration to other programs ..	(.06)	(.76)	(.28)	-----	(.07)	(.20)
Total fixed charges support unit ..	\$3.82	\$2.53	\$2.93	\$5.23	\$4.02	\$4.22
Total current expense of education for regular instructional program (exclusive of transportation) ..	\$313.27	\$341.65	\$389.84	\$774.16	\$299.98	\$442.36
Transportation support unit						
Transportation—contracted ..	-----	-----	\$7.35	\$1.09	-----	\$0.78
Transportation—district operated						
Bus drivers ..	\$3.64	\$6.01	-----	-----	-----	-----
Other transportation, wages ..	1.26	2.21	-----	-----	-----	-----
Fuel, tires, repairs, replacement ..	1.78	3.85	-----	-----	-----	-----
Retirement ..	.62	.84	-----	-----	-----	-----
Less—proration to other programs ..	(.88)	(.23)	-----	-----	-----	-----
Total transportation support unit ..	\$6.42	\$12.59	\$7.35	\$1.09	-----	\$0.78
Total current expense of education for regular instructional program ..	\$319.69	\$354.24	\$397.19	\$775.25	\$299.98	\$443.14

TABLE II
(Summary)
FOUNDATION PROGRAM STUDY
Comparative Costs per ADA
High School Level
Regular Instructional Program

	District			
	No. 4	No. 20	No. 10	No. 13
Classroom unit.....	\$298.43	\$329.92	\$540.08	\$385.05
Instruction support unit.....	84.19	86.10	167.93	138.95
Health support unit.....	3.19	5.94	8.97	3.46
Administration support unit.....	16.46	15.12	34.63	22.83
Utility support unit.....	64.37	57.54	169.30	101.23
Fixed charges support unit (other than retirement)*.....	2.53	4.12	5.17	4.22
Total current expense of education for regular instructional program (exclusive of transportation).....	\$469.17	\$498.74	\$926.08	\$655.74
Transportation support unit.....	11.35	21.21	3.69	.93
Total current expense of education for regular instructional program.....	\$480.52	\$519.95	\$929.77	\$656.67

* Retirement costs have been allocated to the various support units.

We observed that unit costs in the utility support unit varied considerably and that fluctuations in maintenance were greater than in operations. We drew no specific conclusions from these variations however because of the differences in size and age of school plants.

Transportation costs varied widely and were primarily a reflection of the type of transportation program necessary for each district. We concluded that geographical location and availability of public transportation were the primary factors contributing to the varied costs.

Table II shows comparative costs per ADA at the high school level. At the high school level costs per ADA range from a high of \$929.77 in district number 10, the wealthiest district, to \$480.52 in district number 4, which had the lowest assessed valuation per ADA. This is the same pattern as shown in Table I for the elementary level.

Table II shows a wide variation in the combined costs for supervisors and their clerical staffs in the instruction function for district number 20 and number 13. District number 13 expended \$24.95 for these purposes, while district number 20 spent only \$7.48 for these same purposes. Since the two districts are comparable in size, in wealth and, as near as can be determined, in success of their students, it appears that there was an excessive staffing for these purposes in district number 13.

Our observations and conclusions made with regard to Table I (elementary) apply for the most part to Table II (high school) with the exception of the cost per ADA of the classroom teachers.

Tables III and IV present average salaries for comparable positions common in most districts studied.

The information presented in the accompanying tables and our comments are based on the actual expenditures of the districts as reflected by their records and as audited by their independent public accounting firms. These tables show the purposes for which the districts actually

expended their available funds. The following comments are directed toward determining as nearly as possible a minimum acceptable level of

TABLE II—Continued

(Detail)

FOUNDATION PROGRAM STUDY

Comparative Costs per ADA

High School Level

Regular Instructional Program

	District			
	No. 4	No. 20	No. 10	No. 13
Classroom unit				
Teachers.....	\$268.21	\$301.38	\$483.16	\$350.62
Books, supplies, audiovisual.....	24.05	21.27	42.09	23.07
Retirement.....	6.17	7.27	14.83	11.36
Total classroom unit.....	\$298.43	\$329.92	\$540.08	\$385.05
Instruction support unit				
Principals and vice principals.....	\$13.51	\$18.95	\$19.71	\$12.06
Deans.....	10.79	6.17	16.89	10.44
Counselors.....	17.92	22.57	32.89	36.54
Supervisors, curriculum services.....	2.82	3.61	7.21	13.10
Supervisors, other instruction services.....	.36	3.29	7.31	5.52
Library services.....	13.20	9.48	13.49	13.16
Psychology, guidance and testing services.....	1.65	3.10	10.48	6.57
School secretarial and clerical.....	18.44	13.12	31.07	16.18
Supervisor, secretarial and clerical.....	2.17	.58	6.08	6.33
Miscellaneous instruction support.....	2.54	5.25	16.11	18.14
Retirement.....	3.43	3.45	6.69	5.39
Less—proration to other programs.....	(2.64)	(3.47)	-----	(4.48)
Total instruction support unit.....	\$84.19	\$86.10	\$167.93	\$138.95
Health support unit				
Nurses.....	\$2.67	\$4.39	\$4.89	\$3.45
Other health support.....	.58	1.60	3.88	.54
Retirement.....	.08	.15	.20	-----
Less—proration to other programs.....	(.14)	(.20)	-----	(.53)
Total health support unit.....	\$3.19	\$5.94	\$8.97	\$3.46
Administration support unit				
District superintendent.....	\$5.56	\$2.40	\$4.92	\$1.46
Assistant superintendents.....	1.32	1.85	4.06	2.26
Supervisors—business services.....	.68	.81	1.65	1.25
Supervisors—other administration.....	2.54	1.48	3.41	1.56
Secretarial and clerical, business services.....	4.79	1.68	5.30	4.34
Secretarial and clerical, other administration.....	3.39	5.27	8.05	7.30
Supplies equipment rental, mileage.....	1.58	1.13	1.18	2.22
Miscellaneous.....	1.33	-----	4.16	.82
Retirement.....	.95	1.09	1.90	1.93
Less—proration to other programs.....	(.59)	(.59)	-----	(.31)
Total administration support unit.....	\$16.46	\$15.12	\$34.63	\$22.83
Utility support unit				
Operations				
Custodial and gardening.....	\$30.28	\$28.03	\$81.94	\$41.73
Delivery, warehouse, switchboard.....	1.49	-----	2.30	1.88
Other operations labor.....	3.29	-----	-----	-----
Utilities, fuel, supplies.....	12.69	10.21	27.14	20.41
Miscellaneous operations expense.....	.23	3.79	3.41	3.62
Subtotal operations.....	\$47.98	\$42.03	\$114.79	\$67.64

TABLE II—Continued
(Detail)
FOUNDATION PROGRAM STUDY
Comparative Costs per ADA
High School Level
Regular Instructional Program

	District			
	No. 4	No. 20	No. 10	No. 13
Utility support unit—Continued				
Maintenance				
Maintenancemen	\$5.31	\$5.43	\$21.10	\$10.58
Maintenance and repair contracted	5.78	6.23	18.81	10.98
Equipment replacement	3.77	1.62	3.55	4.88
Miscellaneous maintenance expense			2.30	.51
Subtotal maintenance	\$14.86	\$13.28	\$45.76	\$26.95
Retirement	\$3.60	\$3.83	\$8.81	\$7.79
Less—proration to other programs	(2.07)	(1.60)	(.06)	(1.15)
Subtotal	\$1.53	\$2.23	\$8.75	\$6.64
Total utility support unit	\$64.37	\$57.54	\$169.30	\$101.23
Fixed charges support unit (other than retirement)				
Insurance	\$3.22	\$4.25	\$5.06	\$4.02
Miscellaneous .....	.08	.08	.17	.40
Less—proration to other programs	(.77)	(.21)	(.06)	(.20)
Total fixed charges support unit	\$2.53	\$4.12	\$5.17	\$4.22
Total current expense of education for regular instructional program (exclusive of transportation)	\$469.17	\$498.74	\$926.08	\$655.74
Transportation support unit				
Transportation—contracted		\$21.21	\$3.69	\$.93
Transportation—district operated				
Bus drivers	\$5.43			
Other transportation wages	1.91			
Fuel, tires, repairs, replacement	3.48			
Retirement .....	.76			
Less—proration to other programs	(.23)			
Total transportation support unit	\$11.35	\$21.21	\$3.69	\$.93
Total current expense of education for regular instructional program	\$480.52	\$519.95	\$929.77	\$656.67

support to be shared in a partnership of state and local district funds. This does not necessarily mean the lowest cost found in the districts as this could reflect a level of support which would not be acceptable when measured in terms of the best information we now have with regard to the success of the students. We recognize that while a sample of seven districts is comparatively small, it did contain one of the wealthiest and one of the poorest districts in the state. Thus we could expect the costs of most districts not studied to fall between these extremes. As a preliminary to our determination of this minimum acceptable amount to be shared, we reviewed the results of the districts which were studied and chose for further analysis three districts which indicated by their

costs per ADA, their level of salaries, the success of their students, and their size, would be the most representative in this group of giving an adequate education program at a minimum cost. The districts chosen were one unified district and an elementary district and a high school district with a common administration.

Starting with each district's actual cost per ADA for the regular instructional program, as reflected in Tables I and II, adjustments were made to more nearly reflect a minimum adequate program. The adjustments were made for the following reasons:

1. The districts' actual unit costs did not necessarily reflect a minimum adequate level of support.
2. The actual costs in the districts, presented in the regular instructional program, still contained amounts which, even though they are part of the current expense of education, are not subject to a partnership sharing of state and local funds.
3. Summer school costs and its related ADA were excluded in the presentation of the regular instructional program. Since this ADA and cost is based on foundation program support, they were added into the figures for the regular instructional program.
4. In order to present costs which would compare with the latest statutory foundation program support, district actual costs were projected to include the 1965-66 fiscal year.

TABLE III
FOUNDATION PROGRAM STUDY
Comparative Average Salaries
Elementary Level
Regular Instructional Program

	District					
	No. 15	No. 4	No. 9	No. 10	No. 8	No. 13
Classroom teachers—regular program.....	\$5,812	\$6,453	\$7,568	\$7,881	\$6,440	\$6,828
District superintendent.....	18,638	21,500	20,500	22,000	15,063	21,500
Assistant superintendent						
Education.....	13,632	17,000			11,182	16,602
Business.....	14,910	17,000	15,782	18,150	12,754	16,601
Personnel.....	14,910	17,000				
Principal.....	10,360	11,608	11,555	13,602	9,794	11,800
Vice principal.....	7,942	8,909	none	11,724	none	9,303
Director (supervisor) education.....	11,508	14,950	9,756	13,370	none	12,600
Coordinator (supervisor)						
Subject specialties.....	8,115	11,790		11,600	none	11,173
Psychologist.....	10,231	10,277	10,523	11,004	7,312	9,057
Librarians.....	8,146	none	none	8,930	none	6,844
Library assistants.....	3,723	none	none	3,803	none	4,632
School secretaries and clerks.....	3,585	4,143	3,413	4,497	3,372	4,305
Supervisors secretarial and clerks.....	3,872	5,050		4,888		5,755
Secretaries administration.....	5,598	5,478	5,034	7,378	5,234	5,709
Nurses.....	5,920	5,989	4,981	6,996	5,159	contract
Chief accountants.....	8,580	12,284	6,909	7,392	none	10,404
Custodians.....	4,935	4,672	4,890	5,521	4,384	5,276
Gardeners.....	5,107	4,627	4,956	6,043	4,596	5,358
Maintenance men.....	5,610	5,744	5,572	7,689	5,483	8,320

TABLE IV
FOUNDATION PROGRAM STUDY
Comparative Average Salaries
High School Level
Regular Instructional Program

	District			
	No. 4	No. 20	No. 10	No. 13
Classroom teachers—regular program.....	\$7,065	\$7,861	\$9,469	\$7,417
District superintendent.....	21,500	20,500	22,000	21,500
Assistant superintendent				
Education.....	17,000			16,602
Business.....	17,000	15,782	18,150	16,601
Personnel.....	17,000			
Principal.....	14,440	14,137	17,600	13,264
Vice principal.....	11,453	11,217	16,500	11,207
Dean.....	10,350	11,264	14,609	9,324
Counselor.....	8,608	10,308	11,854	9,936
Director (supervisor) education.....	14,950	12,200		12,600
Coordinator (supervisor) Subject specialties.....	11,790			11,267
Psychologist.....	10,277	10,523	11,827	9,057
Librarians.....	7,765	8,842	8,532	8,123
Library assistants.....	4,176	3,228	5,232	5,238
School secretaries and clerks.....	4,143	3,469	5,321	4,957
Supervisor secretarial and clerks.....	5,050	4,128	5,556	4,260
Secretaries administration.....	5,478	5,034	7,378	5,709
Nurses.....	5,989	5,608	8,459	contract
Chief accountant.....	12,284	6,909	7,392	10,404
Custodians.....	4,672	4,973	5,521	4,973
Gardeners.....	4,627	4,812	6,043	5,358
Maintenancemen.....	5,744	5,792	7,689	8,320

We wish to emphasize that these adjustments do not constitute criticisms of the districts' actual expenditures, but were made for the purpose of determining what portion of the expenditures, if any, constitute those in excess of a minimum adequate level of school support.

The following adjustments were applicable in the districts analyzed:

1. The cost per ADA for classroom teachers was adjusted to reflect a ratio of 33:1 ADA at the elementary level and 28:1 ADA at the high school level. The actual average teachers' salary paid in the district was used in the adjustment. The maximum adjustment necessary in the three districts analyzed was an increase of 4.5 ADA per teacher. Because of this district's excellent student achievement and the relatively high salaries paid, we considered that this adjustment would not cause the student achievement to fall below an acceptable minimum level of education.
2. District expenditures for retirement contributions were excluded from the actual unit costs. We recognize that these costs are included under the current definition of the current expense of education. However, we observed that most districts fund these expenditures in total through a district permissive override tax, and thus we do not consider that these costs are being shared by state and local funds.
3. District transportation expenses were adjusted to exclude the portion of unit transportation cost represented by transportation allowances received by the district from the state from a source

other than the foundation program. This portion constitutes total state participation and is thus not part of the cost to be shared.

4. District unit costs were adjusted where applicable for the excess costs of instructing 7th and 8th grade pupils. This was done in order that costs in districts instructing only kindergarten through 6th grade pupils would be comparable to those instructing kindergarten through 8th grade pupils.
5. The portion of unit costs represented by certain positions in the districts were excluded when, by subjective analysis, they were considered to be not minimal to an adequate program. For example, the costs of a Coordinator of Nurses and a Director of School-Community Relations, while being part of the district's current expense of education were not necessary, in our opinion, to a minimum adequate program. On the other hand, expenditures for many positions were included in total without adjustment, such as custodians, clerical, gardeners, and maintenance men because it was impossible, without a detailed study of the districts' minimum requirements for these positions, to determine what portion of these costs per ADA, if any, were in excess of their requirements.

Some of these adjustments are based on judgments containing subjective elements. No adjustments were made with respect to salary levels for teachers, directors, and administrators which may have been in excess of what was necessary to attract competent personnel in the particular circumstances. Further, no adjustments were made for either salary level or number of positions in custodial maintenance and clerical occupations. It is possible that the costs as adjusted represent an amount somewhat greater than an acceptable minimum.

Table V shows, for the districts chosen for further analysis, the comparative costs per ADA at the elementary level as adjusted for the factors mentioned previously. Table VI presents the same data for the high school level. In order to show the effect of the exclusions of retirement costs as against exclusions for other reasons, a segregation of the amount excluded in Tables V and VI in each district for retirement contributions as compared to other exclusions is summarized below:

	<i>Elementary district</i>		<i>High school district</i>	
	<i>No. 4</i>	<i>No. 9</i>	<i>No. 4</i>	<i>No. 20</i>
Retirement costs -----	\$10.97	\$13.94	\$14.99	\$15.79
Other costs -----	23.91	41.45	28.65	29.92
Total excluded -----	\$34.88	\$55.39	\$43.64	\$45.71

Thus in each case the amount excluded for retirement costs are about one-third of the exclusions with the exception of district no. 9 where they are about one-fourth of the total exclusions.

It is also interesting to note from Tables V and VI the high percentage of maximum statutory program available in 1965-66 to the projected adjusted costs of the districts studies. Table V for the elementary level shows that the maximum program guaranteed by the state in 1965-66 is 96 percent and 102 percent of the respective districts' adjusted costs. At the high school level (Table VI), these per-

centages for the respective districts are shown at 88 percent and 86 percent.

We have already noted that the adjusted costs on which these percentages are based included no allowance for salary levels which may be in excess of a minimum for the various positions studied. Further, we have noted that no adjustments were made for custodial, maintenance and clerical positions, for either salary level or number of positions. It appeared to us that further adjustments with regard to these factors could only increase the percentages shown in Tables V and VI, therefore, we considered it unwarranted to gather further data concerning them at this time.

The Department of Education in its 1961 report to the Legislature recommended foundation program levels at 92.8 percent of the elementary districts' costs for foundation program purposes and 90.3 percent for the high school level. Tables V and VI show that the percentages of the 1965-66 projected costs appear reasonably close to the percentages of costs recommended to the Legislature by the Department of Education in 1961.

TABLE V
FOUNDATION PROGRAM STUDY
Adjusted Comparative Costs per ADA
Elementary Level

	District No. 4		District No. 9	
	Excluded	Included	Excluded	Included
Classroom unit.....	\$17.30	\$209.61	\$44.38	\$244.71
Instruction unit.....	5.69	37.15	1.85	42.84
Health unit.....	.27	2.91	.10	3.30
Administration unit.....	3.54	10.56	.76	10.07
Utility unit.....	2.74	49.35	2.90	36.00
Fixed charges unit.....		2.53		2.93
Total (exclusive of transportation).....	\$29.54	\$312.11	\$49.99	\$339.85
Transportation unit.....	5.34	7.25	5.40	1.95
Total (including transportation).....	\$34.88	\$319.36	\$55.39	\$341.80
Summer school adjustment.....		-4.34		
7th and 8th grade excess cost adjustment.....		-15.02		
Total.....		\$300.00		\$341.80
Projection through 1965-66.....		64.05		2.02
Total for 1965-66.....		\$364.05		\$343.82
Percentage of the 1965-66 costs provided by the maximum statutory program available in 1965-66.....		96%		102%

TABLE VI
FOUNDATION PROGRAM STUDY
Adjusted Comparative Costs per ADA
High School Level

	District No. 4		District No. 20	
	Excluded	Included	Excluded	Included
Classroom unit.....	\$16.61	\$281.82	\$25.31	\$304.61
Instruction unit.....	8.20	75.99	8.63	77.47
Health unit.....	.28	2.91	.15	5.79
Administration unit.....	4.10	12.36	1.09	14.03
Utility unit.....	3.60	60.77	3.83	53.71
Fixed charges unit.....		2.53		4.12
Total (exclusive of transportation).....	\$32.79	\$436.38	\$39.01	\$459.73
Transportation unit.....	10.85	.50	6.70	14.51
Total (including transportation).....	\$43.64	\$436.88	\$45.71	\$474.24
Summer school adjustment.....		-8.28		-4.37
7th and 8th grade excess cost adjustment.....		-13.88		
Total.....		\$414.72		\$469.87
Projection through 1965-66.....		88.55		44.57
Total for 1965-66.....		\$503.27		\$514.44
Percentage of the 1965-66 costs provided by the maximum statutory program available in 1965-66.....		88%		86%

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ASSEMBLY INTERIM COMMITTEE REPORTS
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REPORT OF THE
**ASSEMBLY INTERIM COMMITTEE
ON EDUCATION**

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Report of the

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LETTER OF TRANSMITTAL

January 8, 1965

HON. JESSE M. UNRUH
*Speaker of the Assembly, and
Members of the Assembly
Assembly Chamber, Sacramento*

Gentlemen: .

Pursuant to House Resolution No. 500.5, adopted on June 21, 1963, the Assembly Interim Committee on Education herewith submits its final report of the Subcommittee on Special Education.

Respectfully submitted,

CHARLES B. GARRIGUS, *Chairman*
LEO J. RYAN, *Vice Chairman*

Subcommittee on Special Education

Greene, *Chairman*

Alquist

Bee

Dymally

Elliott

Flournoy

Garrigus

Monagan

Whetmore

REPORT OF THE
SUBCOMMITTEE ON SPECIAL EDUCATION
of the
ASSEMBLY INTERIM COMMITTEE ON EDUCATION

MEMBERS OF THE SUBCOMMITTEE

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January 1965



SUBCOMMITTEE ON SPECIAL EDUCATION

The Subcommittee on Special Education was constituted in September 1964 by the Chairman of the Assembly Interim Committee on Education, Assemblyman Charles B. Garrigus, for the purpose of studying several proposals in this specialized area which had been referred to the full committee. Prior to the appointment of the Subcommittee on Special Education several hearings were held on these measures by the Subcommittee on School Finance; upon formation of this subcommittee all such measures were rereferred to it. Chairman Garrigus instructed the subcommittee to conduct a broad study in depth of special education subject matter with a view to presenting a coordinated program in this area to the 1965 Legislature.

Bills and resolutions referred to this subcommittee included the following: House Resolution 357 (calling for a study in depth of all special education subject matter); House Resolution 388 (relating to training of teachers for special education); House Resolution 11 (relating to materials for special education); and Assembly Bill 169 (the School Age Census Bill). In addition, several subject areas closely related to special education were studied by the committee's research staff and proposals were presented to the subcommittee. These appear in the text which follows. It is the hope of the committee members that the recommendations which have grown out of this study receive full consideration by the Legislature in 1965.

CONCLUSIONS AND RECOMMENDATIONS

1. The committee concludes that many children, both handicapped and otherwise, are going without an education because of failure to account for them. The committee therefore recommends that consideration be given to a mandatory youth census, conducted periodically to locate children who are not in school and to assist in future planning for them.

2. The committee finds present special education financing to be cumbersome and outmoded. The committee proposes that the special education portion of the school fund be made part of the total local assistance for education budget, to be distributed on an equalizing multiple ADA formula basis.

3. The committee finds that laboratory schools for exceptional children are needed to improve special education and to aid in teacher training and recruitment. The committee therefore proposes that laboratory schools for exceptional children be established on state college campuses. It is further recommended that the two existing state schools for the cerebral palsied, located on the campuses of San Francisco and Los Angeles State Colleges, be transferred from the jurisdiction of the Department of Education to the respective colleges.

4. It is concluded that many more special education teachers are needed and many of those now teaching are not qualified to do so. It is recommended, should other methods fail to produce a sufficient number of teachers, that financial incentives for teacher training in special education be increased and that financial encouragement be given to colleges for curriculum development.

5. It is concluded that there are no public school programs available for the majority of multiply handicapped children. The committee proposes that the cost of educating these multiply disabled children be reimbursed to approved private schools where no public school programs exist, through the mechanism already established by Senate Bill 346 (Sedgwick) of the 1963 General Session.

6. We note that although day programs for blind and deaf children are well established in our public school system, pressure on the state residential schools is increasing and proposals to build a new facility for multiply handicapped deaf are being made. The committee recommends that children applying to state residential schools be carefully screened on the basis of explicit standards, and that school districts pay a share of the education costs of children attending the state schools. Until such careful screening is instituted, it is recommended that no additional residential schools be authorized.

7. The committee finds that there is a great demand for child care centers, particularly for preschool and disabled children whose mothers must work to help support their families. The committee recommends the establishment of new child care facilities which will provide a combined program of care and education. It is further recommended that all sources of federal funds be explored to offset the added state

cost, including the 75 percent reimbursement for child care available through the 1962 service amendments to the Social Security Act.

8. The committee finds that there are no minimum standards of content and curriculum for special education classes. The committee therefore urges that the State Department of Education, in consultation with voluntary associations, devise appropriate minimum program standards for each disability group.

9. The committee finds that state building aid for special education, available to impoverished school districts on a 50-percent reimbursement basis, lacks criteria for allocation. Furthermore, there is indication of a need to extend state building aid for special education to technically nonimpoverished districts. The committee therefore recommends that maximum limits be set on state building aid in respect to square footage per child per classroom and auxiliary space, according to program purposes. It is further proposed that provisions be made for building aid for so-called nonimpoverished districts with inclusion of incentives to promote interdistrict cooperation and efficiency in planning and constructing special education facilities.

10. The committee is informed that because there is no research and demonstration unit in the State Department of Education, federal research grants must be forfeited and necessary studies are not accomplished. We propose that the State Department of Education be authorized to establish such a research and demonstration unit.

11. The committee concludes that present relationships between school districts, county superintendents of schools, and the State Department of Education are unclear and undefined. The committee calls for a resolution directing a detailed study of present relationships among all levels of special education administration, emphasizing the necessity of vesting greater responsibility and authority in a county or regional body.

12. We find that interagency cooperation among state departments and agencies presently is haphazard and there is no legal authorization to contract with one another for services. We recommend that interagency cooperation be encouraged and that the Education Code be amended to grant explicit permission to school districts, to county superintendents, and to the State Department of Education to contract with other agencies for appropriate services.

13. In fostering interagency cooperation, the committee is particularly concerned with the implementation of House Resolution 11 (1964), calling for the production of educational aids for handicapped children by inmates of Department of Corrections facilities. It is recommended that the Departments of Corrections, Rehabilitation and Education report to the Legislature regarding the financial and legal modifications necessary to implement the resolution. It is further recommended that federal rehabilitation act monies be fully utilized in the implementation of HR 11.

14. The committee recognizes that the programs for mentally gifted students in the public schools are similar in many respects to programs for other exceptional children. We recommend that the Legislature study the financing, identification processes and course content of special programs for the gifted.

INTRODUCTION

A study of special education is of timely importance because special education is now experiencing a tremendous growth, in terms both of numbers of children served and of cost to the state. Groups representing handicapped children are advancing in political awareness and are beginning to make their influence more keenly felt. No longer is it possible to view special education as something apart from general education, as an area which serves a small number of children and is of minor financial importance. The facts are that close to 300,000 school children participate in special programs of some type, at a cost of about \$65 million in state money. It is estimated that by fiscal 1964-65, special programs in our schools will require nearly \$75 million in state financing.

Provisions of state law and the State Constitution require that all children who can benefit from instruction and who are between the ages of 8 and 16 shall be in attendance in the public schools. The law makes no distinction in this regard between handicapped or normal children—it merely demands that a public education be offered to all. This committee rejects the notion that handicapped or exceptional children are new responsibilities of the school system. Rather, it seems apparent that their education has always been a responsibility of local school districts, whether or not that responsibility has been satisfied. It follows, then, that the financial responsibility for such youngsters should be seen as a partnership of state and local resources, not as the sole and exclusive responsibility of the state.

This report attempts to give an overview of the expanding field of special education from several vantage points. The first part of the report traces the historical development of special programs, from their origins in private charitable efforts to the present era of public responsibility. It concentrates on the history of California's educational program for exceptional children, which began in 1860 with the establishment of a state residential school for the deaf.

The century since 1860 has seen our state's special education programs grow to their present level of size, cost, and complexity. Section II describes the present-day programs in terms of such details as groups served, types of classes, specific costs, and numbers of students in each program.

The third section deals with broad questions of definition and purpose in the special education field. It points up the need for an overall philosophy to provide a perspective for evaluating present programs and for guiding future development.

Finally, and most importantly, Section IV gives the committee's conclusions and recommendations for legislative action.

The important issue is not so much whether state money will be spent, but whether it will be spent wisely. This raises questions regarding program content, operation, and development. These latter, of course, are related to finance but they are not financial matters alone.

The objective of this report is to equip the Legislature with some knowledge of a complex area, in the hope that it may be provided with the facts necessary in order to arrive at sound and balanced judgments in the area of special education.

The report also intends to provide a constructive framework for the various policy committees which will be considering legislation affecting the exceptional child. Beyond the provision of information, the report hopes to raise some broad policy issues. Among these is the question whether education has matured to the point where it should no longer continue to deal separately with the needs of various types of exceptional children. The focus of early public education was narrow; children were expelled for slouching in class or other small offenses. Education has now broadened its scope to include nearly all children of school age. While acknowledging responsibility to many different types of children, education has not yet gone the further step of trying to integrate children with special learning problems into regular programs.

SECTION I. HISTORICAL BACKGROUND

Special education in California began in 1860 when, by authorization of the Legislature, a residential school for the deaf was established in San Francisco. In 1865 funds were authorized for the education of blind children, and a combined school for the blind and deaf was established in Berkeley. The City of Los Angeles pioneered special classes in the public school program in 1897, by opening a public day class for deaf children. Within the next three years similar classes were established in San Francisco and Oakland.

In 1907, a law was passed making it permissive for school districts to establish a visual system of instruction for deaf pupils between the ages of 3 and 21. During the next ten years special education classes for deaf, hard of hearing, blind, and speech handicapped were instituted in several of the larger school districts in the state. By 1921, school districts were given authority to establish special classes for mentally retarded students.

Experiences with special education for handicapped children during the first quarter of this century seemed to demonstrate that such children could be more successfully educated in day classes than in residential schools. In addition, the cost was considerably less. Parents began to demand extended school facilities for their disabled youngsters, and such private organizations as the California Society for Crippled Children and the American Hearing Society began to press for legislative provisions which would give additional financial support to school districts to help defray the cost of educating the handicapped.

In 1927 the California Legislature enacted laws allowing reimbursement to school districts for the excess costs of educating the handicapped. From the beginning, school districts have not seen education of such children as their duty; they have tended to think of it as a state responsibility, to be shouldered by themselves only with state financing. The 1927 laws provided that governing school boards might offer education suitable to the needs of blind, deaf, hard of hearing, crippled, and such other physically handicapped individuals as the Superintendent of Public Instruction might designate. The cost to local districts would be reimbursed by half the actual excess expense not to exceed \$100 per unit of average daily attendance (ADA).

During the next 20 years only minor changes were made in financing the various programs for handicapped students. Some of them were: defining excess cost as the total amount spent for remedial and individual instruction of physically handicapped pupils, above the amount used to educate so-called normal children (not including capital outlay costs), and designating a day of attendance as 240 minutes.

By 1940, the Education Code contained authorization for the establishment of special education programs for all types of physically handicapped pupils and for the mentally retarded. Special classes, however, were actually being established in only a relatively few school districts.

At the same time, private agencies interested in the handicapped and parent organizations began to develop rapidly. These, along with the well-established California Congress of Parents and Teachers and individual educators, began to champion the cause of better education for California's youth, whether handicapped or not. With education costs rising, school administrators were reluctant to establish new and expensive school programs, and contended greater state subsidies were the answer to education for the exceptional. It is interesting to note that at no period of California's history has any major education organization taken responsibility for the introduction of legislation specifically aimed at improving the education of handicapped children.

Interested lay groups, however, persisted in their efforts until in 1945 the California Senate appointed an interim committee to study the problem of mental deficiency, and the Education Committees of both houses gave attention to the needs of the physically handicapped.

Under the Statutes of 1945 a new group of physically impaired children was brought into the school program, namely, the cerebral palsied. Not only were excess costs reimbursed to school districts for the education of the cerebral palsied, but residential schools were also established.

The Department of Education first established the Bureau of Special Education in 1947. In the 1947 General Session, as the result of awakened interest in the problem, a number of laws were passed relating to special education. The provisions of these laws accomplished the following:

1. Made it mandatory upon school districts either to provide proper educational facilities for their physically handicapped children or to enter into contracts with another district which did maintain such facilities.

2. Provided that the state reimburse school districts and county superintendents of schools for the excess expenses of educating the physically handicapped in amounts up to \$400 per unit of average daily attendance.

3. Established the County School Service Fund, and authorized county superintendents of schools to provide educational facilities for physically handicapped pupils who otherwise would not receive an education.

4. Made it permissive for physically handicapped children to enter special day classes at the age of three years.

5. Made it mandatory upon school districts and county superintendents of schools to establish and maintain special training classes for mentally retarded minors—such mandate to apply to districts with 15 retarded pupils in residence, and to the county superintendents of schools only for pupils residing in districts with less than 15 such pupils. (This provision was changed in 1949 to read that county superintendents would be responsible in districts with less than 900 pupils in ADA).

6. Made state funds available to reimburse school districts and county superintendents of schools for 75 percent of the excess cost of educating the retarded, not in excess of \$75 per unit of average daily attendance.

7. Appropriated \$250,000 to be used on a matching fund basis to assist school districts and county superintendents of schools to construct and equip special schools and classes for cerebral palsied children.

8. Made a special appropriation to San Francisco State College to develop a teacher education program in all fields of exceptionality.

The enactment of the mandatory laws created additional problems for school administrators whose responsibilities were already being increased by a tremendous growth in school enrollment due to the population influx, but the added state support for the education of the handicapped was of considerable assistance. Special class programs for both physically and mentally handicapped pupils began to show a decided increase. State excess cost reimbursements for special programs operating during the 1947-48 school year rose to new heights and reflected an increase in the number of handicapped pupils being served.

The four years between 1947 and 1951 showed even greater activity in special education. Thousands of mentally and physically handicapped pupils were provided for and the amount of state funds expended for the program doubled.

The period from 1953 to 1963 brought additional expansion of special education programs, and increased state reimbursement. One of the most significant legislative developments during the period was the 1955 Report of the Senate Interim Committee on the Education and Rehabilitation of Handicapped Children and Adults. This lengthy and thorough report is the last comprehensive statement from the Legislature on this subject. The section on special education praised California's efforts in educating handicapped children, but pointed out that special education programs were still serving less than half of the handicapped children of the state.

This brings us to the present day, with school systems exhibiting a proliferation of special classes and services. Many problems and many unmet needs continue to exist. However, before going into the problems, a description of current special programs is necessary.

SECTION II. PRESENT SPECIAL EDUCATION PROGRAMS

There is a difficulty in describing current special education programs, resulting from a disagreement about what special education is. In some contexts, the term designates only programs for physically handicapped and mentally retarded. In others, special education is considered to cover any program which receives special reimbursement, such as aviation education and public speaking. For purposes of this report, special education shall refer only to programs for *exceptional* children. The next section will be devoted to discussing this term.

Types of Programs

There are two kinds of programs for exceptional children in the educational system, both with special reimbursement. Classes for culturally disadvantaged, although with special reimbursement, are not considered special education per se. They are not the responsibility of the Division of Special Schools and Services of the State Department of Education. However, this distinction is somewhat arbitrary and the policy of special techniques for special groups holds.

Under the Division of Special Schools and Services itself are programs for the mentally retarded, the gifted, the physically handicapped, and the educationally handicapped (which include emotionally disturbed and neurologically disabled).

Arrangements for special programs are varied. First, there are children who attend *regular day classes* but who need such special services as transportation, special supplies and equipment, and whose attendance is reported separately for excess cost purposes. The reimbursement is the same as if the child attended separate special day classes. This financial fact hopefully encourages the integration of special students into regular classes.

Next, there are *remedial classes*. Under this arrangement, students attend regular classes for the major portion of the day, but are excused for short sessions of remedial instruction periodically during the week.

Next, in terms of specialization, are *resource classes*. The children in these programs attend regular classes most of the day, but are excused one or more periods per day to receive special instruction. Blind and hard-of-hearing children are presently the only types of children in resource classes. They are instructed in lipreading, speech, braille, typing, or other appropriate special techniques. The emphasis in the resource class is on communication techniques and not on subject matter. However, the program is flexible and children who need remedial type instruction are provided this by the resource teacher.

Where it is deemed unfeasible to allow children with a particular type of handicap to attend any of the above, *special day classes* are established on the same schoolgrounds. Classes for the mentally re-

tarded are of this type. In larger metropolitan areas separate public schools for children with one or more types of handicaps may be established.

Provision is made for a physically handicapped child to receive *individual instruction* at home or in a hospital, with an hour of such instruction constituting a day of attendance for regular and excess cost purposes. The teacher of hospital or homebound children averages a total of seven pupils.

Schools or classes in *sanatoriums* or *institutions* are the responsibility of the governing board of the school district in which the institution is located.

Beyond these provisions, there are *residential schools* for the blind, the deaf, and the cerebral palsied, which are directly under state control.

Thus, special programs run the gamut from the provision of special devices or assistance for children attending regular classes to the institutional arrangements of special residential schools.

Special Groups Served

For the purposes of cost accounting and tabulation, children's disabilities are divided into the following categories:

1. Trainable retarded
2. Educable retarded
3. Blind
4. Partially seeing
5. Deaf
6. Hard of hearing
7. Speech defective
8. Aphasic
9. Cerebral palsied
10. Orthopedically handicapped
11. •Lowered organic vitality
12. Other illnesses and physical conditions
13. Educationally handicapped
14. Gifted
15. Culturally disadvantaged

Although the latter category is usually included on any list of special education programs, as has been said, it is reimbursed separately from the other programs and is not under the Division of Special Schools and Services, as are the other programs.

Approximately 8 percent of the school age population are considered so exceptional in one or more areas as to need special education services. Some estimates of the numbers of exceptional children run as high as 12 percent.¹

Using the fairly conservative 8-percent figure, out of about 4,000,000 children of school age in California, probably at least 320,000 need special programs. In 1961-62 there were 240,499 mentally and physically disabled children in special programs in the public schools. In-

¹ Both estimates from Dunn, Loyd, ed., *Exceptional Children in the Schools*, (New York: Holt, Rinehart and Winston, 1963) p.17.

cluding children in state residential schools, the total was something over 242,000. If the 39,000 pupils in programs for the gifted are also added, there were 281,000 students in special programs in the year 1961-62. These numbers will be more meaningful if the programs are described in terms of the established categories.

1. *Physically Handicapped*

School programs for the physically handicapped are reimbursed at \$910 per unit of average daily attendance (ADA)². Transportation costs of \$475 per ADA are also allowed. These maximum figures represent the costs to a school district which are in excess of the reimbursement paid for educating a normal child in that district. The total excess cost reimbursement for programs for the physically handicapped in 1961-1962 was \$19,545,298 and, in 1962-63, was \$21,432,753. (For a detailed account of the number of children in each of the program categories for handicapped children see Appendices A and B: Tabulation of Excess Cost of Educating Mentally Retarded and Physically Handicapped Pupils, 1961-62 and 1962-63.)

By far the largest group among the physically handicapped are the speech defectives—of the total 195,173 children in programs for the physically handicapped, 137,854 are in speech programs. Speech disorders are difficult to define. Standards of correct speech vary from group to group. The most concise definition is that of Van Riper: "Speech is defective when it deviates so far from the speech of other people that it calls attention to itself, interferes with communication, or causes its possessor to be maladjusted."³

In California, teachers of speech handicapped children see them only periodically, perhaps once a week, while the students spend most of their time in regular classes. A recent survey revealed that the average caseload of speech teacher-therapists is 131 students. Most of the teachers felt they had more students than they could adequately handle. The recommended average caseload was 84.⁴

Reimbursement for speech programs is paid on the usual basis of \$910 for every unit of average daily attendance (ADA). However, since each student usually spends only a fraction of an hour per week in speech programs, it takes many actual students to equal one ADA. There are no tabulations of the total ADA of this group, since the numbers of each type of physically handicapped student are not separately computed. However, it should be noted that there are 195,173 pupils classified as physically handicapped, while the ADA for the physically handicapped is only 19,145. It can be assumed that the speech defectives are largely responsible for this difference between physically handicapped enrollment and ADA, meaning that they represent a small proportion of the total ADA.

Children with crippling and chronic health conditions, that is with nonsensory physical impairments, constitute another major category. Class size for these children averages 13. Although the nonsensory phys-

² Blind students may receive an additional \$910 for special services and supplies.

³ Van Riper, C., *Speech Correction: Principles and Methods*, (Englewood, N.J.: Prentice-Hall, 1958).

⁴ California State Federated Council for Exceptional Children and California Administrators of Special Education, *Survey* (March 12, 1963).

ically handicapped are an extremely heterogeneous group in the varieties of physical conditions they represent, they are usually grouped together in school programs.

The cerebral palsied, because of their numbers and the multiplicity of their handicaps, are usually separated from other children with non-sensory physical handicaps. Not only are there special classes for the cerebral palsied (limited to 15 students), but there are two residential schools, one in San Francisco and one in Los Angeles. The average student enrollment in the two schools was 61 in 1961-62. Most of the students stay only for a diagnostic period, hence the average enrollment does not represent the total served during the year.

The sensory handicapped, the blind and the deaf, constitute the last major group of physically handicapped. There were 2,011 blind and partially sighted children in public school programs in 1961-62 with an average of 11 students per teacher.⁵ Twelve students per class is the legal limit in this program. One hundred fifty-seven blind children attended the California School for the Blind at Berkeley. Eight deaf-blind children were also enrolled at the School for the Blind in 1961-62.

There are two residential schools for the deaf, one at Berkeley and one at Riverside. In 1961-62, enrollment at the two schools was 968. A total of 6,437 deaf and hard-of-hearing students attended special or resource day classes. The average number of pupils handled by teachers of the deaf is eight. The maximum allowable class size is ten.

2. Mentally Retarded

Next to the physically handicapped, the mentally retarded constitute the largest group served by special programs—45,324 in the year 1961-62. Current enrollment of retarded is estimated at 58,000. The mentally retarded are divided into two groups for educational purposes. The majority of retarded, with I.Q.'s between 50 and 75, are called "educable," meaning that they can benefit from a limited academic education. However, they must be taught at a slower pace and with special techniques. It is felt that children in this group can aspire to become self-supporting. The usual number of students in a class of educable retarded is 14. The maximum class size is 18. Classes for educable retarded are called Point I.

The second and smaller group is the "trainable," or Point II retarded, whose I.Q.'s fall below 50. The type of education given to this group is largely of the self-care, communication, and socialization type. Self-support is usually not considered a realistic goal and teaching of the three R's is not attempted. Classes for trainable children typically have 12 students. This is the maximum size.

Programs for both educable and trainable retarded have grown at a record pace in the past few years. Greater expansion is anticipated, particularly in the Point II program which was permissive, **not mandatory**, until 1963. Classes for trainable retarded have increased tenfold in 11 years. In 1953 there were only 376 trainable pupils in the public schools. By 1963 there were 3,720. Even so, the demand for such classes continues to greatly exceed the supply.

⁵ All average class size figures are from *ibid.*

Using the accepted formula of three retardates per every 100 of population, there are about 500,000 mentally deficient persons in California. Of these about 10 percent, or 50,000, are severely retarded. Allowing that some of these severely retarded are not amenable even to the demands of a Point II class, and admitting also that a number of adults are included in this number, it still must be assumed that the majority of severely retarded persons who might benefit from Point II classes are not yet enrolled.⁶ For a typical community, out of every 1,000 school age children there would be three children of trainable intellect.⁷ All but very small cities would probably have sufficient children of this type to justify exploration of the need for special programming. It is not known what proportion of the 11,835 patients⁸ currently in state hospitals for the retarded are severely retarded of school age.

Enrollment of educable retarded, those less severely affected, has also shown remarkable growth. In 1948-49, there were 7,541 pupils in educable (Point I) programs. By 1963, total enrollment in this category had risen to 45,008. Of these, 35,158 were in elementary school programs and 9,850 were in secondary programs. When added to the enrollment for Point II classes, the total of retarded served becomes one of 48,728.

The cost of educating the retarded in 1961-62, in terms of state reimbursements to school districts, was \$17,646,188. In 1962-63, this cost was \$19,790,364. These figures do not include special transportation costs nor capital outlay. No official estimate of the building costs for classrooms for the retarded currently exists.

State reimbursement for retarded pupils is paid on the basis of \$375 per ADA for Point I students, and \$680 per ADA for Point II students. Added to this are the special transportation reimbursements of \$475 per Point II pupil.

Teacher shortage continues to be a problem in the education of the retarded. Teachers of the retarded are generally less qualified than teachers of physically handicapped or normal children. The 1959-61 Report of the Assembly Education Subcommittee on Special Education noted that a sizable percentage of teachers of mentally retarded children lacked standard teaching credentials. At that time, of 2,375 teachers of the educable mentally retarded, 17 percent lacked standard credentials. Of 208 teachers of severely retarded, 30 percent lacked standard credentials. Presumably, most of those lacking standard credentials were teaching with provisional credentials. The question is not whether the teachers had special credentials for teaching mentally retarded, but rather whether they had the standard credentials to teach normal children. As yet, there was no credential for mentally retarded. There is now a credential for teachers of retarded, but no distinction is made between teachers in Point I and Point II programs. Also, while efforts to educate teachers of the retarded have intensified, a great shortage of qualified personnel exists.

⁶ It should be noted that the life span of severely retarded persons is far below average and includes a disproportionate number of children.

⁷ Dunn, *op. cit.*, p. 132.

⁸ California State Department of Mental Hygiene, *Population and Capacity of Hospitals* (Biostatistics Section, Form A, November 16, 1962).

3. Gifted

During 1961-62, 39,000 pupils were enrolled in programs for the gifted.⁹ Current enrollment is estimated at 68,000. Reimbursement for this program totaled over \$1,300,000 for 1961-62. Maximum reimbursement per pupil is \$40.

Programs for the gifted are varied. The guiding principle is "enrichment." As an official publication puts it, the gifted pupil "thrives best in an atmosphere rich in opportunity for free discussion, independent thought, and high level performance. He enjoys extending and exerting himself in the realm of creative thought. He requires, therefore, an environment in which individual progress, imagination, and originality are valued and nurtured."¹⁰

Some educators have pointed out that students of average ability can benefit from the approaches and techniques directed toward gifted (and retarded) pupils.¹¹

4. Educationally Handicapped and Culturally Disadvantaged

Discussion of the programs for the educationally handicapped and culturally disadvantaged is combined because both programs are new, having been authorized during the 1963 legislative session.

Assembly Bill No. 464, which establishes the program for educationally handicapped minors, defines them as those who are unable to function in regular classes or in a school setting, by reason "of marked learning or behavioral problems." Physically handicapped and mentally retarded children are excluded.

It is difficult to estimate the numbers and identify the children who will require services for the educationally handicapped. While the bill itself is not specific, it can be assumed that many of these children are of a type commonly designated as emotionally disturbed. Some authorities submit that at least 10 percent of the school age population need psychiatric help.¹² It is not known what proportion of these children would be so disturbed in their behavior or learning ability as to require special classes or services for the educationally handicapped.

The bill appropriates a total of \$2,930,000 for the next three years, through 1964-65. The Legislative Analyst estimates that the eventual cost of the program, if made permanent by the Legislature, could be expected to reach \$12.1 million. The current maximum excess cost per ADA in the program is \$565. Participants in the program are not to exceed 2% of the enrollment of any district.

Senate Bill 115 established the Office of Consultant on Compensatory Education within the Department of Education and authorized grants to finance school district programs of compensatory education for culturally disadvantaged children. While the bill did not make a specific appropriation, an amount of \$346,000 was included in the budget bill

⁹ California State Department of Education, *California Schools*, (33:12, December 1962), pp. 426-7.

¹⁰ California State Department of Education, *Special Programs for Gifted Pupils*. (Bulletin 21:1, January 1962) p. 28.

¹¹ "Nason on Education," *Sacramento Bee* (January 13, 1964).

¹² Bower, E. M., *The Education of Emotionally Handicapped Children*, (Sacramento: California State Department of Education, 1961).

for the support of the Office of Compensatory Education and nine district projects. The Legislative Analyst estimates that costs could rise as high as \$19 million in future years, if expansion of the program is desired. The current maximum state share per ADA is \$24. It is estimated that 10% to 20% of the school population may eventually be eligible for the program.

When the total state costs of special education are added together, the amounts are significant. The following table shows actual and estimated total costs from 1961-62 through 1964-65.¹³

Item	1961-62 (Actual)	1962-63 (Actual)	1963-64 (Estimated)	1964-65 (Estimated)
School fund totals to mentally retarded and physically handicapped -----	\$47,742,607 ¹⁴	\$50,478,896	\$55,000,000	\$59,000,000
Building aid for special education -----	1,827,000	2,349,000	2,900,000	3,500,000
Residential schools -----	4,776,747	5,252,708	5,392,036	5,503,409
Gifted programs -----	435,712	1,342,439	1,700,000	2,200,000
Culturally disadvantaged -----	-	-	346,000	346,000
Educationally handicapped -----	-	-	830,000	2,000,000
Pilot day care -----	-	46,613	127,285	127,285
Bureau of Special Education -----	228,353	237,144	242,122	274,191
Braille book depository -----	-	-	-	28,000
Total -----	\$55,010,419	\$59,706,800	\$66,537,443	\$72,978,885

¹⁴ Figures in this row represent amounts apportioned for each year but which are actually part of the budget appropriation for the subsequent year.

While it is important to know the costs of our state educational programs for exceptional children, we must not lose sight of educational goals. In attempting to achieve for exceptional children the usual educational goals of self-realization and usefulness to society, it is important to remember that physical facilities and equipment do not alone make a good program. In fact, there is a real danger that special provisions for disabled children may be too specialized, and that students may become so surrounded with gadgetry designed to make things easier for them that they never learn to cope with the world outside the classroom walls. More vital to the realization of each child's goals than his physical surroundings is the attitudinal climate in which he learns. The determining factor is not where the child is, but how he and others think and feel about him.

The next section will deal critically with the philosophy of special education and will discuss some notions of the proper scope and function of special education programs.

¹³ Figures supplied by the California State Department of Education.

SECTION III. SPECIAL EDUCATION, DEFINITION AND PURPOSE

Special education is education, but it is considered a thing separate from education generally. It is different in financing, different in instruction methods and teacher training, different in the average class size, often different in curriculum and supplies, and different in the characteristics of the children it serves. This latter difference is the determining factor in special programs, for if there were no exceptional children, there would be no special education.

One writer on special education defines exceptional pupils as those "(1) who differ from the average to such a degree in physical or psychological characteristics, (2) that school programs designed for the majority of children do not afford them opportunity for all-around adjustment and optimum progress, (3) and who therefore need either special instruction or in some cases special ancillary services, or both, to achieve at a level commensurate with their respective abilities."¹ The basis of differentiation for exceptional children may be a physical, emotional, or intellectual deviation, or any combination of these.²

Given the exceptionality of certain children, most experts in the field explain the need for special classes on the basis that exceptional features prevent the children from benefiting from regular instruction. "Equality of educational opportunity is achieved through enabling each pupil to develop at his own pace and, as nearly as possible, to the maximum of his potentialities. Therefore, the true meaning of equality of opportunity lies in diversified rather than similar school programs . . . different expectancies are set for different children . . . Thus the guiding principle for the education process becomes one of devising a school program where each child has opportunity to work at his own level, and to progress as far and as fast as his learning characteristics permit."³

Carried to the extreme, the argument for special education would result in a special program for each child, geared to his particular abilities and potential. Educational philosophy is approaching this extreme through the increasing categorization of pupils and the creation of more special programs. Not only are there special classes of all types, but "normal" students are divided according to their abilities.

Here is an example of the trend in the categorization of handicapped children:

Another milestone in curriculum trends is the recognition that mental retardation rarely exists as a unitary entity. More and more multihandicapped classes are appearing countrywide. Here in New York City it is demonstrated in classes for the blind retarded, deaf

¹ Dunn, *op. cit.*, p. 2.

² Levine, Samuel. "A Proposed Conceptual Framework for Special Education," in *Exceptional Children* (October 1961) p. 83.

³ Dunn, *op. cit.*, pp. 5-6.

retarded, neurologically impaired retarded, and perhaps we will see, in the not too distant future, classes for the emotionally disturbed and socially maladjusted retarded.⁴

The article from which the above was quoted proposes the ever greater specialization of the education process and a tighter categorization of students. Homogeneity is the goal. Efficiency and smoothness of operation is assumed. The proposition that an emotionally disturbed retarded child will be better able to learn in a class for "emotionally disturbed retardates" than in a class for retardates generally is not questioned.

A good argument can be made that children with the same or similar handicaps all have similar special learning needs. However, there is a danger here which is not commonly recognized. A particular special class, no matter how specialized, may not serve the learning needs of a given child. It cannot be assumed that because, for example, children's physical limitations are the same, they all will benefit from the same educational approach. Educational specialists and lay persons alike tend to assume that given conditions determine particular curricula content and class methods.

We have already posited that according to this logic, the best educational program would be one which had as many special classes as there are students. However, it would be impossible to create a separate individual program for each student for two reasons. One is obvious: such a program would be too costly in terms of personnel and other needs. The second reason is of equal importance, students might achieve superior academic advances, but they would lack experience in group interaction and competition. These criticisms of an extreme individual approach to education apply to a lesser extent to special education programs. Special programs are costly and they tend to provide an abnormal, sheltered social environment for their participants.

It has been the tendency of special education programs to want to make exceptional children feel secure by categorizing them according to dominant social expectancies. The children are protected from competition with others and from sensitivity about their deviations. It is often pointed out that a severely handicapped child is better adjusted than a moderately handicapped child because his limitations are obvious and difficult demands are not made of him. "Severely retarded often exhibit better adjustment than those less severely retarded, since they are not placed in regular grades expected to achieve at the same level as their agemates."⁵

However, categorization is not only a realistic response to a child's ability (or lack thereof); it can also be an expression of social expectation and a way of insuring conformity to those expectations. Categorization has an effect beyond the learning of classroom skills. It influences a child's attitude toward himself and molds the attitude of his family and others toward him.

Too often special education advocates see only the positive aspects of special classification. They interpret some parents' desperate de-

⁴ Krugman, Morris, "Current Trends in Special Education in New York City," in *Exceptional Children* (January 1962), p. 248.

⁵ Dunn, *op. cit.*, p. 528.

sire to have their children remain in regular classes as lack of acceptance of the fact that "Johnny is retarded," or "Johnny is deaf." The parents may be able to accept facts, but they are denying the conclusion that their child must therefore be removed from a normal classroom and placed with "handicapped" pupils.

Sometimes teachers, as well as parents, resist the removal of so-called exceptional children from regular classes. One problem of educating the retarded, according to the State Department of Education, is convincing their present teachers that they belong in special classes.

The Nature of Disability

Perhaps the issue of segregating children in school programs according to their handicaps can be clarified by a discussion of what disability is. Society "understands" or conceptualizes the disabled individual in categorical terms. However, all disabled individuals may not share society's frame of reference in regard to their disabilities. Therefore, there will be instances in which the "disabled individual will come into conflict with the existing structure, whether it be in regard to educational, vocational or social aspirations. Conflict will be evidenced by overt rejection of the individual's aspirations, denial of his competence, and/or a refusal to extend consideration to him equal to that of a nondisabled individual."⁶

It is easy to contend that the disabled person and his family must "accept" his disability. But this is only a meaningless and contradictory platitude if the underlying situation of disability is not understood. "If 'acceptance' means that the person must be content with an inferior position that requires him to acknowledge his inferiority as a person and permits him to strive only for intrinsically less satisfying goals, 'acceptance' is difficult. If there is no assurance that society will 'accept' the disability also and not penalize the person for it, it is unrealistic to endow 'acceptance' with the qualities of a panacea."⁷

If this is a correct interpretation, it is therefore not surprising that many parents resist having their children placed in special classes, for the designation of a child as handicapped places him in a position of having to overcome not only his disability, but people's lowered expectations. The position of a handicapped child is, in many ways, analogous to that of a child of minority ethnic background. His education is geared to what is thought to be his position in society, although he may not wish to accept that position.

Special education has done a service to handicapped children simply by bringing them into the educational system. The problem now is to further overcome the barriers to acceptance which handicap the personal and social adjustment, as well as the educational achievement, of many children. In extreme cases continuance in special classes can certainly be justified. However, it is felt that teachers must reject the notion that every class should contain a homogeneous group of students, who can all be taught by one efficient and appropriate method. This

⁶ Levine, *op. cit.*, p. 85.

⁷ Meyerson, L., "Somato-Psychology of Physical Disability," in Cruick-Shank, W. M., ed., *Psychology of Exceptional Children and Youth* (New Jersey, Prentice-Hall, 1955, p. 56).

approach stifles the teacher's ingenuity and prevents him from treating each student as an individual. It prevents each student from knowing children who differ from him in important respects—children against whom he can measure his own individuality and test his own concepts. Furthermore, this approach deprives the deviant child of normal associations and of the chance for social integration, thus reinforcing his deviance.

It would seem that reducing class size generally might allow a teacher to cope with children of somewhat variant intelligence, cultural background, emotional development and physical characteristics. No one is saying that a teacher could adequately deal with a class of children with many different types of educational needs. However, he could probably cope with a small class which included some deviant children.

The reduction of class size generally and the education of teachers to face a *variety* of teaching problems would perhaps reverse the snowballing trend toward the establishment of special classes. Indeed, the small size of special education classes may be the reason for their success, rather than the use of special methods or techniques. "By keeping the classes small and by securing adequately prepared teachers, instruction for all children in regular classes has been advocated for many years. But to individualize instruction in a class of 35 or 40 pupils of varying abilities and needs is a difficult matter. The small size of classes in special education makes it possible to achieve that aim much more readily."⁸

Up to this point, an argument has been made in favor of integrating exceptional pupils into regular programs, with the re-education of teachers to cope with variety among their students. Nevertheless, it is recognized that thoughtfully created special programs have their place. A blind child needs special instruction in braille and typing, a deaf child must learn special methods of communication. However, this does not necessarily mean that special classes or schools are required. The major part of blind or deaf children's work should be the same as that of other children and in classrooms with other children. Likewise, a retarded child may be able to take cooking, art or physical education with mentally normal persons.

The exceptional child should spend only that portion of the school day in special classes that is truly necessary. This is not a defense of the position of the extreme environmentalist, who feels that identical school programs are not only most democratic, but will allow pupils to overcome physical, mental or social inequalities. Reality dictates that some special education is essential for handicapped pupils. However, if the mechanics of communication and mobility are solved early, there will be less chance of falling behind in subject matter areas. The emphasis should be on the special techniques, with compensatory education in subject matter being given to handicapped pupils on the same basis it is given to physically normal children. Once the special techniques are mastered, even a resource program is unnecessary, and complete integration is possible.

⁸ Henry, Nelson, *The Forty-Ninth Yearbook of the National Society for the Study of Education* (Chicago: University of Chicago Press, 1950) Part II, "The Education of Exceptional Children," p. 11.

At the same time it must be recognized that most of a handicapped child's normal agemates will have conventional social attitudes. It cannot be assumed that handicapped children will be accepted by their nonhandicapped peers simply by placing them in regular classrooms.⁹ In other words, physical integration does not assure social integration. In fact, pupils may be more cruelly segregated socially in a program where they are not accepted by their classmates, than in one where they are physically separate. This fact does not justify the segregation of physically handicapped pupils; rather, it is a challenge to find methods of educating regular students to the acceptance of exceptionality. The attitudes of many teachers, including some special education teachers, must also be modified.

Special mention should be made here of the educational needs of mentally retarded persons. Without going into the problems involved in discovering true retardation, retardation is by definition, a limited capacity to absorb abstract concepts. The disability of retarded persons is largely one of an inability to follow academic and intellectual pursuits. Thus, curricula for retarded children rightly emphasize vocational training for the mildly retarded and self-care and social adjustment for the severely retarded. These goals necessitate special curricula where learning is constantly related to concrete tasks, so that as an adult, the retarded person may more readily blend into everyday society.

Defining the Limits of Education

The scope of education has become increasingly broad in recent years. Schools now provide lunches, physical examinations, counseling and other services outside the classroom. Most of these functions are justified in terms of preparation for learning. Preparation for learning becomes even more significant in programs for exceptional children. Through special programs, children whose backgrounds have not afforded them intellectual stimulation can receive this. Children whose speech is peculiar can have it corrected. Youngsters who require physical therapy because of a crippling condition can obtain this help as part of their education. In some ways, the whole special education program can be considered preparation for learning. However, there are two problems which should be considered. First, there is some danger that preparatory functions will become the primary content of special education, meaning that the pupils may not also receive a good academic training in relation to their agemates. Second, other agencies, such as Crippled Children's Services, Social Welfare, and Rehabilitation (not to mention the family), may find that the schools are preempting their functions. It has perhaps become too easy to focus on the school as the agency for dealing with all social problems, particularly the problems of the young.

It would seem difficult to answer these questions and to determine the proper scope of special education without the results of the comprehensive study of general education called for by ACR 45 (1964),

⁹ Force, D.G., "Social Status of Physically Handicapped Children," in *Exceptional Children* (No. 23, 1956), pp. 104-7.

which calls for the development of a master plan for public education. Our views of special education must change with our changing expectations of education *per se*.

Our general view of education is changing from the notion of a static institution repetitiously passing down the time honored ideas and practices of centuries, to a conception of education as a process—dynamic, constantly evolving, sensitive and flexible. Its purpose is to prepare youngsters for a changing world. This new approach to education is helping break down the old stereotypes that have tended to dominate the education of exceptional children.

SECTION IV. LEGISLATIVE PRIORITIES

The State Department of Education contends that California has the best special education program in the nation. No one can dispute the fact that California has the most children in special programs and spends more for such programs than any other state. However, in spite of relative success, improvements are in order, both as to the quantity of children served and the quality of education provided. The purpose of the committee's recommendations, to be discussed in this section, is to improve special education in both quantitative and qualitative terms.

Legislative actions should assure that children with special learning problems receive the best program which can be designed and that this program be organized so as to test and incorporate new developments as they become available. Each of the committee's recommendations will be discussed in detail.

1. MANDATORY YOUTH CENSUS

Estimates of the number of handicapped children in California vary. All the evidence indicates, however, that there are many such children not being served by our educational system. Conservative estimates by the State Department of Education show approximately 95,000 physically and mentally handicapped children of school age not on school. In addition, we do not know how many nondisabled children are evading the compulsory education laws.

As of 1960, 43 states provided for a mandatory school census, with 14 of these registering children from birth. Of the total, 28 states took a separate census of handicapped children, or included special handling of this group within the regular census.¹ The main purpose of taking a census is to find how many schoolage children are not in school and the reasons for absence, such as employment, possession of a handicapping condition, etc. A census shows population trends and shifts, thus aiding in future planning.

California is the only major state which does not conduct an annual census of its youth. It is therefore proposed that a designated body keep an up-to-date census of children under 19 years of age who reside in the state. This body would record the names, ages, and addresses of children, including pertinent information as to those who are blind, deaf, or have serious physical or mental deficiencies.

The purpose of a youth census is to make possible the provision of education to all children, whether handicapped or not. The information and vital statistics a census would provide are essential if California is to identify children who cannot function in the regular school setting because of physical, emotional, or mental handicaps and who, therefore, are presently unknown to the schools.

For example, multiply handicapped children are generally not included in our educational system. A census would reveal the lack of

¹ United States Department of Health, Education and Welfare, Office of Education, *State Legislation on School Attendance* (January 1, 1960 OE-24000), p. 6.

educational opportunities for this group and might bring to light other groups of children who are not now being served by our schools. In accordance with the State Education Code, school districts must have committees to screen handicapped children for admittance. Those who are rejected or discharged from school are not presently accounted for.

Census information would be valuable for both local and statewide purposes. State agencies such as the Departments of Education, Social Welfare, Mental Hygiene, Rehabilitation, and Public Health have a direct stake in locating children with present or future needs for their services. Early case finding would enable preventive and remedial measures to be taken promptly.

A census of the type proposed would also improve school districts' ability to predict their future building and staff needs, and would enable officials concerned with the health and welfare of all children to make their plans on the basis of realistic information. At present the State Department of Education merely advises schools to project school housing needs by sample surveys among various parts of their communities.

Census information not only would discover handicapped children who are not enrolled, but would provide the number of employed children and "dropouts," enabling school authorities to more accurately deal with problems in this area. For example, there seems evidence that children of migrant farm workers often fail to register in school. The third annual *Conference on Families Who Follow the Crops* recommended:

The child labor and school attendance laws should be rigorously enforced. School attendance officers are not employed to interpret the law but to enforce it. If necessary, let drastic actions be taken, but get and keep the children in school.

In addition to migrant farm children who may not register in school, there are youngsters coming to the attention of probation departments who have large gaps in school attendance. A census would also help locate these children.

Failure to attend school, even for limited periods, has serious effects. Children of migrant workers are usually at least one year behind their agemates by the end of elementary school, partly because of lack of schooling for significant periods. Children coming to the attention of probation departments also appear to be retarded in scholastic development.

There are a number of ways a youth census could be administered. One way would be to vest responsibility for conducting a census in the county superintendent's office as part of his coordinating function. Another way would be to set up a census unit in the office of the county clerk. Funds could be provided through the county service fund. It is also possible that a youth census could incorporate into the anti-poverty program. (This assumes that the anti-poverty program continues indefinitely.)

Cost estimates vary. New York State's census operation costs \$0.41 per ADA. However, the State Department of Education considers

\$0.50 per ADA a more realistic figure, not including \$75,000 per year needed by the department for general administration, tabulation and interpretation. The cost aspect requires further exploration and development.

2. FINANCING

House Resolution 357 calls for a study of the possible revision of special education financing. This probably is the most crucial and most persistent problem area in special education.

The committee held a hearing on special education finance on November 16, 1964, at which time it became evident that the state is playing an increasing role in the care, treatment, education and rehabilitation of mentally and physically disabled persons. The past few years have seen a dramatic increase in the enrollment of disabled children in special education programs. With the passage of Senate Bill 115 and Assembly Bill 464, the next few years will see the cost of special education provisions exceeding \$100 million annually. This assumes that no new programs are added to those already established.

The present practice of allowing excess cost reimbursement is based upon a policy of full state responsibility for exceptional children. The state pays 100 percent of excess costs up to certain maximums, regardless of the tax base in the school district. Accounting procedures are complicated and cost tabulations for special programs must be kept separate from those for regular programs.

However, in spite of the difficulties involved, spokesmen for the Department of Education, as well as a number of school administrators, have defended it. These spokesmen contend that separate funding of special programs is necessary to prevent competition with general education and to insure that special education programs are adequately financed. They point out the difficulty of estimating the future growth of special education programs, which are developing at a greater pace than regular school enrollment. They therefore criticize any attempt to tie special education to the rest of the education budget.

With regard to the present lack of distinction between basic aid districts and impoverished districts in the distribution of special education funds, advocates of the present system state that less than total state financing would result in curtailment of programs or in failure to make needed improvements and growth. They feel that exceptional children are the state's responsibility. The notion is that if school districts could not be induced by 100-percent financing to educate exceptional children, then the state would have to build residential institutions.

These arguments are based on the fear that special education will perish unless protected. Yet, there is mounting evidence that special education programs—though still needing improvements—are very much a part of our public school system. Communities have an interest in seeing them maintained and often spend more than even the maximum available through state reimbursement. The committee feels that special education has come of age and is being recognized as a legitimate part of the school system. It appears that the great growth of numbers of students and of programs makes the old methods of separate accounting cumbersome and outmoded.

The special education portion of the state budget is presently allocated by multiplying total anticipated pupil enrollment by \$9.63. Each year special education funds are exhausted and a deficit is created.

Furthermore, the committee finds there are many shortcomings to the method by which school districts presently report special education expenditures. At the end of each school year, districts are reimbursed on the basis of the completion of forms furnished by the State Department of Education. These forms, designated J-22, do not require a breakdown of expenditures, nor are expenditures differentiated according to the type of children served, except for broad categories, such as physically handicapped. Verification of expenditures is not required, giving rise to complaints on the part of voluntary organizations that claims do not square with actual costs.

It is impossible, under the present reporting system, to compare the costs of educating a speech defective child, the most common type of physically handicapped pupil, and a cerebral palsied child. Do special day classes for the deaf cost more or less than resource programs for the blind? Although the reports of J-22 forms are used to justify proposals for increased special education expenditures, they in no way relate expenditures to the needs of the children being served. (A sample J-22 form is shown in Appendix D.)

Even as an accounting mechanism the committee finds the current J-22 forms seriously inadequate. For example, the percentage of time a school administrator spends on special education programs is prorated and reimbursed by the state. It seems rather unrealistic to expect superintendents and administrators to objectively analyze their time, to determine what portion of their salary should be reimbursed as a special education expense.

On the basis of these and other objections to the existing financial mechanism, the committee is strongly in favor of incorporating the special education fund into the general school support fund and substituting the J-22 form with a procedure which is essentially program oriented. Adjustments in the state's financial participation in special education could then more adequately be made on the basis of program considerations.

New methods of financing special education need to be considered. One specific proposal is to reimburse for children in special programs according to a multiple of the ADA formula for normal children *in that district*. The amount paid into each district per ADA varies according to the local tax base. It will take careful consideration and investigation to set up proper formulas. Suffice it to say here, for purposes of illustration, that a school district would be allowed to report, for example, four ADA for every physically handicapped minor and three for every severely retarded child it serves. Multiples would not have to be in round numbers, but could also include fractions. If this principle of special education finance is to be given serious consideration, a detailed financial investigation must be made along with a determination of its effects on state and local operation.

On the basis of present information, the multiple ADA accounting procedure in special education would appear to be simple in its tabu-

lation and administration. The state would no longer have to be interested in the item-by-item expenditures of districts, but could regularly check to see if required services were being provided. (See Section 8 on minimum standards.) It would be up to school districts to determine *how* the services would be provided.

A desirable feature of this plan is the fact that it would tend to equalize the quality of special education programs throughout the state by reimbursing according to the particular amount per ADA entering each school district. This is especially important as the percentage of pupils in special education increases, for otherwise the state is financing an ever greater part of local education without regard to the financial ability of the districts. Under the proposed system, as the cost of special education increases, state monies can be more judiciously apportioned to districts of greatest need.

The committee finds the multiple ADA approach to be consistent with a philosophy of integration. Putting special education on the same financial footing as general education should cause special education to be viewed as education *first* and special education *second*. Special educationists and particular interest groups support improvements in general education, while PTA's, teachers associations and others concerned with general education would hopefully come to take an interest in special programs. Increases in state payments per ADA would be reflected in special programs. Deficits would be spread over the entire education budget. In other words, special education would be viewed in a broader light as part of, instead of in competition with, education as a whole. A more integrative approach could be taken to special education programs, instead of building them piecemeal according to the requests of various interest groups.

3. LABORATORY SCHOOLS

At the October 14, 1964, hearing of this committee it was proposed that laboratory schools for exceptional children be established on state college campuses. At that time there was full agreement on the part of the Department of Education and statewide voluntary organizations for handicapped children that such a proposal would enhance the scope and quality of teacher training and educational methods.

On the whole, California leads the states in its education programs for disabled children. Nevertheless, teaching programs for special groups need further development, particularly for multiply-handicapped children and for the emotionally disturbed, mentally retarded, and neurologically disabled. The committee believes that the establishment of laboratory schools for handicapped children will uncover some of the deficiencies of special education programs and help provide remedies.

The laboratory school is a well-established aid for the training of teachers of normal children. Five state colleges have such schools on their campuses, thereby allowing students to observe classroom operation and to participate in practice teaching under the guidance of skilled master teachers.² Laboratory schools have demonstrated their value on stimulating campus interest in teaching, in providing training grounds for prospective teachers, and in serving as the focus of edu-

² Chico, Fresno, Humboldt, San Diego and San Francisco State Colleges.

educational research and experimentation. Furthermore, the pupils of a laboratory school usually receive a superior education because of the fresh attitudes and approaches used in instructing them.

All the benefits which laboratory schools offer to the education of normal children would be increased in laboratory schools for disabled children. This is because the needs which can be served by laboratory schools are so much greater in the special education field. Compared to education generally, special education is woefully lacking in adequate techniques of pupil instruction and teacher training. Furthermore, there is a tremendous need for more teachers. Finally, there are almost no methods of dealing with some types of children, most notably the multiply handicapped, with the result that there are presently no public school programs for such children.

A laboratory school can encompass the proper mixture of practical and academic orientations to further many of the objectives of special education. For example, one of the recurrent concerns of the State Department of Education and of local school districts is the implementation of new special education legislation. A 1963 Assembly bill (AB 464, Waldie) authorized schooling for neurologically disabled and emotionally disturbed youngsters. However, there is now some doubt among school districts as to the best way to implement the program. Should hyperactive children be taught in classrooms balanced with those who are less active, or would it be better not to mix the two?

In another important area, what advances in teaching methods are available to the mentally retarded, the largest single group (58,000) served by special classes in our public schools? How can present research in cybernetics and perception be translated into classroom success? What is the optimum teacher-pupil ratio for each disability group? The committee finds a paucity of answers to these vital questions. We believe they could find partial resolution through on-campus experimentation in laboratory schools. In addition, the various subject matters represented in the colleges, sociology, psychology, physiology, and even physical sciences, could be brought to bear on the tasks of special education. Some of the stubborn problems might yield best to an interdisciplinary approach.

There are additional considerations. Laboratory schools could take advantage of the educational expertise of professors of education to provide a good education to selected handicapped children. Research grants and the academic orientation of the colleges directing the laboratory schools would hopefully encourage more students to enter the special education field.

Finally, by combining some activities of the special education laboratory school with activities, classes, and child development programs for normal children, valuable comparisons could be made, not to mention the fact that disabled children would be given opportunities for association with nonhandicapped youngsters. These are all possible benefits of the proposed arrangements. Six state colleges have already submitted written statements delineating the ways laboratory schools on their campuses would assist disabled children and improve teacher training.

It would seem appropriate, as a first step, to transform the two state schools for cerebral palsied, already located on the campuses of San Francisco and Los Angeles State Colleges, into laboratory schools under the jurisdiction of the respective colleges. These facilities presently offer short-term diagnostic service to children with cerebral palsy and other similar handicaps. It is not proposed that the current diagnostic functions and contractual arrangements be abandoned. A plan could be developed whereby these vital functions would continue but a full educational program could be added via the laboratory school. In fact, the medical and diagnostic aspects could be expanded without concomitant plant expansion through fuller utilization of available hospitals and other facilities.

A questionnaire sent to parents of approximately 250 children served by the schools for cerebral palsied indicated that most children remained for a period of only a few weeks and did not receive instruction paralleling that available in public school special education programs. Because classrooms and educational equipment are already provided by the schools for cerebral palsied, it would seem logical that they become laboratory schools offering a rounded and more long-term educational program to a selected number of children going through the diagnostic procedure.

Whatever specific arrangements are made for establishing laboratory schools on state college campuses, it is clear that the need exists. Plans must go forward as soon as possible.

The committee has assigned a high priority to this proposal. Without question, laboratory schools are the most promising path to meeting short-term needs, such as teacher training, and long-term goals, such as the discovery of improved instructional techniques. A necessary part of a laboratory school will be a well-defined diagnostic procedure. Some residential provisions should also be included, where they are a necessary adjunct to the educational process. We envision the laboratory school as the central locus of many types of efforts for the improvement of special education.

4. TEACHER TRAINING

The committee has concluded that teacher shortages existing throughout education are accentuated in the special education field. The tables in Appendix C show the great needs in the presently existing special categories. What they do not show is how many more teachers would be needed if all potential students were enrolled. The committee held a hearing on teacher training on October 14, 1964. At that hearing, testimony by the Department of Education and voluntary organizations substantiated the lack of teachers in all areas of specialization.

A shortage of qualified teachers is particularly evident in programs for the mentally retarded. As of 1963-64, classes for the educable mentally retarded served only 63% of their potential enrollment. In the same period, classes for the trainable retarded reached only 55 percent of their total potential enrollment.³ The figures on teacher needs, shown in Appendix C, represent our best available information, consolidated with past history, trends, and relevant future variables. The

³ California State Department of Education, *Education of the Mentally Retarded in the Public Schools of California* (June 1, 1964), pp. 10, 21.

tables indicate that 1,211 new teachers will be needed for both retarded groups as of 1964-65. Only about one-third of present teachers of retarded hold a standard credential in this field.⁴

We believe that teacher training in special education needs to be improved on three fronts. First, many more teachers are needed. Prospective teachers could be induced to enter special education through increased scholarships and a possible shortening of credential requirements (without losing essential course preparation). Currently certified teachers of normal children should be encouraged, with the granting of educational leaves and stipends, and with assurances of salary increases, to acquire special education training leading to the special education credential.

We believe that the laboratory schools proposed by the previous recommendation will prove an important step in providing an adequate number of properly trained special education teachers. Through the availability of workshops and actual teaching situations, it is highly possible that more students may become motivated to enter this field. We believe that this avenue should be explored before large new extensions are made of existing systems of financial and scholarship aid for prospective teachers of exceptional children.

A second need is to keep teachers now in the field abreast of changes in philosophy and techniques, in order to increase their skill and effectiveness. This can be done through greater use of summer courses and workshops.

The third vital need is for curriculum development and improvement in our state colleges, along with training for college instructors. The federal government has shown leadership in the special education scholarship field. The state must now follow up with additional grants and stipends, and by creating new special education programs and facilities the state colleges and the University of California. A scholarship does a student no good if he has no source of training.

Special education teacher training is a matter of deficiency from top to bottom. Professors are scarce, college training programs are lacking, not enough students are entering the field, and teachers now in the classroom need to have their skills continually upgraded. Funds should be specifically designated for curricula improvement in those colleges now offering special education training. For those colleges which have no special education courses, the establishment of programs should be initiated as soon as possible. It is an essential minimum step to earmark funds in certain state college budgets to establish special education courses, where it is determined that a maximum return be obtained. A portion of the funds should be set aside for summer school programs and stipends for teachers attempting to complete their special education credentials.

Items for immediate specific attention include the establishment of summer training institutes on several state college campuses. These institutes would be designed primarily for tenured teachers who have not specialized in the special education field. Of equal importance is the continuation and expansion of the provisions of Education Code 6875-6878 (AB 813, 1963), which appropriated \$60,000 to the Depart-

⁴ *Ibid.*, pp. 12, 25.

ment of Education to reimburse school districts and county superintendents who had approved summer school grants for teachers obtaining special education credentials. According to estimates by the Department of Education, actual demand for the grants approximated \$150,000.⁵ The department estimates that full stimulation of teacher training in special education, including summer training, workshops, institutes, and grants to undergraduate students, would cost \$949,596, not taking into account any possible federal reimbursement.

The Coordinating Council on Higher Education has made a study of the long range needs for special education teachers and has also analyzed curriculum development for purposes of reporting to this committee and to the 1965 Legislature. The Legislature will be asked to determine the placement of the primary responsibility for continuing development of teacher training in special education and to provide adequate budgetary support. A copy of the Council's report may be found as Appendix D.

5. PROGRAM DEVELOPMENT FOR MULTIPLY DISABLED CHILDREN

The committee finds that instructional programs suited to the needs of multiply handicapped children are completely lacking in our public school system. Without a census such as that described previously, there can be no accurate estimate of the number of multiply disabled in the school-age population. However, the estimates which have been made by public and private agencies indicate that there are substantial numbers of such children who are not receiving the benefits of any educational program. These children have the same right to education as do other children.

The State Department of Education estimates that there are at least 700 multiply handicapped deaf youngsters who are not enrolled in schools. The Coordinating Council on Services for the Blind calculates that there are about 1,600 blind and partially sighted children with other handicaps. (These other handicaps include deafness, which may mean there is some overlap with the estimates of multiply handicapped deaf.) No estimates exist of how many other children there are with multiple disabilities.

There are several reasons why these very needy children have been forgotten by our educational system. First of all, the multiply handicapped are relatively few in number compared to the total school age population, although their proportions seem to have been increasing in the last few years due to lowered infant mortality. Second, there are no organized parents' groups to press demands for educational opportunities. Finally, the diversity and severity of the children's conditions present problems most school districts are unable or unwilling to cope with.

An ideal school program for multiply handicapped children would give as much individualized attention and instruction as possible. Residential care would be provided for those who required it. Schools would hopefully be small and community based, allowing frequent trips home and parental involvement in planning for each child.

⁵ California State Department of Education, *Bureau of Special Education* (November 1964).

The best method of achieving these aims would seem to be the utilization and encouragement of private facilities. There are already a few private schools serving multiply handicapped children who have been unable to find public facilities to meet their needs. Since these schools must depend upon philanthropy and tuition for their financing, they are limited in the types of programs they can offer and in the number of children they can serve. With some financial assistance through public funds, there is little doubt that such private facilities would multiply and expand to meet the demand, much as nursing homes have mushroomed as a result of the federal-state medical aid to the aged program.

Two types of financing are needed. First, the costs of the instructional program must be met. Second, there must be provision of residential care for those who need it. The charitable and volunteer services should not be discouraged, but expanded and supplemented. The instructional portion of the program could be financed in the same manner as public school programs for physically and mentally handicapped. The school district where the child's family lives would participate according to its normal cost per ADA. The excess cost would be reimbursed by the state, following a formula similar to that for children with other handicapping conditions. At present, neither the usual ADA nor the excess cost payments have been used by multiply handicapped children in private facilities, although their educational needs are as great or greater than those of other youngsters. For children needing residential care, direct vendor payments could be made to the private school providing their education.

Payment for the education of handicapped minors is sanctioned in law, but has not been implemented in practice. During the 1963 legislative session, a permissive measure, Senate Bill 346, was passed. It stipulated that "with the approval of the Superintendent of Public Instruction, any school district having a physically handicapped minor as defined by this chapter for whom special education facilities and services are not available and cannot be reasonably provided . . . and for whom the State of California has no appropriate special education facilities and services, may pay to the parent or guardian . . . an amount not to exceed the sum per unit of average daily attendance . . . excess current expenses . . . and the amount . . . derived from district taxation." Residential and other facilities offering educational services have to be certified by the State Department of Education before payment can be made under the measure. There has been no use of the measure to date, except for payment for children in out-of-state schools.

The committee proposes that the law be extended beyond the physically handicapped and be made mandatory. The neurologically and emotionally disabled (designated in the Education Code as "educationally handicapped") and the mentally retarded should be explicitly included in the special provision. Only then will an education be assured every severely and multiply handicapped youngster.

The alternatives to this proposal are the following:

(1) State hospitals, which already house a number of multiply handicapped children, could continue to accept them regardless of

whether they have mental impairments. The cost of state hospital care, including capital outlay, averages about \$4,000 per year per patient, an amount which would probably be increased if an adequate and complete educational program were provided.

(2) A new special education category could be created within local school districts to serve multiply handicapped children. Necessary residential care and diagnostic services would probably have to be furnished by some other agency. Excess cost, according to proponents of this plan, would be \$1,820, twice the amount allowed for a physically handicapped student.

(3) New state residential schools for the various combinations of multiply handicapped children could be constructed. The per pupil cost would greatly exceed the \$250 per month estimated for private care. In addition, decentralization would not be possible.

(4) The present-day care centers for severely handicapped children could be multiplied and expanded. Heretofore, their emphasis has not been educational and they have not provided residential care. However, perhaps these could be added, again, at considerable cost to the state.

The proposal for public financing of education in private nonprofit institutions is, admittedly, somewhat unorthodox. Such a plan would be inappropriate and unnecessary for ordinary children or for those with fairly common handicaps. These latter are best served in regular public school programs. But the proposal offered here would seem to have several advantages for severely and multiply handicapped children. Nonpublic schools have traditionally pioneered new educational methods, especially for exceptional children. A number of private facilities are already in existence and they have demonstrated success in educating children with a variety of severe disabilities. These facilities are usually small and near the children's homes. They are considered a community responsibility and are consequently the recipients of valuable volunteer services, as well as of voluntary contributions.

None of these advantages would be lost through making available the reimbursement due a public school if it served these children. The private schools have accepted a task which public agencies have not shouldered. It would seem that the educational costs should be borne by the public and, probably, the residential care and treatment costs as well.

Specifically, this proposal authorizes payment of excess cost reimbursement to a parent who chooses a facility approved by the State Department of Education, when there is no public school program suitable to a child's educational needs due to the severity of his handicap. Where it is determined that a child needs residential care as an adjunct to his educational program, this cost will be covered by a direct vendor payment. The source of this latter cost is yet to be determined. Parents might pay part of it according to their means.

Although operating under private auspices, these schools would be subject, under the plan, to state inspection. Representatives of the State Department of Education would periodically review curriculum and care in order to determine whether standards for reimbursement were

being met. As outsiders, these representatives could look at the operation of the schools in a critical and objective manner. The contingent nature of the funds would serve as an incentive to keep the programs at a high level.

The need is urgent and critical. The choices now available to parents of multiply handicapped children are to keep them at home without an education, to place them on the waiting list of a state hospital or school, or to educate them in a private school at their own expense. The present situation should not be allowed to continue. The question is not whether to educate the multiply handicapped, but how to do it in the best and most economical way.

6. SCHOOL DISTRICT RESPONSIBILITY FOR CHILDREN IN STATE SCHOOLS

The committee commends school districts for their response to the challenge of educating children requiring special programs. The progress that has been made is a tribute to the willingness and imagination of local districts. At the same time that special public school programs have expanded, however, pressure on state schools for the blind and deaf has also increased.

In order to deal with this situation, efforts should be made to insure that children now in state hospitals and in the state schools for the blind and deaf cannot be educated in their home communities. A child who is blind, deaf or retarded, without other defects, can probably be educated without going away from home. With the exception of a handful of blind-deaf pupils, none of the children presently enrolled in the state schools for the blind and deaf can be classified as multiply handicapped. Furthermore, the majority of these children are from metropolitan areas where there are sufficient numbers to justify public school programs where such programs are not already established.

Most counties in the state have more children in public day classes than in the residential schools. However, in the counties where the residential schools are located, and in adjacent areas, there are no day classes or very few such classes. Thus, the residential schools seem to have retarded the development of day classes in the nearby areas. If the children now in the state schools for blind and deaf could attend public school classes, costly bed space would be made available for blind and deaf children with other disabling conditions or from remote areas.

It has been noted, for example, that there is little, if any, formalized communication between parents of deaf children, local school districts (which may or may not have a program for the deaf), state residential schools, and the State Department of Education or the county superintendent's office. Because of this lack of communication, many parents have placed their children in the schools for the deaf, without proper screening and sometimes without awareness of local programs.

The committee contends that children referred to state schools should be thoroughly screened to see whether they cannot benefit from an education in their home community. If a child must attend a state school in order to have an education, then the present financial advantage to his district should be removed. It is therefore proposed that

the district of residence contribute at least the average amount of local tax dollars it would spend to educate a child with that handicap. According to estimates by the Legislative Analyst, this would yield \$1.1 million for operation of state schools.

The committee feels that most children can receive a better education in their local schools, at less public cost, and without the need for separation from families and normal social life. The present plan is designed to encourage development of local school programs and to give school districts some financial responsibility for those children they cannot serve. Where children *are* referred to state schools, the parents can rest assured that this is the best plan for their child, since the decision will be the result of thorough screening by persons knowledgeable about community school programs.

The state schools were established originally when there were no regular programs for blind and deaf children. Now these facilities should be converted to use by multiply handicapped children who, as yet, generally have no public school programs. This plan, along with the use of existing private facilities and expansion of day care,⁶ should meet the educational needs of those children requiring very specialized service or residential schooling, thus eliminating expansion of state schools.

7. CHILD CARE CENTERS

Since 1943, at the Legislature's behest, the State Department of Education has established and operated child care centers. These centers provide care and educational supervision to children, most of whom have working mothers. A means test has been established to determine the share of the cost each family must pay.

Child care centers have offered a variety of services, including pre-school care and after-school supervision of older youngsters. In 1959, two pilot day care centers for severely mentally and physically handicapped children were established in Stockton and Oakland and in 1963, two additional projects of this type were authorized by the Legislature.

Both the regular and the pilot child care centers have been helpful in relieving the burdens of working parents in terms of both finances and care. However, many more centers are needed to give supervision to youngsters whose parents must work, to provide disadvantaged pre-schoolers with preparation for later school experiences, and to reduce the demand for institutional placement of very severely disabled children.

Expansion of the child care program has been slow because of the large state expenditures entailed. Although parents' fees cover approximately one-third of the costs and school districts have added limited support, the state has borne the major expense. As a result only 25,000⁷ children are now covered by the service.

The need is particularly acute for preschool children, many of whom are ill-prepared to enter kindergarten and first grade due to lack of stimulation between the vital ages of three and five. "The growing numbers of programs throughout the nation, and especially in Cali-

⁶ See next section.

⁷ California State Department of Education (March 1964).

fornia, planned to provide compensatory experiences both in and out of the classroom for children from culturally disadvantaged backgrounds reflect the growing concern that all community resources be marshaled to help salvage children and, in the long run, help reduce the cost of the child's formal education, which rises with school failures and dropouts." ⁸

Adequate child care facilities must also be made available to families receiving aid to families with dependent children (AFDC). Single parent families are often prevented from finding work because of lack of child care arrangements, even though AFDC allows the parent to deduct this expense from his or her earnings.

Finally, expanded child care is needed for preschool and older children with severe mental and/or physical disabilities which keep them from attending other school programs. The mothers of severely handicapped children may need to work, but often are prevented from doing so by the lack of care for their children. At least 22 communities other than those now operating pilot projects have expressed interest in offering day care to such children. These centers, if established, could serve at least some of the approximately 1,600 children on the waiting list for admission to State Department of Mental Hygiene hospitals.

The total unmet need for child care is not known, but indications are that it is great. It is possible that the recommended youth census would establish the magnitude of this need. "The total need of families for the care and educational supervision of young children when their mothers must work never has been accurately assessed in California, nor has the known need been met." ⁹

At least part of the need can be met through the use of day care funds available through the 1962 service amendments to the Social Security Act. These funds are offered on a 75-25 matching basis to states which establish new child care programs for aid recipients and near recipients, roughly the same group being served by current child care centers. A 100-percent federal grant of \$250,000 has also been made available to California to assist local communities to operate day care centers.

Establishing day care centers through financing available to the State Department of Social Welfare will not require sacrificing educational or other high quality aspects of the program. The Department of Social Welfare is now presenting to the federal government a plan for expanded child care services. If this plan, now pending, is accepted, the social welfare budget would have to be increased and proper legislative criteria incorporated into the plan. The Department of Social Welfare could be authorized to contract with other agencies, including the State Department of Education.

Although full details cannot be worked out as yet, the great demand for child care centers requires full utilization of federal funds.

⁸ Mahler, Theresa S., *A Brief on the California Child Care Centers* (California Child Care Directors and Supervisors Association) (April 1964), p. 4.

⁹ *Ibid.*, p. 3.

8. ESTABLISHMENT OF MINIMUM STANDARDS

It is the conclusion of the committee that the number of children served by special education programs, the great financial investment, and the need for quality education all demonstrate the necessity of establishing minimum standards. A minimum standard would provide curriculum guidelines for each disability group and could act as a guide for state reimbursement if the multiple ADA financing system were adopted. (See Recommendation 2.)

What is proposed here is not a detailed blueprint of courses and activities for each group of children, but rather, requisites for achievement at various levels. For example, blind children should be expected to learn braille and typing after a certain length of time in the program. Deaf children should be taught special communication techniques early in their school career. In the case of the mentally retarded, the educational goals of self-care, social independence and self-support must be divided into specific sequential levels of achievement, without necessarily adhering to rigid time tables.

It must be remembered that two-thirds of the teachers of the mentally retarded do not possess an education credential. These untrained teachers, in particular, could benefit from knowing what is generally expected of them and their students. There are presently no standard, or even accepted, textbooks for mentally retarded classroom use. In such a situation, programs may tend to accept makeshift duplication of materials, haphazard arrangements, or busywork for idle fingers.

The establishment of minimum standards regarding class content is particularly appropriate now that programs for mentally and physically handicapped pupils are mandatory by law. The standards for these programs need not meet the same expectations set of normal children, but should approximate them where feasible. The line between an acceptable, constructive program and mere babysitting must be drawn now.

Controversial programs, such as those for speech defectives, could proceed confidently, in the knowledge of what is expected of a true program of speech correction, as distinguished from one for speech improvement. Children in programs of speech therapy, 137,854 in all, constitute 70% of all physically handicapped special education pupils. A 1961 hearing before the Assembly Interim Committee on Education revealed that one school district had 45% of its students enrolled in speech therapy. It is estimated that the average participant spends only 15 minutes per week in speech programs. These facts would cast doubt on whether the state is receiving proper value for the special education dollars invested in speech programs. Another factor for concern is the high proportion of students enrolled in speech therapy who are of high school age, when experts feel early identification and treatment are necessary to conquer speech defects.

Without guiding standards, school districts are called upon to make their own interpretations, whether in the provision of speech therapy or in the construction of a curriculum for the aphasic. Parents contemplating moving children from private to public schools currently have no basis of judgment. There is no method of evaluating classes of private schools receiving payment under Senate Bill 346. Finally, disabled

children may go without the quality education to which all children are entitled. Therefore, the committee recommends that the State Department of Education, in consultation with voluntary associations and agencies, devise appropriate minimum program standards for each disability group, to insure solid substance for California's special education programs.

9. BUILDING AID

The state school building aid program provides impoverished school districts with assistance in constructing special education classrooms. In providing this assistance, the state writes off 50% of the cost of the special education projects and the district is required to pay the remaining 50% with interest. Where special education facilities are to be administered by the county office, the 50% remainder will be repaid 10% by the district and 40% by the county office.

The cost of building special education classrooms under the state building aid program varies. The costs may run very high and there is no set limit on size of classrooms. For example, an application for a new cerebral palsy school for 24 pupils was recently submitted for approval. The school is to be a separate facility constructed on an existing site. The per pupil cost for this facility is \$12,389. The furniture and equipment cost per pupil is \$1,333 and the area per student is 508 square feet. By way of comparison, the *total* average per student cost of providing special education facilities under the building aid program has been \$1,814.

While the construction of very costly facilities tends to be unusual, it occurs with sufficient frequency to raise questions about the need for such great expenditures. It would appear that some top limits, either in terms of space or of dollar expenditures per student, are required. These limits or maximums could be somewhat flexible and could vary according to the disability or disabilities represented, the number of pupils per facility, and other considerations. However, the limits must be set through legislative action and after consultation with the State Department of Education and staff of the Local Allocations Board.

If a district wished to construct a facility costing more than the maximum allowed, it could do so with the understanding that it would have to fully finance the additional amount. However, the Legislature recognizes that limits on the expenditure of state money must be set if the already rising expenditures under the building aid program are not to soar to unpredictable heights.

This proposal does not deny the great need for more classrooms for exceptional children. Certainly school districts are to be commended for wanting to have superior facilities, which after all, are 50% district financed. The committee is in accord with this aim. What the committee proposes is adequate and reasonable limits, which will fully meet the classroom requirements of disabled children.

While impoverished districts have been offered aid in constructing special education classrooms, nonimpoverished districts, along with voluntary groups, have made pleas for the extension of building aid funds. A district may technically fall into the nonimpoverished cate-

gory and still be unable to finance much needed construction. The committee recommends revisions to extend building aid to nonimpoverished districts on a sliding scale according to their tax base.

If aid is extended to nonimpoverished districts, the necessity for limits becomes even more crucial. The Legislative Analyst considers that expenditures under a broadened program would be impossible to estimate without maximum standards. In view of the future unification of school districts under Assembly Bill 145, it is also felt that encouragement in the form of increased aid should be offered to projects which are the cooperative effort of two or more districts.

While specific details have not yet been worked out, the committee recognizes the need to spend building aid funds wisely and to extend their use. The committee therefore recommends that maximum limits be set on state school building aid funds allocated to particular projects, taking into account the handicaps of the students, the size of the facility and other pertinent factors. In addition, it is proposed that aid be extended to nonimpoverished districts on a sliding scale, with special incentives for projects which are the combined efforts of several districts.

10. RESEARCH AND DEMONSTRATION

The committee concludes that a research and demonstration unit is needed within the State Department of Education. Such a unit would not only provide leadership for research by other agencies, but would be eligible to receive grants through the National Institute of Mental Health, the Department of Health, Education and Welfare, the Office of Vocational Rehabilitation, and other federal bodies. Because of the lack of a research and demonstration unit in the Department of Education, California has had to forfeit a large portion of federal resources.

It is the explicit intent of this proposal to stimulate growth in all phases of special education, with the further intent that the county superintendent's office act as an intermediary between school districts and the state in the operation of pilot programs.

One of the major areas of research should be an evaluation of I.Q. scores and tests as they relate to disabled children. Although there are other areas where study is vitally needed, the I.Q. is singled out as an example because of its broad use in school programs.

Intelligence quotient scores are used in many ways. They are the basis of determining mental retardation and they distinguish between children in Point I and Point II classes for the retarded. They help tell us whether a child who is functioning on a low level is lacking in ability or in motivation. Also, placement in classes for the gifted is done largely on the basis of I.Q.

Intelligence quotient tests may have importance in predicting the performance of normal children. However, when used with children possessing distinct or unusual characteristics, they may be poor indicators of performance and of potential. Although I.Q. tests are routinely given to children in our public schools, it is well recognized that sociocultural characteristics and emotional factors greatly influence test scores. This, of course, brings up the question of how well intelligence tests actually measure ability, as distinguished from the effects of education and training.

The questions that can be raised about the validity of our intelligence tests have particular bearing on programs for exceptional children. The problem is that the results of I.Q. tests may lower our expectations of children's performance and thus actually retard that performance. While no teacher wants to demand more of a student than he can produce, there is an equal danger of not demanding enough, especially of exceptional children.

Time and again experience with teaching has shown that ability is very difficult to predict. This is true even in the cases of children with very low I.Q.'s, although most educators and psychologists hold that the lowest scores are the most valid and immutable.

Even special educators who place great weight on I.Q. tests admit that the I.Q. is not fixed. "Results of recent research suggests that the training of intellect is possible especially among low I.Q. children who have lacked adequate stimulation. Thus, the educability of intelligence (raising the I.Q.) through educational treatment has an important place in the curriculum, especially for the non-brain-injured mentally retarded."¹⁰

It is significant to note that less than 20% of all retardation is caused by known damage to the brain. As a rule, children in the very lowest I.Q. brackets evidence brain damage, while the mildly retarded do not. It is also significant to note that severely retarded, brain-damaged children are fairly evenly distributed through the population. There is a slightly larger percentage among lower socioeconomic groups, which can be attributed to inadequate prenatal or infant care.

However, *mild* retardation, unlike most forms of severe retardation, tends to run in families, even though there is usually no measurable congenital defect. What is important is that the mildly retarded are concentrated in low income, poorly educated families. Thus, mild mental retardation may be due, at least in part, to social deprivation.

The problem is that once children are tested and placed in a program for the retarded there is little chance that their designation can change. The children are often not retested after their initial categorization. In situations where retesting is done, a fair number of children are found to achieve scores within the average range. The new school program for culturally disadvantaged children may have some effect on the future numbers of children entering Point I classes for the retarded. At least, the relationship between the Point I program and the culturally disadvantaged program should be a subject of research.

Uses of intelligence tests with the blind and the deaf have also had some disquieting results. Both blind and deaf children achieve lower average scores than their normal counterparts.¹¹ It has therefore been hypothesized that damage to the sensory organs and the central nervous system may occur simultaneously, thus affecting the intelligence of children with sensory handicaps. Yet, a strong argument can be made that the lack of achievement these children show in I.Q. tests is educational in nature rather than intellectual. It is possible that our

¹⁰ Dunn, *op. cit.*, p. 115.

¹¹ Hayes, S. P., "Measuring the Intelligence of the Blind," in Zahl, P. A., ed. *Blindness* (Princeton, N.J.: Princeton University Press, 1950), and Dunn, *op. cit.*, pp. 360, 361, 432.

schools are failing to educate exceptional children, especially sensory-handicapped children, by methods which develop their true potential. If this is the case, I.Q. scores may be falsely exonerating current educational practices.

So much of our educational programs for both exceptional and normal children are based on faith in I.Q. scores that this area should not be neglected. While we cannot expect perfection from tests administered on a mass basis, we should expect revision of present tests if investigation proves they are substantially inaccurate.

Beyond specific attention to the intelligence quotient, research and demonstration would have a variety of tasks such as the evaluation of school district programs, of minimum standards, and of state college instruction, including the use of laboratory schools. The subject matter would not be restricted to special education programs and problems, but would include projects aimed at understanding and improving general learning as well.

The subcommittee feels that the implementation of this proposal would require only a small nucleus-type staff on the state level at this time. This staff would have the task of initiating, supervising, and distributing funds for projects carried out by county superintendents' offices and local districts. The state staff would also be responsible for reporting the progress and results of each study to the Legislature.

Actual review of applications for grants could be made by a committee composed of county officials, school district personnel, and legislative representatives from both houses. All other state departments have legal authorization to carry out research and demonstration projects; now is the time for Education to follow suit.

11. STATE, COUNTY AND SCHOOL DISTRICT RELATIONSHIPS

At the present time, State Department of Education staff attempt to provide consultation on program design and development, according to school districts' requests. County superintendents' offices, as one of their major functions, offer similar consultative and coordinative services to their districts. These offices also operate programs directly in small districts in their counties.

There are strong indications that although county superintendents are vested with coordinative functions, there is relatively little coordination and communication between state and county levels. A district may either request assistance from the county office or go directly to the State Department. Duplications may result and channels of communication are fragmented.

A recent study of the entire California education system has pointed out the need for new arrangements between the various levels of educational administration. This study, by Arthur D. Little, points out that some districts, especially larger ones, have little contact with the State Department of Education. It also shows that county offices are already assuming a greater role, especially in the area of special education.

According to this report:

As districts grow larger and become more self-sufficient through expansion of their administrative organizations, the county offices

are gradually changing the emphasis of their role. Most county offices are identifying functions that can be served more efficiently or economically on a county basis than by individual districts, and some are examining the possibility that certain county office functions can be reduced or eliminated. The appropriateness of acquiring, storing, distributing, and maintaining instructional materials in audiovisual or instructional materials centers at the county level is well-established. Except in very large and well-staffed districts, there is general agreement that the county office is also a logical center for the location of certain kinds of specialized personnel, such as consultants in special education, who would be underutilized if located within any one district. Similarly, in areas where the incidence of mental retardation of physical handicaps is low, the county is a logical level for the operation of special schools.¹²

Communities are becoming increasingly interested in providing for the special needs of handicapped children in the public schools. Since the incidence of need and the availability of alternative sources of assistance vary from community to community, a good deal of "tailoring" must take place in the design and installation of special education programs. However, as is the case with other bureaus in the department, the Bureau of Special Education cannot be expected to provide enough consultants to work closely with all of the individual districts in the state that might benefit from their assistance. On the other hand, the average school district cannot fully utilize the expensive and specialized talents of special education consultants within their staff organizations, and there are not enough such specialists at this time to meet the needs of all districts. We can only conclude that the Bureau of Special Education should intensify its efforts to strengthen the ability of intermediate units to meet the demands of local districts for help in establishing and operating special education programs, as we understand the bureau has been attempting to do in the recent years.¹³

The committee plans to give more detailed study to the possibility of granting county superintendents primary responsibility for special education, including state liaison functions. The role of state consultants could then become one of providing their services to the county level. If the previous proposal on research and demonstration is adopted, state staff could help supervise and arrange for projects through the county superintendent's office.

By giving authority for special education to the county boards of education, a specific entity would be established to create continuity of program throughout each county. Access to knowledge of the types of programs offered would be made easier and there would be a firmer base upon which to develop future programs. Such a system would also help prevent unnecessary duplication of programs within an area. As

¹² Little, Arthur D., Inc., *Emerging Requirements for Effective Leadership to California Education* (California State Department of Education, November 1964), pp. 50-51.

¹³ *Ibid.*, p. 108.

stated, counties already have authority for special education in cases where the population of districts is too small to merit separate programming.

An intermediate level between the state and district is definitely needed. County superintendents are a logical choice, particularly in districts where unification is taking place. The committee recommends a resolution calling for detailed study of the organization of present special education administration. The resolution will emphasize the necessity of vesting greater authority and responsibility for operation in an intermediary between the state and school districts, such as in a county or regional body.

12. INTER-AGENCY COOPERATION

We believe that the State Department of Education and school districts should be allowed, possibly directed, to contract with other agencies for services and the provision of supplies wherever this would be financially or programmatically advantageous. Federal monies are available to the Departments of Social Welfare, Public Health and Rehabilitation for some types of activities now performed by school districts using only local and state funds. Besides assisting with financing, other agencies could offer consultation and direct services in their own areas of expertise.

For example, if occupational training programs for handicapped youth are considered desirable, there is real question whether such programs should be financed with education funds. Rather than take workshop payments from the school fund, it might seem feasible to allow the Department of Rehabilitation to pay for this training through funds which are matched by 50% federal monies. The Department of Social Welfare also has 75% reimbursement available for workshop training through the service amendments to the Social Security Act. These funds are already being used to provide such training to mentally retarded recipients. School districts should be able to contract with the appropriate agency for workshop services.

Where vocational training is provided by a school itself, the Department of Rehabilitation would seem to have a vested interest in seeing that proper equipment and supplies are made available for instructing their possible future clients. If the age of eligibility for rehabilitation is lowered from the present 16 years, as is under consideration by the Department of Rehabilitation, establishing an explicit relationship between the Departments of Education and Rehabilitation will be even more significant. Rehabilitation counselors could then give direct employment counseling to disabled high school youngsters, something most teachers are not equipped to do.

Interagency cooperation would probably also bring to light a number of areas in which unnecessary and costly duplication of services exists. To give one example, the federal government gives a direct per capita allotment for equipment to each legally blind student reported by the State Department of Education. The Department of Rehabilitation also offers this service to its blind clients who are in school. And the State Department of Education has its own special reading and equipment fund for blind students. In another area, retarded or emotionally

disturbed children are released to their homes or to family care homes by the Department of Mental Hygiene, without notification to school districts or to the Department of Education. This means that there is no advance planning and some children may have inadequate public school programs or none at all.

More integration is needed in the provision of services, both educational and otherwise, to exceptional children. Interagency cooperation can help achieve this result. The committee therefore recommends that the Education Code grant explicit permission to school districts, to county superintendents of schools, and to the State Department of Education to contract with other agencies for appropriate services.

13. IMPLEMENTATION OF HOUSE RESOLUTION 11

House Resolution 11, passed during the 1964 legislative session, directs the Departments of Education and Corrections to develop special education materials for exceptional children, which could feasibly be manufactured in state correctional facilities. Because most special education supplies and teaching aids are specialized and limited to use by relatively few children, they are not subject to mass production and probably cannot be manufactured commercially on a profitable basis. However, production of such items would greatly enhance the education of exceptional children, who are apt to be more dependent than normal children on special aids and devices.

If classroom materials for exceptional children, specifically those not readily available on the open market, could be manufactured in state correctional facilities, there would be a twofold benefit. Inmates would have an opportunity to participate in socially useful endeavors and necessary materials could be provided for the education of exceptional children. According to testimony presented at a hearing of the Subcommittee on Special Education on November 16, 1964, a few inmates of the Department of Corrections have learned braille and have produced braille texts. Others have assisted in the preparation of large print books or tape recordings. However, these efforts have been limited due to lack of funds for materials and instructors.

On a smaller level, inmates of the Los Angeles county jails have produced toys and puzzles for mentally retarded children at the request of a local voluntary agency. There are, perhaps, other efforts being made in various parts of the state. The success of these small, unorganized projects is evidence of a greater potential.

As part of any proposal to finance an expanded program of the manufacture of special education materials, the possibility of receiving funds through the Department of Rehabilitation should be explored. If such funds are not available, alternate means of financing will have to be found.

14. PROGRAMS FOR THE MENTALLY GIFTED

The committee regrets that it has not had time to fully study the programs presently offered mentally gifted minors in California's public schools. We recognize that many of the special education problems which we have outlined in this report have implications also for

mentally gifted programs. In the areas of pupil identification and financing, particularly close parallels may be observed.

Despite the committee's inattention to this specialized area, we believe that it is important enough that a thorough study should be instituted by the Legislature. Our recommendation for study of the state-financed program for the gifted is submitted in the hope that thorough evaluation may be made by the Legislature before any major program changes are considered.

CONCLUSION

The goals of special education are those of education generally, since all children are fundamentally the same. This point has been aptly phrased:

Exceptional children are basically like other children. It must always be remembered that the education of exceptional children has basic concepts and goals in common with the education of all children. The same principles of child development prevail. A deaf child is a child with a hearing handicap. As a child, he has all the needs, desires, and physical energy of children in general. Basically, the only way in which he differs from an average child is his inability to hear.¹

A special education program, like other education programs, has not accomplished its purpose unless it has helped the pupil to view his assets and limitations realistically, to develop independence in thought and action, and to find a place for himself among his peers and in society. Nor has the school accomplished its purpose unless it has assisted the handicapped child's associates to see beyond his defect to his worth as an individual. This task is not the school's alone. However, the school, particularly, must take care not to reinforce the stereotypes which can damage a child's development far more than his mere physical limitations.

This committee strongly believes that allocation of funds for special programs should be based not on pity, or the desire to compensate the handicapped for their low position in society or protect them from the attitudes of others. Instead, special funds should be authorized only when it is found that educational aims will be served. Careful and rational planning of special education will discourage crippling attitudes and will result in improved programs for exceptional children and youth.

¹ Henry, *op. cit.*, p. 10.

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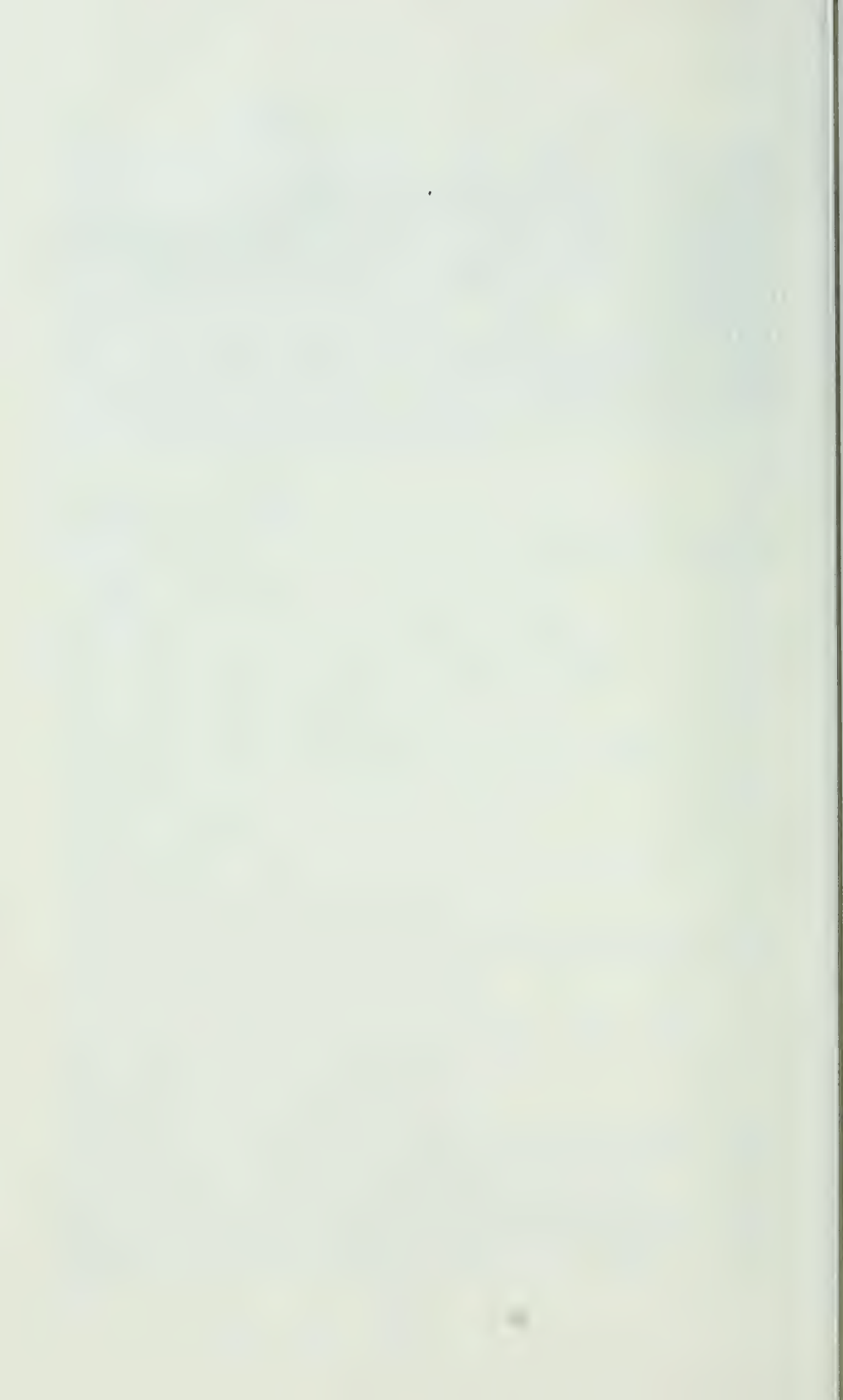
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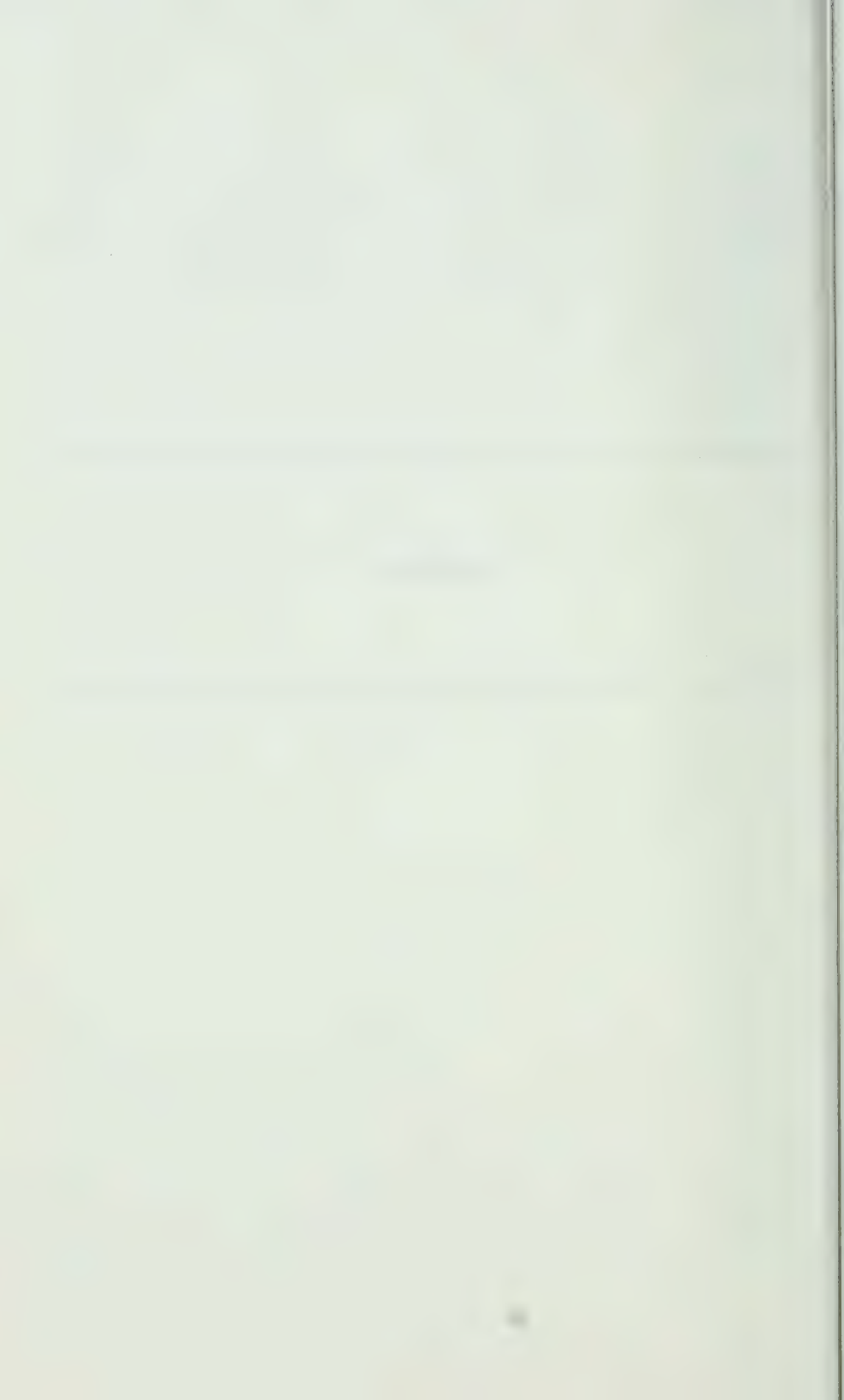
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APPENDIX



APPENDIX A

MAX RAFFERTY

*Superintendent of Public Instruction
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DIVISION OF SPECIAL SCHOOLS AND SERVICES

*Bureau of Special Education
Charles W. Watson, Chief*

May 1963

TABULATIONS OF EXCESS COST OF EDUCATING MENTALLY RETARDED AND PHYSICALLY HANDICAPPED PUPILS

Information Taken From J-22 Forms, 1961-62

- J-22 "Report of Excess Expense of Educating Physically Handicapped and Mentally Retarded Pupils"
- J-22.1 "County Superintendent's Report of Certain Expenses for Emergency Education and Special Training Schools and Classes"
- J-22T "Report of Expense of Transporting Certain Handicapped Pupils"

Prepared for the Division of Special Schools and Services by the Bureau of
School Apportionments and Reports, Division of Public School
Administration, California State Department of Education

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**CLASSIFICATION OF PHYSICALLY HANDICAPPED ENROLLMENT BY STATE TOTALS AS
FORWARDED BY DISTRICT ON FORM J-22 AND BY COUNTY SUPERINTENDENTS
OF SCHOOLS ON FORM J-22.1 FOR THE FISCAL YEAR
1961-62 FOR 1962-63 APPORTIONMENT**

	Deaf	Blind	Aphasic	Cerebral palsied	Ortho- pedically handicapped	Hard of hearing	Speech defective	Partially seeing	Lowered organic vitality	Enrolled in special P.E. classes	Other illnesses and physical condition	Totals
Regular classes.....	344	549	13	34	383	334	--	456	67	305	26	2,491
Remedial classes.....	4	10	5	21	69	4,023	134,524	48	89	30,997	181	169,971
Individual instruction.....												
Home or institution.....	53	23	5	109	2,464	45	2,764	86	3,173	--	6,279	15,001
Preschool.....	8	--	--	4	15	9	163	--	38	--	3	240
Special day classes.....	1,120	494	102	2,023	1,413	497	403	345	802	32	239	7,470
State totals.....	1,529	1,076	125	2,191	4,324	4,908	137,854	935	4,169	31,334	6,728	195,173

CLASSIFICATION OF PHYSICALLY HANDICAPPED ENROLLMENTS BY DISTRICT AS REPORTED
ON FORM J-22 FOR FISCAL YEAR 1961-62 FOR 1962-63 APPORTIONMENT

	Deaf	Blind	Aphasic	Cerebral palsied	Ortho- pedically handicapped	Hard of hearing	Speech defective	Partially seeing	Lowered organic vitality	Enrolled in special P.E. classes	Other illnesses and physical condition	Totals
Elementary												
Regular classes	62	175	--	4	47	60	--	83	1	5	8	445
Remedial classes	2	4	3	4	3	982	75,464	9	18	833	102	77,424
Individual instruction												
Home or institution	43	5	2	53	713	11	305	7	707	--	2,051	3,897
Preschool	7	--	--	4	15	6	85	--	--	--	3	120
Special day classes	315	144	--	632	187	210	88	125	65	32	43	1,861
Totals	429	338	5	717	965	1,269	75,942	224	791	870	2,207	83,747
High school												
Regular classes	55	46	--	10	81	40	--	106	1	16	3	358
Remedial classes	--	--	--	8	28	162	1,119	7	65	2,581	72	4,042
Individual instruction	7	13	--	18	428	2	43	7	740	--	2,035	3,293
Special day classes	5	11	--	9	59	20	226	8	--	--	--	338
Totals	67	70	--	45	596	224	1,388	128	806	2,597	2,110	8,031
Unified												
Regular	227	328	13	20	235	234	--	267	65	284	15	1,688
Remedial classes	2	6	2	9	38	2,879	57,941	32	6	27,583	7	88,505
Individual instruction												
Home or institution	3	5	3	38	1,323	32	2,416	72	1,726	--	2,193	7,811
Preschool	1	--	--	--	--	3	78	--	38	--	--	120
Special day classes	800	339	102	1,362	1,167	267	89	212	737	--	196	5,271
Totals	1,033	678	120	1,429	2,763	3,415	60,524	583	2,572	27,867	2,411	103,395
Grand totals	1,529	1,076	125	2,191	4,324	4,908	137,854	935	4,169	31,334	6,728	195,173

**CLASSIFICATION OF PHYSICALLY HANDICAPPED ENROLLMENT BY DISTRICTS AS REPORTED
BY COUNTY SUPERINTENDENTS ON FORM J-22.1 FOR FISCAL YEAR
1961-62 FOR 1962-63 APPORTIONMENT**

	Deaf	Blind	Aphasic	Cerebral palsied	Ortho- pedically handicapped	Hard of hearing	Speech defective	Partially seeing	Lowered organic vitality	Enrolled in special P.E. classes	Other illnesses and physical condition	Totals
Elementary												
Regular classes.....	--	--	--	--	--	--	16	--	--	--	--	16
Remedial classes.....	--	--	4	2	--	684	4,118	45	--	--	--	4,853
Individual instruction.....	2	--	1	4	54	1	1	3	176	--	248	490
Special day classes.....	42	51	5	189	126	29	158	16	--	--	--	616
Totals.....	44	51	10	195	180	714	4,293	64	176	--	248	5,975
High school												
Regular classes.....	--	--	--	--	--	--	--	--	--	--	--	--
Remedial classes.....	--	--	--	--	--	--	--	--	--	--	--	--
Individual instruction.....	--	--	--	--	4	--	--	--	25	4	74	107
Special day classes.....	--	--	--	4	2	--	--	--	--	3	--	9
Totals.....	--	--	--	4	6	--	--	--	25	7	74	116

SUMMARY
SPECIAL TRAINING SCHOOLS AND CLASSES, 1961-62
 Mentally Retarded Minors
 (Education Code Section 6902)

Items	Level	A.D.A. reported	Certificated salaries of instruction	Average salaries per unit of A.D.A.	Total current expense	Average current expense of education per A.D.A.		Excess expense	Average excess expense per A.D.A.
						Special classes	Normal		
231	Elementary school districts	10,201	\$5,127,174	\$502.61	\$7,753,173	\$760.04	\$369.94	\$3,979,458	\$390.10
104	High school districts	5,040	2,753,428	546.32	4,187,477	830.85	528.22	1,525,237	302.63
83	Unified school districts	23,440	13,473,769	574.82	17,980,583	767.09	394.98	8,722,282	372.11
45	County School Service Fund								
2	Elementary	2,572	1,499,610	583.05	2,217,072	862.00	398.94	1,190,999	403.06
	High	16	8,871	544.44	18,491	1,155.68	724.11	6,905	431.57
465	Totals	41,269	\$22,862,852	\$554.00	\$32,156,796	\$779.20	\$405.44	\$15,424,881	\$373.76

SUMMARY
SPECIAL TRAINING SCHOOLS AND CLASSES, 1961-62
 Severely Mentally Retarded
 (Education Code Section 6903)

Items	Level	A.D.A. reported	Certificated salaries of instruction	Average salaries per unit of A.D.A.	Total current expense	Average current expense of education per A.D.A.		Excess expense	Average excess expense per A.D.A. ¹
						Special classes	Normal		
32	Elementary school districts	647	\$407,878	\$630.41	\$667,802	\$1,032.15	\$357.28	\$436,639	\$674.87
12	High school districts	12	10,633	886.08	16,333	1,361.08	521.52	10,075	839.56
18	Unified school districts	1,117	707,259	633.17	1,271,497	1,138.31	421.12	801,101	717.19
28	County School Service Fund	1,374	937,898	682.60	1,603,460	1,167.00	458.49	973,492	708.51
90	Totals	3,150	\$2,063,668	\$655.13	\$3,559,092	\$1,129.87	\$424.69	\$2,221,307	\$705.18

¹ Excludes expenses of transporting severely mentally retarded minors to special training schools and classes.

**SUMMARY OF TRANSPORTATION OF PHYSICALLY HANDICAPPED AND SEVERELY
MENTALLY RETARDED MINORS AS REPORTED ON FORM J-221
BY DISTRICTS AND COUNTY SUPERINTENDENTS
1961-62 for 1962-63 Apportionment**

Type of district	Average daily attendance			Current expense				Total current expense	Expense per unit of A.D.A.
	Physically handicapped	Severely mentally retarded	Total A.D.A.	Physically handicapped	Expense per unit of A.D.A.	Severely mentally retarded	Expense per unit of A.D.A.		
Elementary school districts-----	1,865	663	2,528	\$683,122	\$366.29	\$205,863	\$310.50	\$888,985	\$351.66
High school districts-----	147	22	169	46,933	319.27	8,977	408.05	55,910	330.83
Unified school districts-----	4,420	1,118	5,538	1,556,027	352.04	411,503	368.07	1,967,530	355.28
County School Service Fund-----	428	1,323	1,751	181,484	424.03	404,178	305.50	585,662	334.47
Totals-----	6,860	3,126	9,986	\$2,467,566	\$359.70	\$1,030,521	\$329.66	\$3,498,087	\$350.30

SUMMARY
PHYSICALLY HANDICAPPED, 1961-62
Regular Class Instruction

Level	Number of pupils enrolled	A.D.A. reported	Certificated salaries of instruction	Average salaries per unit of A.D.A.	Total current expense	Average current expense per unit of A.D.A.	Total excess expense	Average excess expense per unit of A.D.A.
Elementary school districts	446	390	\$236,268	\$605.82	\$324,510	\$832.08	\$325,232	\$833.93
High school districts	350	263	93,051	353.81	167,489	636.84	170,264	647.39
Unified school districts	2,017	1,189	810,076	681.81	1,139,702	973.36	1,163,522	978.57
County School Service Fund	16	1	2,266	2,266.00	2,854	2,854.00	2,204	2,204.00
Totals	2,829	1,843	\$1,142,261	\$619.78	\$1,654,555	\$897.75	\$1,661,222	\$901.36

Excludes expense of blind readers and certain other expenses incurred for blind pupils, limited to amount computed for blind pupil allowance. (E.C. 18102, 18103.)

Excludes expense of transporting minors, who were handicapped in seeing and hearing, to integrated classes. (E.C. 18060.2.)

SUMMARY
PHYSICALLY HANDICAPPED, 1961-62
 Remedial Class Instruction

Level	Number of pupils enrolled	A.D.A. reported	Certified salaries of instruction	Average salaries per unit of A.D.A.	Total current expense	Average current expense per unit of A.D.A.	Total excess expense	Average excess expense per unit of A.D.A.
Elementary school districts	76,629	2,084	\$2,304,152	\$1,105.64	\$2,760,782	\$1,324.75	\$2,760,782	\$1,324.75
High school districts	4,715	643	350,324	544.83	519,375	807.74	519,375	807.74
Unified school districts	91,334	4,659	4,096,681	879.30	5,261,439	1,129.31	5,261,133	1,129.24
County School Service Fund								
Elementary	4,872	166	251,790	1,516.81	309,885	1,866.78	220,283	1,327.01
Totals	177,550	7,552	\$7,002,947	\$927.30	\$8,851,481	\$1,172.07	\$8,761,573	\$1,160.17

SUMMARY
PHYSICALLY HANDICAPPED, 1961-62
Individual Instruction

Level	Number of pupils enrolled	A.D.A. reported	Certificated salaries of instruction	Average salaries per unit of A.D.A.	Total current expense	Average current expense per unit of A.D.A.	Total excess expense	Average excess expense per unit of A.D.A.
Elementary school districts-----	3,758	920	\$782,659	\$850.72	\$884,223	\$961.11	\$884,223	\$961.11
High school districts-----	3,484	662	626,085	945.75	717,381	1,083.66	717,381	1,083.66
Unified school districts-----	5,734	1,248	1,675,018	1,342.16	1,826,591	1,463.61	1,826,591	1,463.61
County School Service Fund								
Elementary-----	490	95	102,121	1,074.96	114,678	1,207.14	61,216	644.38
High-----	107	26	25,242	970.85	28,215	1,085.19	19,320	743.08
Totals-----	13,573	2,951	\$3,211,125	\$1,088.15	\$3,571,088	\$1,210.13	\$3,508,731	\$1,189.00

SUMMARY
PHYSICALLY HANDICAPPED, 1961-62
 Special Day Classes

Level	Number of pupils enrolled	A.D.A. reported	Certified salaries of instruction	Average salaries per unit of A.D.A.	Total current expense	Average current expense per unit of A.D.A.	Total excess expense	Average excess expense per unit of A.D.A.
Elementary school districts-----	2,351	1,622	\$1,396,731	\$861.12	\$2,112,014	\$1,302.10	\$1,532,422	\$944.77
High school districts-----	309	90	74,662	829.58	114,854	1,276.16	64,533	717.03
Unified school districts-----	5,377	4,636	4,695,331	1,012.80	5,573,511	1,202.22	3,543,857	704.42
County School Service Fund								
Elementary-----	476	444	381,059	858.24	573,104	1,290.77	464,599	1,046.39
High-----	9	7	7,209	1,029.85	10,629	1,518.43	8,361	1,194.45
Totals-----	8,522	6,799	\$6,554,992	\$964.11	\$8,384,112	\$1,233.14	\$5,613,772	\$825.68

Excludes expenses of transporting physically handicapped to special day classes.

Excludes expense of blind readers and certain other expenses incurred for blind pupils limited to amount computed for blind allowance.

**NUMBER OF DISTRICTS AND COUNTIES WHICH FILED CLAIMS FOR EXCESS COST
OF EDUCATING PHYSICALLY HANDICAPPED MINORS**

Classified by Average Unit Cost

1961-62 Fiscal Year for 1962-63 Apportionment

Regular Day Classes

Type of district	Less than \$100 per A.D.A.	\$100-\$200 per A.D.A.	\$200-\$300 per A.D.A.	\$300-\$400 per A.D.A.	\$400-\$500 per A.D.A.	\$500-\$600 per A.D.A.	Over \$600 per A.D.A.	Total
Elementary.....	6	3	5	7	7	--	24	52
High school.....	2	4	1	4	3	1	16	31
Unified.....	2	3	2	4	1	3	17	32
Total districts.....	10	10	8	15	11	4	57	115
County School Service Fund.....	--	--	--	--	--	--	--	1
State totals.....	10	10	8	15	11	4	57	116

Remedial Classes

Type of district	Less than \$600 per A.D.A.	\$600-\$800 per A.D.A.	\$800-\$1,000 per A.D.A.	\$1,000-\$1,200 per A.D.A.	\$1,200-\$1,400 per A.D.A.	\$1,400-\$1,600 per A.D.A.	Over \$1,600 per A.D.A.	Total
Elementary.....	27	59	88	73	54	30	87	418
High school.....	16	11	12	4	4	4	8	59
Unified.....	6	5	10	7	12	13	29	82
Total districts.....	49	75	110	84	70	47	124	559
County School Service Fund.....	--	1	2	1	--	1	11	16
State totals.....	49	76	112	85	70	48	135	575

**NUMBER OF DISTRICTS AND COUNTIES WHICH FILED CLAIMS FOR EXCESS COST
OF EDUCATING PHYSICALLY HANDICAPPED MINORS**

**Classified by Average Unit Cost
1961-62 Fiscal Year for 1962-63 Apportionment
Individual Instruction**

Type of district	Less than \$200 per A.D.A.	\$300-\$600 per A.D.A.	\$600-\$900 per A.D.A.	\$900-\$1,200 per A.D.A.	\$1,200-\$1,500 per A.D.A.	\$1,500-\$1,800 per A.D.A.	Over \$1,800 per A.D.A.	Total
Elementary-----	95	68	90	55	25	7	18	358
High school-----	8	11	29	41	10	7	7	113
Unified-----	8	13	17	30	17	5	12	102
Total districts-----	111	92	136	126	52	19	37	573
County School Service Fund-----	2	2	6	6	3	2	4	25
State totals-----	113	94	142	132	55	21	41	598

Special Day Classes

Type of district	Less than \$800 per A.D.A.	\$800-\$900 per A.D.A.	\$900-\$1,000 per A.D.A.	\$1,000-\$1,100 per A.D.A.	\$1,100-\$1,200 per A.D.A.	\$1,200-\$1,300 per A.D.A.	Over \$1,300 per A.D.A.	Total
Elementary-----	4	2	4	7	7	6	34	64
High school-----	1	1	1	1	--	2	5	11
Unified-----	1	1	1	--	8	7	17	35
Total districts-----	6	4	6	8	15	15	56	110
County School Service Fund-----	2	--	2	1	2	1	12	20
State totals-----	8	4	8	9	17	16	68	130

**ALLOWANCES FOR READERS, PURCHASE OF BRAILLE BOOKS, EQUIPMENT, AND OTHER
EXPENSES FOR BLIND PUPILS, 1961-62 FOR 1962-63 APPORTIONMENT, AS
REPORTED ON FORMS J-22 AND J-22.1 BY DISTRICTS AND COUNTY
SUPERINTENDENTS (EDUCATION CODE SECTION 18102 and 18103)**

Level	A. D. A. reported	Current expense	Cost of equipment	Total expense and equipment	Average total cost per unit of A. D. A.	Amount allowed	Average allowed per unit of A. D. A.
Elementary school districts.....	251	\$593.08	\$114.30	\$707.38	\$281.82	\$42,665	\$170.00
High school districts.....	80	317.81	32.99	350.80	438.50	14,335	179.19
Unified school districts.....	525	936.65	150.21	1,086.86	207.02	56,725	108.05
Junior college districts.....	1	5.86	--	5.86	5.86	395	395.00
Total districts.....	857	\$1,853.40	\$297.50	\$2,150.90	--	\$114,120	--
County School Service Fund.....	11	5.48	7.59	13.07	118.82	880	80.00
State totals.....	868	\$1,858.88	\$305.09	\$2,163.97	\$249.31	\$115,000	\$132.49

**NUMBER OF DISTRICTS AND COUNTIES WHICH FILED CLAIMS FOR EXCESS COST OF
EDUCATING MENTALLY RETARDED AND SEVERELY MENTALLY RETARDED MINORS**

**Classified by Average Unit Cost
1961-62 Fiscal Year for 1962-63 Apportionment**

**Mentally Retarded
(Education Code Section 6902)**

Type of district	Less than \$400 per A.D.A.	\$400-\$500 per A.D.A.	\$500-\$600 per A.D.A.	\$600-\$700 per A.D.A.	\$700-\$800 per A.D.A.	\$800-\$900 per A.D.A.	Over \$900 per A.D.A.	Total
Elementary-----	1	13	31	53	46	37	47	228
High school-----	--	2	8	16	22	19	38	105
Unified-----	--	1	4	12	24	16	26	83
Total districts-----	1	16	43	81	92	72	111	416
County School Service Fund-----	--	1	1	5	5	8	25	45
State totals-----	1	17	44	86	97	80	136	461

**Severely Mentally Retarded
(Education Code Section 6903)**

Type of district	Less than \$600 per A.D.A.	\$600-\$700 per A.D.A.	\$700-\$800 per A.D.A.	\$800-\$900 per A.D.A.	\$900-\$1,000 per A.D.A.	\$1,000-\$1,100 per A.D.A.	Over \$1,100 per A.D.A.	Total
Elementary-----	--	2	2	5	7	6	11	33
High school-----	--	--	--	--	--	--	1	1
Unified-----	--	1	--	1	--	2	13	17
Total districts-----	--	3	2	6	7	8	25	51
County School Service Fund-----	1	2	--	4	3	5	12	27
State totals-----	1	5	2	10	10	13	37	78

APPENDIX B

MAX RAFFERTY

*Superintendent of Public Instruction
and Director of Education*

FRANCIS W. DOYLE

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**California State Department of Education
Sacramento, California 95814**

DIVISION OF SPECIAL SCHOOLS AND SERVICES

*Bureau of Special Education
Charles W. Watson, Chief*

March 1964

TABULATIONS OF EXCESS COST OF EDUCATING MENTALLY RETARDED AND PHYSICALLY HANDICAPPED PUPILS

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**Prepared for the Division of Special Schools and Services by the Bureau of
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SUMMARY
PHYSICALLY HANDICAPPED, 1962-63
Remedial Class Instruction

Level	A.D.A. reported	Certificated salaries of instruction	Average salaries per unit of A.D.A.	Total current expense	Average current expense per unit of A.D.A.	Total excess expense	Average excess expense per unit of A.D.A.
Elementary school districts	2,147	\$2,582,060.00	\$1,202.64	\$3,083,827.00	\$1,436.34	\$3,083,827.00	\$1,436.34
High school districts	810	510,330.00	630.04	721,907.00	891.24	721,907.00	891.24
Unified school districts	4,807	4,423,461.00	920.21	5,662,546.00	1,177.98	5,662,546.00	1,177.98
County School Service Fund	174	251,812.00	1,447.20	286,374.00	1,645.83	195,491.00	1,123.51
State totals	7,938	\$7,767,663.00	\$978.54	\$9,754,654.00	\$1,228.86	\$9,663,771.00	\$1,217.41

SUMMARY
PHYSICALLY HANDICAPPED, 1962-63
 Individual Instruction

Level	A.D.A. reported	Certificated salaries of instruction	Average salaries per unit of A.D.A.	Total current expense	Average current expense per unit of A.D.A.	Total excess expense	Average excess expense per unit of A.D.A.
Elementary school districts.....	895	\$811,182.00	\$906.35	\$814,506.00	\$1,021.79	\$814,506.00	\$1,021.79
High school districts.....	682	707,322.00	1,037.13	810,414.00	1,188.29	810,414.00	1,188.29
Unified school districts.....	1,310	1,722,742.00	1,315.07	1,929,415.00	1,472.84	1,929,415.00	1,472.84
County School Service Fund							
Elementary.....	86	\$7,571.00	1,018.27	96,959.00	1,127.43	52,564.00	611.21
High.....	31	23,313.00	752.03	26,913.00	868.16	16,381.00	528.42
State totals.....	3,004	\$3,352,130.00	\$1,115.89	\$3,778,207.00	\$1,257.73	\$3,723,280.00	\$1,239.44

SUMMARY
PHYSICALLY HANDICAPPED, 1962-63
 Regular Class Instruction

Level	A.D.A. reported	Certificated salaries of instruction	Average salaries per unit of A.D.A.	Total current expense	Average current expense per unit of A.D.A.	Total excess expense	Average excess expense per unit of A.D.A.
Elementary school districts	440	\$357,218.00	\$811.86	*\$428,056.00	\$973.88	\$428,506.00	\$973.88
High school districts	341	132,401.00	388.27	217,253.00	637.11	217,253.00	637.11
Unified school districts	1,264	921,763.00	729.24	1,263,614.00	999.69	1,263,614.00	999.69
County School Service Fund	---	---	---	---	---	---	---
State totals	2,045	\$1,411,382.00	\$690.16	\$1,909,373.00	\$933.68	\$1,909,373.00	\$933.68

* Excludes expense of blind readers and certain other expenses incurred for blind pupil allowance (E.C. 18102-18103).
 Excludes expense of transporting minors who were handicapped in seeing and hearing, to integrated classes (E.C. 18060.2).

SUMMARY
PHYSICALLY HANDICAPPED, 1962-63
Special Day Classes

Level	A.D.A. reported	Certificated salaries of instruction	Average salaries per unit of A.D.A.	Total current expense	Average current expense per unit of A.D.A.	Total excess expense	Average excess expense per unit of A.D.A.
Elementary school districts	1,629	\$1,513,896.00	\$929.34	\$2,327,220.00	\$1,428.62	\$1,622,902.00	\$996.26
High school districts	107	100,729.00	941.39	137,627.00	1,286.23	75,577.00	706.33
Unified school districts	4,805	4,027,657.00	838.22	6,012,000.00	1,251.20	3,854,513.00	802.19
County School Service Fund							
Elementary	530	473,068.00	892.58	718,703.00	1,356.04	572,683.00	1,080.53
High	9	8,876.00	986.22	13,570.00	1,507.78	10,654.00	1,183.78
State totals	7,080	\$6,124,226.00	\$865.00	\$9,209,120.00	\$1,275.30	\$6,136,329.00	\$866.71

* Excludes expenses of transporting physically handicapped to special day classes.

Excludes expense of blind readers and certain other expenses incurred for blind pupils limited to amount computed for blind allowance.

**NUMBER OF DISTRICTS AND COUNTIES WHICH FILED CLAIMS FOR EXCESS COST
OF EDUCATING PHYSICALLY HANDICAPPED MINORS**

Classified by Average Unit Cost

1962-63 Fiscal Year for 1963-64 Apportionment

Regular Day Classes

Type of district	Less than \$100 per A.D.A.	\$100-\$200 per A.D.A.	\$200-\$300 per A.D.A.	\$300-\$400 per A.D.A.	\$400-\$500 per A.D.A.	\$500-\$600 per A.D.A.	Over \$600 per A.D.A.	Total
Elementary-----	4	7	14	2	4	5	29	65
High school-----	4	5	5	4	1	5	13	37
Junior College-----	--	1	--	--	--	1	--	2
Unified-----	2	3	2	3	2	4	19	35
Total districts-----	10	16	21	9	7	15	61	139
County School Service Fund-----	--	--	--	--	--	--	--	--
State totals-----	10	16	21	9	7	15	61	139

Remedial Day Classes

Type of district	Less than \$600 per A.D.A.	\$600-\$800 per A.D.A.	\$800-\$1,000 per A.D.A.	\$1,000-\$1,200 per A.D.A.	\$1,200-\$1,400 per A.D.A.	\$1,400-\$1,600 per A.D.A.	Over \$1,600 per A.D.A.	Total
Elementary-----	34	58	71	60	57	41	109	430
High school-----	11	10	14	6	2	2	14	59
Junior college-----	--	1	--	--	--	--	--	1
Unified-----	3	7	10	12	11	9	37	89
Total districts-----	48	76	95	78	70	52	160	579
County School Service Fund-----	2	1	3	2	1	1	12	22
State totals-----	50	77	98	80	71	53	172	601

**NUMBER OF DISTRICTS AND COUNTIES WHICH FILED CLAIMS FOR EXCESS COST
OF EDUCATING PHYSICALLY HANDICAPPED MINORS**

**Classified by Average Unit Cost
1962-63 Fiscal Year for 1963-64 Apportionment**

Individual Instruction

Type of district	Less than \$300 per A.D.A.	\$300-\$600 per A.D.A.	\$600-\$900 per A.D.A.	\$900-\$1,200 per A.D.A.	\$1,200-\$1,500 per A.D.A.	\$1,500-\$1,800 per A.D.A.	Over \$1,800 per A.D.A.	Total
Elementary-----	78	57	99	65	29	10	12	350
High school-----	8	10	33	38	20	3	6	118
Unified-----	9	9	22	34	11	10	12	107
Total districts-----	95	76	154	137	60	23	30	575
County School Service Fund-----	1	2	5	8	--	5	1	22
State totals-----	96	78	159	145	60	28	31	597

Special Day Classes

Type of district	Less than \$800 per A.D.A.	\$800-\$900 per A.D.A.	\$900-\$1,000 per A.D.A.	\$1,000-\$1,100 per A.D.A.	\$1,100-\$1,200 per A.D.A.	\$1,200-\$1,300 per A.D.A.	Over \$1,300 per A.D.A.	Total
Elementary-----	6	1	6	4	4	7	35	63
High school-----	1	1	1	--	--	2	6	11
Unified-----	--	1	1	2	5	2	24	35
Total districts-----	7	3	8	6	9	11	65	109
County School Service Fund-----	2	--	--	3	2	1	12	20
State totals-----	9	3	8	9	11	12	77	129

**CLASSIFICATION OF PHYSICALLY HANDICAPPED ENROLLMENTS BY DISTRICT AS REPORTED
ON FORM J-22 FOR FISCAL YEAR 1962-63 FOR 1963-64 APPORTIONMENT**

	Deaf	Blind	Aphasic	Cerebral palsied	Ortho- pedically handicapped	Hard of hearing	Speech defective	Partially seeing	Lowered organic vitality	Enrolled in special P.E. classes	Other illnesses and physical condition	Totals
Elementary												
Regular classes.....	43	175	--	9	26	125	4,173	82	15	--	61	4,709
Remedial classes.....	77	21	4	9	17	1,284	73,667	167	1	274	96	75,617
Individual instruction.....												
Home or institution.....	2	5	2	23	645	13	99	5	459	--	2,235	3,488
Preschool.....	26	--	--	4	10	9	56	5	4	--	2	116
Special day classes.....	264	133	24	683	357	254	196	91	216	27	376	2,641
Totals.....	412	354	30	728	1,055	1,685	78,191	350	695	301	2,770	86,571
High school												
Regular classes.....	25	57	--	11	206	78	394	41	75	365	96	1,348
Remedial classes.....	6	--	--	--	--	197	1,770	--	--	3,054	110	5,137
Individual instruction.....	2	--	--	11	466	2	39	2	735	3	2,177	3,437
Special day classes.....	8	19	--	34	29	28	13	18	2	144	94	380
Totals.....	41	76	--	56	701	305	2,216	61	812	3,566	2,477	10,311
Junior college												
Regular classes.....	24	2	--	--	--	--	--	--	--	--	--	26
Remedial classes.....	--	--	--	--	--	--	--	--	--	67	--	67
Totals.....	24	2	--	--	--	--	--	--	--	67	--	93
Unified												
Regular classes.....	183	331	15	27	204	338	717	294	115	375	59	2,658
Remedial classes.....	--	6	1	2	7	2,520	59,345	20	--	29,975	--	91,876
Individual instruction.....												
Home or institution.....	--	2	2	54	1,420	2	16	69	1,603	--	3,067	6,235
Preschool.....	--	--	--	--	--	1	24	--	--	--	6	31
Special classes.....	893	370	2	1,479	1,201	294	113	177	2,098	51	251	6,929
Totals.....	1,076	709	20	1,562	2,832	3,155	60,215	560	3,916	30,401	3,383	107,729
Grand totals.....	1,533	1,141	50	2,346	4,588	5,146	140,622	971	5,323	34,335	8,630	204,704

**CLASSIFICATION OF PHYSICALLY HANDICAPPED ENROLLMENT BY DISTRICTS AS REPORTED
BY COUNTY SUPERINTENDENTS ON FORM J-22.1 FOR FISCAL YEAR
1962-63 FOR 1963-64 APPORTIONMENT**

	Deaf	Blind	Aphasic	Cerebral palsied	Ortho- pedically handicapped	Hard of hearing	Speech defective	Partially seeing	Lowered organic vitality	Enrolled in special P.E. classes	Other illnesses and physical condition	Totals
Elementary												
Regular classes.....	--	--	--	--	--	--	--	--	--	--	--	--
Remedial classes.....	--	--	1	--	--	115	5,060	51	--	--	--	5,227
Individual instruction.....	--	--	--	10	35	2	--	--	180	--	175	402
Preschool.....	--	--	--	--	--	--	1	--	--	--	--	1
Special day classes.....	81	37	5	193	174	54	7	10	--	--	162	723
Totals.....	81	37	6	203	209	171	5,068	61	180	--	337	6,353
High school												
Regular classes.....	--	--	--	--	--	--	--	--	--	--	--	--
Remedial classes.....	--	--	--	--	10	--	--	--	63	--	79	152
Individual instruction.....	--	--	--	6	2	--	--	--	--	--	--	8
Special day classes.....	--	--	--	--	--	--	--	--	--	--	--	--
Totals.....	--	--	--	6	12	--	--	--	63	--	79	160

**CLASSIFICATION OF PHYSICALLY HANDICAPPED ENROLLMENT BY STATE TOTALS AS
FORWARDED BY DISTRICT ON FORM J-22 AND BY COUNTY SUPERINTENDENTS
OF SCHOOLS ON FORM J-22.1 FOR THE FISCAL YEAR
1962-63 FOR 1963-64 APPORTIONMENT**

	Deaf	Blind	Aphasic	Cerebral palsied	Ortho- pedically handicapped	Hard of hearing	Speech defective	Partially seeing	Lowered organic vitality	Enrolled in special P.E. classes	Other illnesses and physical condition	Totals
Regular classes.....	275	565	15	47	436	541	5,284	417	205	740	216	8,741
Remedial classes.....	83	27	6	11	24	4,116	139,842	238	1	33,303	208	177,867
Individual instruction.....												
Home or institution.....	4	7	4	98	2,576	19	154	76	3,040	3	7,733	13,714
Preschool.....	26	--	--	4	10	10	81	5	4	--	8	148
Special day classes.....	1,246	579	31	2,395	1,763	630	329	296	2,316	289	883	10,767
State totals.....	1,634	1,178	56	2,555	4,809	5,316	146,690	1,032	5,566	34,335	9,046	211,217

**ALLOWANCES FOR READERS, PURCHASE OF BRAILLE BOOKS, EQUIPMENT, AND OTHER EXPENSES
FOR BLIND PUPILS, 1962-63, FOR 1963-64 APPORTIONMENT, AS REPORTED ON
FORMS J-22 AND J-22.1 BY DISTRICT AND COUNTY SUPERINTENDENTS
(EDUCATION CODE SECTIONS 18102 AND 18103)**

Level	A.D.A. reported	Current expense	Cost of equipment	Total expense and equipment	Average total cost per unit of A.D.A.	Amount allowed	Average allowed per unit of A.D.A.
Elementary school districts.....	262	\$72,624.00	\$9,656.00	\$82,280.00	\$314.05	\$34,158.00	\$130.37
High school districts.....	96	27,183.00	6,118.00	33,302.00	346.90	13,490.00	140.53
Unified school districts.....	579	78,716.00	10,066.00	88,781.00	153.34	35,742.00	61.73
Junior college districts.....	2	1,169.00	--	1,169.00	584.50	564.00	282.00
Total districts.....	939	\$179,692.00	\$25,840.00	\$205,532.00	\$218.88	\$83,955.00	\$89.41
County School Service Fund.....	15	\$8,177.00	\$378.00	\$8,555.00	\$570.33	\$3,046.00	\$203.07
State totals.....	954	\$187,869.00	\$26,218.00	\$214,087.00	\$224.41	\$87,000.00	\$91.20

SPECIAL EDUCATION—TABLE A
MASTER ENROLLMENT PROJECTION
 California's Public School Projected Enrollment: Regular Pupils K-12 and Special Pupils Enrolled
 in Special Day Classes for the Mentally Retarded and Physically Handicapped
 (Enrollment in Classes for Educationally Handicapped Beginning 1965)

A	B	C	D	E	F
Year	Projected total fall enrollment ¹	Percentage of all special education pupils ²	Projected fall enrollment in special classes ³	Percent of increase of special class enrollment over previous year ⁴	Projected fall enrollment K-12 regular classes ⁵
1964-65.....	4,092,542	2.561%	102,192	12.995%	3,990,350
1965-66.....	4,257,967	2.842	117,667	15.143	4,140,300
1966-67.....	4,414,367	2.947	126,367	7.393	4,288,000
1967-68.....	4,594,763	3.063	135,663	7.356	4,429,100
1968-69.....	4,711,385	3.218	140,885	8.271	4,564,500
1969-70.....	4,853,960	3.432	161,060	9.650	4,692,900
1970-71.....	4,988,756	3.656	175,956	9.248	4,812,800
1971-72.....	5,121,715	3.874	191,015	8.558	4,930,700
1972-73.....	5,248,814	4.075	205,514	7.590	5,043,300
1973-74.....	5,379,662	4.255	219,562	6.835	5,160,100
1974-75.....	5,503,082	4.403	232,082	5.702	5,271,000

¹ Projected total fall enrollment, K-12, obtained by adding the projected enrollment in special day class programs for the mentally retarded, the physically handicapped, and the educationally handicapped (beginning with 1965) (column D) to the projected enrollment, K-12, of pupils in regular day classes (column F).

² The records of enrollment in special day classes for the physically handicapped and for the retarded over the past five years were analyzed to develop a history and base line for future projections. These projections attempt to take into consideration important variables such as: (1) the change in the severely mentally retarded program from a permissive basis to a mandatory basis in 1964; (2) the beginning of large-scale programs for the educationally handicapped in 1965; (3) the availability of newly completed physical facilities for the educationally handicapped in

1968; (4) the availability of an increased supply of special education teachers in 1968; and (5) the increased numbers of severely retarded to be given local help under proposals now being developed and expected to become effective during 1968.

³ Projected fall enrollment figures obtained by applying the percentages developed in column C to the total statewide enrollment projections presented in column B.

⁴ Developed by converting the numerical pupil increase in projected fall enrollment in column D to a percentage increase.

⁵ Basic data developed by the Department of Finance, Population Research Unit, July 1964.

DEAF
Predicted Increase in Enrollment and Anticipated Number of Special Teachers Needed for Deaf Minors for the 10-year Period 1964-65 Through 1974-75

School year	Predicted total school enrollment K-12*	Predicted enrollment of deaf minors	Anticipated total number of special teachers needed (1 teacher—8 pupils) class size or caseload used as divisor	New teachers needed to replace those of last year not returning to teaching for the year in question (5 percent)	New teachers needed because of the increase in enrollment over the preceding year	Total number of new teachers needed	Total number of new classrooms needed
1964-65	4,092,542	2,623	325	16	32	48	32
1965-66	4,257,917	2,925	366	18	38	56	38
1966-67	4,414,367	3,235	404	20	39	59	39
1967-68	4,564,763	3,554	444	22	40	62	40
1968-69	4,711,385	3,885	486	24	41	65	41
1969-70	4,853,960	4,225	518	26	43	69	43
1970-71	4,988,756	4,572	572	29	43	72	43
1971-72	5,121,715	4,929	616	31	45	76	45
1972-73	5,248,814	5,292	662	33	45	78	45
1973-74	5,379,662	5,671	708	35	47	82	47
1974-75	5,503,082	6,053	757	38	48	86	48

* Projected total fall enrollment, K-12, obtained by adding the projected enrollment in special day class programs for the mentally retarded, the physically handicapped, and the educationally handicapped (beginning with 1965) (column D) to the

projected enrollment, K-12, of pupils in regular day classes (column F). (See master enrollment projection.)

HARD OF HEARING
 Predicted Increase in Enrollment and Anticipated Number of Special Teachers Needed for
 Hard-of-hearing Minors for the 10-year Period 1964-65 Through 1974-75

School year	Predicted total school enrollment K-12*	Predicted enrollment of hard of hearing minors	Anticipated total number of special teachers needed (10), class size or caseload used as divisor	New teachers needed to replace those of last year not returning to teaching for the year in question (5 percent)	New teachers needed because of the increase in enrollment over the preceding year	Total number of new teachers needed	Total number of new classrooms needed
1964-65.....	4,092,542	1,821	182	9	71	80	71
1965-66.....	4,257,967	2,512	251	12	69	81	69
1966-67.....	4,414,367	3,244	324	16	73	89	73
1967-68.....	4,564,763	4,017	402	20	77	97	77
1968-69.....	4,711,385	4,829	483	24	81	105	81
1969-70.....	4,853,960	5,679	568	28	85	113	85
1970-71.....	4,988,756	6,560	656	32	88	120	88
1971-72.....	5,121,715	7,478	748	37	92	129	92
1972-73.....	5,248,814	8,451	845	42	97	139	97
1973-74.....	5,379,662	9,468	947	47	102	149	102
1974-75.....	5,503,082	10,511	1,051	52	104	156	104

SPEECH AND HEARING HANDICAPPED
Predicted Increase in Enrollment and Anticipated Number of Speech and Hearing Specialists
Needed for the 10-year Period 1964-65 Through 1974-75

A	B	C	D	E	F	G	H	I
Year	Projected enrollment K-12 ¹	Potential enrollment of speech and hearing handicapped minors ²	Percent actually enrolled	Estimated actual enrollment	Estimated number of speech and hearing specialists needed ³	Estimated increase needed over previous year	Estimated replacement need ⁴	Estimated total annual need ⁵
1964-65	4,092,542	204,627	59%	120,729	1,006	100	150	250
1965-66	4,257,907	212,898	63	133,885	1,115	109	167	276
1966-67	4,414,307	220,718	67	147,881	1,232	117	184	301
1967-68	4,564,763	228,238	71	162,048	1,350	118	202	320
1968-69	4,711,385	235,569	75	176,676	1,472	122	220	342
1969-70	4,853,960	242,698	79	191,731	1,597	125	239	364
1970-71	4,988,756	249,437	83	207,032	1,725	128	258	386
1971-72	5,121,715	256,085	87	222,793	1,856	131	278	409
1972-73	5,248,814	262,440	91	238,820	1,990	134	298	432
1973-74	5,379,662	268,983	95	255,533	2,129	139	319	458
1974-75	5,503,082	275,154	100	273,154	2,292	163	343	506
Totals						1,386	2,658	4,044

¹ Total school (K-12) A.D.A. predictions taken from Department of Finance, Budget Division, Financial Research Section, July 1964.

² Based on estimated 5 percent incidence rate in school population.

³ Based on estimated total annual enrollment of 120 children per speech and hearing specialist. Note: Maximum caseload cannot exceed 90 children at any given time.

⁴ Based on estimated 15 percent replacement need.

⁵ Represents total of columns G + H.

VISUALLY HANDICAPPED
Predicted Increase in Enrollment and Number of Classes for the Visually Handicapped for the 10-year Period 1964-65 Through 1974-75

Year	BLIND		PARTIALLY SEEING		VISUALLY HANDICAPPED		Total projected number of classes ³	Increase over previous year	Replacement 10 percent	Total needs
	Projected potential percentage of blind	Projected number of blind	Projected potential percentage of partially seeing	Projected number of partially seeing	Total potential percentage of blind and partially seeing ²	Total projected potential number of blind and partially seeing ²				
1964-65-----	.0210	859	.0420	1,719	.0630	2,578	258	47	26	73
1965-66-----	.0239	1,017	.0468	1,993	.0707	3,010	301	43	30	73
1966-67-----	.0268	1,183	.0516	2,278	.0784	3,461	346	45	35	80
1967-68-----	.0297	1,355	.0564	2,575	.0861	3,930	393	47	39	86
1968-69-----	.0326	1,536	.0612	2,883	.0938	4,419	442	49	44	93
1969-70-----	.0355	1,723	.0660	3,204	.1015	4,927	493	51	49	100
1970-71-----	.0384	1,915	.0708	3,532	.1092	5,447	545	52	54	106
1971-72-----	.0413	2,115	.0756	3,872	.1169	5,987	599	54	60	114
1972-73-----	.0442	2,320	.0804	4,220	.1246	6,540	654	55	65	120
1973-74-----	.0471	2,534	.0852	4,583	.1323	7,117	712	58	71	129
1974-75-----	.0500	2,751	.0900	4,953	.1400	7,704	770	58	77	135
Totals-----								559	550	1,109

¹ Projected total fall enrollment, K-12, obtained by adding the projected enrollment in special day class programs for the mentally retarded, the physically handicapped, and the educationally handicapped (beginning with 1965) to the projected enrollment, K-12, of pupils in regular day classes. (See master enrollment projection.)

² Blind plus partially sighted.

³ Ten pupils per class.

ORTHOPEDEICALLY HANDICAPPED (Including the Cerebral Palsied)

Predicted Increase in Enrollment and Anticipated Number of Special Teachers Needed for the Orthopedically Handicapped, Including the Cerebral Palsied, Minors for the 10-year Period 1964-65 Through 1973-74

A Year	B Projected K-12 population in regular classes ¹	C Projected potential percentage OH and CP ²	D Projected Enrollment in special classes OH and CP ³	E Projected classes 12 per class ⁴	F Increase over previous year	G Replacement ⁵ 5 percent	H Projected total increase in classes-- teacher needs
1964-65	4,092,542	.110	4,502	375	52	19	71
1965-66	4,257,967	.115	4,896	408	33	20	53
1966-67	4,414,367	.120	5,297	441	33	22	55
1967-68	4,564,763	.125	5,705	475	34	24	58
1968-69	4,711,385	.130	6,125	510	35	25	60
1969-70	4,853,960	.135	6,553	546	36	27	63
1970-71	4,988,756	.140	6,984	582	36	29	65
1971-72	5,121,715	.145	7,426	619	37	31	68
1972-73	5,248,814	.150	7,864	655	36	33	69
1973-74	5,379,662	.155	8,338	695	40	35	75
1974-75	5,503,082	.160	8,805	734	39	36	75
Total					411	301	712

¹ Total school (K-12) A.D.A. predictions taken from Department of Finance, Budget Division, Financial Research Section, July 1964.

² Anticipated incidence percentage of pupils enrolled in special day classes. This figure does not include those pupils enrolled in home and hospital programs, residential schools or regular classes.

³ Includes only pupils enrolled in special day schools and classes for the orthopedically handicapped, including the cerebral palsied.

⁴ Based on maximum enrollment as authorized under Title V, California Administrative Code, Section 193. (The state average is 12 pupils per class.)

⁵ Based on an estimated replacement ratio of teachers during the years 1953-1963.

MENTALLY RETARDED

TABLE I

Summary of Teacher Needs for the Mentally Retarded Based on Predicted Increase of Classes, Replacement Needs, and Training-Placement Loss

A Year	B Educable mentally retarded	C Trainable mentally retarded	D Total	A Year	B Educable mentally retarded	C Trainable mentally retarded	D Total
1964-65-----	1,024	187	1,211	1971-72-----	1,452	260	1,712
1965-66-----	974	144	1,118	1972-73-----	1,421	256	1,677
1966-67-----	1,108	162	1,270	1973-74-----	1,489	271	1,760
1967-68-----	1,174	184	1,358	1974-75-----	1,540	287	1,827
1968-69-----	1,243	211	1,454	Total-----	14,115	2,430	16,545 ¹
1969-70-----	1,315	227	1,542				
1970-71-----	1,375	241	1,616				

¹ Grand total of persons to be trained during the 10-year period to ensure teachers for increase of classes in program for the mentally retarded.

EDUCABLE MENTALLY RETARDED
Rate of Growth of Enrollment and Number of Classes for the Educable Mentally
Retarded for the 10-year Period 1953-54 Through 1963-64

School year	Enrollment in special classes ¹	Approximate number of classes ²	Increase in enrollment over previous year	Approximate increase in classes over previous year ²	Approximate percent of growth in classes over previous year
1953-54	15,699	1,046	1,939	130	12.4
1954-55	17,638	1,176	1,808	120	10
1955-56	19,446	1,296	3,511	235	18
1956-57	22,957	1,531	3,736	248	16
1957-58	26,693	1,779	3,201	214	12
1958-59	29,894	1,993	4,072	271	13
1959-60	33,966	2,264	3,455	231	10
1960-61	37,421	2,495	4,639	309	12
1961-62	42,060	2,804	2,948	197	7
1962-63	45,008	3,001	3,380	225	7.5
1963-64	48,388	3,226			

¹ October Enrollment Report.

² The number of classes was ascertained by dividing the average class size (15) into the number of pupils enrolled.

EDUCABLE MENTALLY RETARDED

TABLE I

Predicted Increase in Enrollment and Number of Classes for the Educable Mentally Retarded for the 10-year Period 1964-65 Through 1974-75

A Year	B Potential enrollment in classes for EMR ¹	C Predicted percentage of potential that will be enrolled ²	D Predicted enrollment	E Predicted number of classes ³	A Year	B Potential enrollment in classes for EMR ¹	C Predicted percentage of potential that will be enrolled ²	D Predicted enrollment	E Predicted number of classes ³
1964-65-----	81,850	65	53,202	3,547	1970-71-----	99,775	81	80,817	5,388
1965-66-----	85,159	66	56,204	3,747	1971-72-----	102,434	84	86,045	5,737
1966-67-----	88,287	69	60,915	4,061	1972-73-----	104,976	86	90,279	6,018
1967-68-----	91,295	72	65,732	4,382	1973-74-----	107,593	88	94,681	6,312
1968-69-----	94,223	75	70,667	4,711	1974-75-----	110,061	90	99,055	6,604
1969-70-----	97,079	78	75,721	5,050					

¹ 2 percent of enrollment.

² Based on increase of professional personnel available, teachers, facilities, etc. Estimated progressive increase to 90 percent of potential.

³ Average enrollment of 15 pupils per class.

EDUCABLE MENTALLY RETARDED
TABLE II
Predicted Teacher Needs for Educable Mentally Retarded for the 10-year Period 1964-65
Through 1974-75 Based on Predicted Increase in Number of Classes
Each Year, Replacement Needs, and Training-placement Loss

A Year	B Predicted number of classes	C Predicted increase in classes ¹	D Replacement needs ²	E Training-placement loss ³	F Total needs for training ⁴
1964-65-----	3,547	321	532	171	1,024
1965-66-----	3,747	200	562	152	914
1966-67-----	4,061	314	609	185	1,108
1967-68-----	4,382	321	657	196	1,174
1968-69-----	4,711	329	707	207	1,243
1969-70-----	5,050	339	757	219	1,315
1970-71-----	5,388	338	808	229	1,375
1971-72-----	5,737	349	861	242	1,452
1972-73-----	6,018	281	903	237	1,421
1973-74-----	6,312	294	947	248	1,489
1974-75-----	6,604	292	991	257	1,540

¹ Number of classes increased over the number in operation during the previous year.

² Based on 15 percent of the number of classes in operation.

³ Represents the loss of personnel receiving training but not accepting placement in the area of training (20 percent of C + D).

⁴ Represents total of columns C + D + E.

TRAINABLE MENTALLY RETARDED

Rate of Growth of Enrollment and Number of Classes for the Trainable (Severely) Mentally Retarded for the 10-year Period 1953-54 Through 1963-64

School year	Enrollment in special classes	Number of classes	Increase in enrollment over previous year	Increase in number of classes over previous year	Percent of growth in classes over previous year
1953-54	628	56	--	--	--
1954-55	929	83	301	27	47
1955-56	1,128	100	199	17	20
1956-57	1,399	124	271	24	24
1957-58	1,707	132	308	28	22
1958-59	2,000	183	293	31	20
1959-60	2,375	208	375	25	16
1960-61	2,748	246	373	38	18
1961-62	3,264	294	516	48	20
1962-63	3,720	336	456	40	14
1963-64	4,207	382	487	46	14

TRAINABLE MENTALLY RETARDED

TABLE I

Predicted Increase in Enrollment and Number of Classes for the Trainable Mentally Retarded Pupils for the 10-year Period 1964-65 Through 1974-75

A	B	C	D	E	A	B	C	D	E
Year	Predicted enrollment ¹	Predicted percentage of potential that will be enrolled ²	Predicted enrollment	Predicted number of classes ⁴	Year	Predicted enrollment ¹	Predicted percentage of potential that will be enrolled ²	Predicted enrollment	Predicted number of classes ⁴
1964-65-----	8,185	63	5,156	468	1970-71-----	14,906	62	9,278	843
1965-66-----	8,516	66	5,620	511	1971-72-----	15,365	66	10,140	922
1966-67-----	8,829	70	6,180	562	1972-73-----	15,746	69	10,864	988
1967-68-----	9,129	75	6,846	622	1973-74-----	16,138	72	11,619	1,056
1968-69-----	14,134 ²	54 ²	7,632	694	1974-75-----	16,509	75	12,381	1,126
1969-70-----	14,561	58	8,445	768					

¹ 1964-65 through 1967-68, Incidence of 2 per 1,000 school enrollment. Due to influence of moving pupils from state hospitals into foster homes, the incidence figure is changed to 3 per 1,000.

² Pattern over last 10 years indicates gradual increase in potential. Note this change in 1969-70 due to influence of changed incidence.

³ Based on percentage of potential.

⁴ Based on 10 pupils per class.

TRAINABLE MENTALLY RETARDED

TABLE II

Predicted Teacher Needs for Trainable Mentally Retarded for the 10-year Period 1964-65
Through 1974-75 Based on Predicted Increase in Number of Classes Each
Year, Replacement Needs, and Training-placement Loss

A Year	B Predicted number of classes	C Predicted increase in classes ¹	D Replacement needs ²	E Training-placement loss ³	F Total needs for training ⁴
1964-65	468	86	70	31	187
1965-66	511	43	77	24	144
1966-67	562	51	84	27	162
1967-68	622	60	93	31	184
1968-69	694	72	104	35	211
1969-70	678	74	115	38	227
1970-71	843	75	126	40	241
1971-72	922	79	138	43	260
1972-73	988	66	148	42	256
1973-74	1,056	68	158	45	271
1974-75	1,126	70	169	48	287

¹ Number of classes increased over the number in operation during the previous year.

² Based on 15 percent of the number of classes in operation.

³ Represents the loss of personnel receiving training but not accepting placement in the area of training (20 percent of C + D).

⁴ Represents total of columns C + D + E.

EDUCATIONALLY HANDICAPPED

TABLE I

Predicted Increase in Enrollment and Number of Classes for the Educationally Handicapped Pupils for the 10-year Period 1964-65 Through 1974-75

A School year	B Potential enrollment ¹	C Percent of potential enrollment ²	D Predicted actual enrollment	A School year	B Potential enrollment ¹	C Percent of potential enrollment ²	D Predicted actual enrollment
1962-63		Pilot programs only	100 (est.)	1969-70	97,079	48	46,598
1963-64		AB 464 effective	500 (est.)	1970-71	99,775	57	56,872
1964-65		6	4,911	1971-72	102,434	65	66,582
1965-66	81,850	12	10,219	1972-73	104,976	72	75,583
1966-67	85,159	22	19,423	1973-74	107,593	76	81,771
1967-68	88,287	30	27,388	1974-75	110,061	80	88,049
1968-69	91,295	38	35,804				
1969-70	94,223						

¹ Based on legal limit of 2 percent of total public school enrollment K-12. Potential enrollment figures are for the fall of each school year.

² Annual increases are not linear because an attempt has been made to consider possible future factors such as: transportation allowances, state building aid, teacher availability, secondary level expansion, etc.

EDUCATIONALLY HANDICAPPED

TABLE II

Predicted Teacher Needs for Educationally Handicapped for the 10-year Period 1964-65
Through 1974-75 Based on Predicted Increase in Number of Classes Each
Year, Replacement Needs, and Training-placement Loss

A School year	B Predicted actual enrollment	C Total teacher requirement ¹	D Increased teachers required for growth	E Teachers required for replacement ²	F Teachers required for training loss ³	G Total annual new teacher training requirement
1964-65	4,911	491	--	74	--	74
1965-66	10,219	1,022	531	153	137	921
1966-67	19,423	1,942	920	291	242	1,453
1967-68	27,388	2,739	797	411	242	1,450
1968-69	35,804	3,580	841	537	276	1,654
1969-70	46,598	4,660	1,080	699	356	2,135
1970-71	56,872	5,687	1,027	853	376	2,256
1971-72	66,582	6,658	971	999	394	2,364
1972-73	75,583	7,558	900	1,134	407	2,441
1973-74	81,771	8,177	619	1,226	369	2,214
1974-75	88,049	8,805	628	1,321	390	2,339
Grand total			8,314	7,698	3,189	19,201

¹ Since programs include provisions for special classes, learning disability groups, and out-of-school instruction, the prediction was developed using a ratio of 1 teacher for 10 pupils.

² 15 percent of current total requirement ($0.15 \times \text{column C} = \text{column E}$).
³ 20 percent of current increase plus replacement needs ($0.20 \times [\text{column D} + \text{column E}] = \text{column F}$).

SUMMARY
SPECIAL TRAINING SCHOOLS AND CLASSES, 1962-63
 Mentally Retarded Minors
 (Education Code Section 6902)

Items	Level	A.D.A. reported	Certificated salaries of instruction	Average salaries per unit of A.D.A.	Total current expense	Average current expense of education per A.D.A.		Excess expense	Average excess expense per A.D.A.
						Special classes	Normal		
231	Elementary school districts	10,609	\$6,188,995.00	\$583.37	\$8,175,291.00	\$770.60	\$356.03	\$4,398,174.00	\$414.57
104	High school districts	5,710	3,449,433.00	604.10	5,102,811.00	893.66	540.51	2,016,481.00	353.15
83	Unified school districts	24,933	15,262,296.00	612.13	20,324,253.00	815.15	435.29	9,470,925.00	379.86
45	County School Service Fund								
	Elementary	2,592	1,648,268.00	635.91	2,429,660.00	937.37	413.34	1,358,283.00	524.03
	High	26	15,134.00	582.08	24,722.00	950.85	324.00	16,298.00	626.85
	State totals	43,870	\$26,564,120.00	\$605.52	\$36,050,737.00	\$821.90	\$428.46	\$17,260,161.00	\$393.44

SUMMARY
SPECIAL TRAINING SCHOOLS AND CLASSES, 1962-63
 Severely Mentally Retarded
 (Education Code Section 6903)

Items	Level	A.D.A. reported	Certificated salaries of instruction	Average salaries per unit of A.D.A.	Total current expense	Average current expense of education per A.D.A.		Excess expense	Average excess expense per A.D.A.
						Special classes	Normal		
32	Elementary school districts	738	\$507,375.00	\$687.50	\$762,890.00	\$1,033.73	\$357.15	\$499,319.00	\$676.58
12	High school districts	35	20,627.00	589.34	30,008.00	857.37	529.83	11,464.00	327.54
18	Unified school districts	1,286	986,288.00	761.02	1,469,470.00	1,133.85	438.31	901,415.00	695.54
28	County School Service Fund	1,569	1,102,343.00	702.58	1,639,615.00	1,045.01	332.45	1,118,005.00	712.56
	State totals	3,638	\$2,616,633.00	\$719.25	\$3,901,983.00	\$1,072.56	\$377.07	\$2,530,203.00	\$695.49

* Excludes expenses of transporting severely mentally retarded minors to special training schools and classes.

**NUMBER OF DISTRICTS AND COUNTIES WHICH FILED CLAIMS FOR EXCESS COST OF
EDUCATING MENTALLY RETARDED AND SEVERELY MENTALLY RETARDED MINORS**

**Classified by Average Unit Cost
1962-63 Fiscal Year for 1963-64 Apportionment
Mentally Retarded
(Education Code Section 6902)**

Type of district	Less than \$400 per A.D.A.	\$400-\$500 per A.D.A.	\$500-\$600 per A.D.A.	\$600-\$700 per A.D.A.	\$700-\$800 per A.D.A.	\$800-\$900 per A.D.A.	Over \$900 per A.D.A.	Total
Elementary-----	1	5	21	50	49	47	58	231
High school-----	1	1	3	10	22	20	55	112
Unified-----	--	--	2	10	20	24	31	87
Total districts-----	2	6	26	70	91	91	144	430
County School Service Fund-----	--	1	1	2	5	7	30	46
State totals-----	2	7	27	72	96	98	174	476

**Severely Mentally Retarded
(Education Code Section 6903)**

Type of district	Less than \$600 per A.D.A.	\$600-\$700 per A.D.A.	\$700-\$800 per A.D.A.	\$800-\$900 per A.D.A.	\$900-\$1,000 per A.D.A.	\$1,000-\$1,100 per A.D.A.	Over \$1,100 per A.D.A.	Total
Elementary-----	1	1	--	3	9	4	14	32
High school-----	--	--	1	--	2	--	--	3
Unified-----	--	--	2	--	1	4	14	21
Total districts-----	1	1	3	3	12	8	28	56
County School Service Fund-----	1	2	2	5	2	7	12	31
State totals-----	2	3	5	8	14	15	40	87

**SUMMARY OF TRANSPORTATION OF PHYSICALLY HANDICAPPED AND SEVERELY
MENTALLY RETARDED MINORS AS REPORTED ON FORM J-221
BY DISTRICTS AND COUNTY SUPERINTENDENTS
1962-63 for 1963-64 Apportionment**

Type of district	Average daily attendance			Current expense				Total current expense	Expense per unit of A.D.A.
	Physically handicapped	Severely mentally retarded	Total A.D.A.	Physically handicapped	Expense per unit of A.D.A.	Severely mentally retarded	Expense per unit of A.D.A.		
Elementary school districts-----	2,120	703	2,823	\$785,967.00	\$370.74	\$220,738.00	\$313.99	\$1,006,705.00	\$356.61
High school districts-----	170	47	217	58,914.00	346.55	18,290.00	389.15	77,204.00	355.78
Unified school districts-----	4,626	1,363	5,989	1,805,207.00	390.23	510,172.00	374.30	2,315,379.00	386.61
County School Service Fund-----	495	1,518	2,013	216,061.00	436.49	475,928.00	313.52	691,989.00	343.76
State totals-----	7,411	3,631	11,042	\$2,866,149.00	\$386.74	\$1,225,128.00	\$337.41	\$4,091,277.00	\$370.52

APPENDIX C

CALIFORNIA STATE
DEPARTMENT OF EDUCATION
FORM NO. J-22 (REV. 1-63)

REPORT OF EXCESS EXPENSE OF EDUCATING PHYSICALLY HANDICAPPED AND MENTALLY RETARDED PUPILS

For the fiscal year beginning July 1, 19..... and ending June 30, 19.....

(Please read instructions carefully before making any entries)

DISTRICT.....

COUNTY.....

Grade span of attendance and expenditure data:..... through.....

(Enter lowest and highest grades; see General Instruction 9)

GENERAL INSTRUCTIONS

1. **Definition.** This report covers education of both physically handicapped minors and mentally retarded minors, except as otherwise specifically designated.

2. **Code References.** Legal provisions relating to the education of exceptional children and the allowance of state aid for the excess expense therefore are contained in Education Code Sections 6801 through 6821, 6901 through 6916, 17301, 17303(c), 11201 through 11203, 18060, 18062, 18102, 18106, 18152, 18156, 18202 through 18203 and 18206.

Sections 180 through 199.6, California Administrative Code, Title 5, set forth rules and regulations governing the education of mentally retarded minors, physically handicapped minors, and severely mentally retarded minors, respectively.

3. **District Reports.** The city or district superintendent of schools, or the principal in districts not employing a superintendent, or other employee acceptable to the county superintendent of schools, shall prepare this report, in quadruplicate, immediately upon the close of the fiscal year in each district which has incurred excess expense for the education of exceptional children, retaining one copy in the district files and forwarding the original and two copies to the county superintendent of schools.

4. **Approval and Transmittal.** The county superintendent of schools, after certifying his approval, shall transmit the original and one copy of each report to the Bureau of School Appointments and Reports, Division of Public School Administration, State Department of Education, Sacramento 14, California, not later than September 1.

5. Definition of Categories.

a. **Regular Day Classes (Column 2, Page 2).** This category shall include the attendance of physically handicapped minors enrolled in classes established for normal (nonhandicapped) pupils. The excess expense for physically handicapped pupils in regular day classes may include only identifiable special expenses, such as special supplies, special teaching aids, supplemental teaching (the supplemental teacher must be available for a minimum school day in the program and must possess a valid credential for teaching the type of exceptional children enrolled in such classes), and special transportation. No part of the regular teacher's salary can be included as excess expense in such programs.

This category shall also include the attendance of pupils who are partially seeing, blind, hard of hearing, or deaf enrolled in "Integrated Classes" (Education Code Section 18060.2). "Current Expenses" may include the salary of the properly credentialed "special" teacher that provided supplementary instruction and certain other expenses pertaining to the integrated class only in Items B-500, 600, 700 and 800.

b. **Remedial Classes (Column 3, Page 2).** "Remedial" classes as herein employed include special classes providing remedial instruction for physically handicapped pupils who are excused in small numbers for a portion of a class period from regular classes, special day classes and special training schools and classes for mentally retarded and severely mentally retarded, without appreciable reduction in the costs of such classes (Education Code Section 6816). The total current expenses incurred for remedial classes are defined as "excess expense."

c. **Individual Instruction (Column 4, Page 2).** Individual instruction of physically handicapped minors is furnished at the home or in an institution. It may also be furnished at school for pre-school children with speech disorders or defects (Ed. Code Section 6916). One hour of teaching time counts as one day of attendance for this category only. Any period of teaching time shall be counted for only one pupil regardless of the presence of any other pupil during any or all of this period. The total current expenses of individual instruction are defined as "excess expense."

d. **Other Special Day Classes (Column 5, Page 2).** This category shall include all other schools and classes for physically handicapped minors. Special day classes are organized for small groups of physically handicapped employing an additional special teacher and usually held for a minimum school day.

The excess expenses of educating physically handicapped minors in this category shall be determined, as indicated in this report form, by comparison of the current expense per unit of average daily attendance of pupils in this category with the current expense per unit of average daily attendance of "normal" pupils.

e. **Special Training Schools and Classes (Column 6 and 7, Page 2).** The excess cost of educating mentally retarded minors shall be determined, as indicated in this report form, by comparison of the current expense per unit of average daily attendance of pupils in special training schools and classes with the current expense per unit of average daily attendance of "normal" pupils.

For further classification and identification by category for physically handicapped minors, refer to Chapter 4 of the *Handbook on Attendance Accounting*, in California Public Schools.

NOTE: Expenses of educating pupils with mild neurological impairment may not be reported as physically handicapped. (See AGO No. 4-217 dated 12-27-62.)

6. **Allowance for Blind Pupils.** An additional allowance is provided for certain expenses incurred for blind pupils in either of the 5 categories of physically handicapped. Certain expenses are defined as follows:

a. **Current Expense (Item E-1).** Expenditures for providing a reader to assist blind pupils in their studies, the purchase of braille books, the cost of transcribing ink print materials into braille, the purchase or making of sound recordings, and the purchase of special supplies.

b. **Equipment (Item E-2).** Expenditures for purchasing equipment for blind pupils only.

7. **Average Daily Attendance in Whole Numbers.** Average daily attendance shall be computed in whole numbers and fractions precisely as the spaces allow.

8. **Current Expense.** Current expense shall be determined as defined by the California School Accounting Manual, including expenditure classes 100 through 800, only. (See exception for equipment for blind pupils.) The current expense data shall be reported in accordance with actual records maintained. Districts should be prepared to substantiate any expenses shown in this report.

Education Code Sections 18060 and 18060.2 provide for reimbursement up to \$475 per unit of a.d.a. to school districts for actual expense of transporting pupils who are blind, partially seeing, deaf and partially hearing to "integrated" classes and for transporting blind, partially seeing, deaf, partially hearing, aphasic, cerebral palsied and orthopedically handicapped to special day classes. Transportation in the same amount is also provided for severely mentally retarded pupils attending special training schools and classes.

Reimbursement will be based on data reported on Form J-22T. Form J-22 requires the reporting of the total current expense of the transportation of physically handicapped and severely mentally retarded minors attending integrated classes in B-500, special day classes, and special training schools and classes and the subtraction therefrom of the expense of such transportation in D.

The amount reported on this form (J-22) in Item D, Columns 2, 5, and 7, shall be the same as the total current expense reported on Form J-22T for reimbursement.

Expenses of transporting handicapped pupils to "regular classes" should be entered in B-500 as "current expense" and not deducted in Item D.

9. **Consistency of Attendance and Expense Data.** It is essential that attendance and current expense data be reported for exactly the same grade span. Kindergarten attendance and current expense are to be included if kindergartens are maintained. Attendance through grade 6, only, is to be included if seventh and eighth grade pupils attend junior high school, in such case, the current expenses shall not include tuition transfers for the seventh and eighth grade pupils. Attendance and current expenses for grades 7 to 12, inclusive, are to be included for a high school report in a district which maintains junior high schools.

High school district reports should not include grades 13 and 14, unless segregation of current expense data for such grades is unavailable, in which case both the attendance and current expense data shall include grades 13 and 14.

Union districts shall file a single report for attendance and current expense for the entire district.

Unified school districts shall file a single report for attendance and current expense of the entire grade span maintained by the unified school district.

10. **Maximum Which May Be Allowed for Special Physical Education Classes.** The total average daily attendance of pupils in special physical education classes for any one level may not exceed three percent of the average daily attendance of the district for that educational level nor may current expense reported be in excess of that incurred for the three percent (Section 194.5, Title 5, California Administrative Code).

11. **Reports for Only Certain Categories of Physically Handicapped Minors.** All data in Columns 1 and 8 on Page 2 should be completed only if this report includes other special day classes for physically handicapped minors or special training schools and classes for mentally retarded minors.

12. **Prefiling Audit.** Before the certification is executed, all data and computations in this report should be thoroughly reviewed. The attendance of physically handicapped minors and mentally retarded minors must agree with the attendance reported in the county superintendent's annual attendance report. All computations should be thoroughly checked for accuracy and conformity with all instructions contained in this report. Where major corrections are found necessary by the county superintendent of schools, he shall require the district to complete and file a new report. In the event minor corrections are made by the county superintendent of schools or other school officials, all changes shall be initialed by the official making the corrections.

Max Hoffert
Superintendent of Public Instruction

PAGE 2

District _____ Grade span: _____ through _____

County _____

(Enter name, abbreviate if necessary)

(Enter lowest and highest grades)

(Enter name of county)

BASIC DATA ON ATTENDANCE AND EXPENSE

Note: Use Columns 1 and 8 only if there are entries in Columns 5, 6, or 7.	District totals (including all attendance and related current expense for the grade span of this report)	PHYSICALLY HANDICAPPED MINORS				MENTALLY RETARDED MINORS		Normal a.d.s. (District totals columns 1, less the sum of columns 3, 4, 5, 6 and 7)
		In regular day classes	In remedial classes	In individual instruction	In other special day classes	Special training schools and classes (Ed. Code 6992)	Special training schools and classes for severely mentally retarded (Ed. Code 6993)	
	1	2	3	4	5	6	7	8
AVERAGE DAILY ATTENDANCE								
1. Average daily attendance, by level								
a. Elementary school (Include kindergarten; exclude 7 and 8 in junior high school)								
b. High school								
(1) Grades 7 and 8 in junior high								
(2) Grades 9 to 12								
(3) Junior college grades 13 and 14 maintained by high school district								
(4) Continuation school		XXXXXX	XX	XXXXXX	XX	XXXXXX	XX	XXXXXX
(5) Classes for adults		XXXXXX	XX	XXXXXX	XX	XXXXXX	XX	XXXXXX
c. Junior College								
(1) Grades 11 and 12 in 4-yr. junior college							XXXXXX	XX
(2) Grades 13 and 14 in junior college						XXXXXX	XX	XXXXXX
(3) Continuation classes (Grades 11 and 12 in 4-yr. junior college)		XXXXXX	XX	XXXXXX	XX	XXXXXX	XX	XXXXXX
(4) Classes for adults		XXXXXX	XX	XXXXXX	XX	XXXXXX	XX	XXXXXX
2. Total average daily attendance		XX				XX		XX
FOR STATE USE ONLY		XX				XX		XX
CURRENT EXPENSE (See Instruction 8)								
								Normal current expense column 1 less column 7
100. Administration								
200. Instruction								
a. Certificated Salaries of Instruction (Include salary of "special" teacher only in Col. 2—See Instruction 5)								
b. Other Salaries of Instruction								
c. Other Expenses of Instruction								
400. Health Services			XXXXXX	XX	XXXXXX	XX		
500. Transportation of Pupils					XXXXXX	XX		
600. Operation of School Plant					XXXXXX	XX		
700. Maintenance of School Plant								
800. Fixed Charges (Items 600, 700 and 800 in Col. 2 pertain to supplemental teaching only)								
TOTAL CURRENT EXPENSE OF EDUCATION (B-100 to B-800 inclusive)								
FOR STATE USE ONLY								
LESS CURRENT EXPENSE FOR TRANSPORTATION of physically handicapped and severely mentally retarded minors (See Instruction 8)			XXXXXX	XX	XXXXXX	XX		XXXXXX
LESS CERTAIN EXPENSE INCURRED FOR BLIND PUPILS								
1. Current Expense (Included in Cols. 2, 3, 4 or 5. See Special Instruction 6-a)	\$							
2. Cost of Equipment (Do not include in Cols. 2, 3, 4 or 5. See Special Instruction 6-b)	\$							
3. Total Current Expense and Cost of Equipment (E.1 plus E.2)	\$							
4. \$910 times A.D.A. of such pupils (Whole number only)	\$							
5. Smaller of Items E.3 or E.4	\$							
6. Enter as Deduction Item 5 (allowance) Less Item 2 (Equipment) (If Item 2 is Greater than Item 5, Enter "None")						XXXXXX	XX	XXXXXX
FOR STATE USE ONLY						XXXXXX	XX	XXXXXX

DO NOT WRITE IN THIS SPACE

PAGE 4

CERTIFICATION

The deletion of or failure to complete any of the following certifications as required will cause this report to be returned or disallowed.

To THE COUNTY SUPERINTENDENT OF SCHOOLS:

I HEREBY CERTIFY that, to the best of my knowledge and belief, the special education of exceptional children herein reported met the standards prescribed by law and by the State Department of Education, and that this report is true and correct and compiled in accordance with all instructions.

DISTRICT

DATE

(By)

Title

To THE SUPERINTENDENT OF PUBLIC INSTRUCTION:

I HEREBY CERTIFY that, to the best of my knowledge and belief, the special education of exceptional children herein reported met the standards prescribed by law and by the State Department of Education, and that this report is true and correct and compiled in accordance with all instructions.

[SIGNED]

County Superintendent of Schools

DATE

COUNTY

FOR STATE USE ONLY

Memoranda of communication with reporting official:

OUTGOING

INCOMING

ACTION

INITIAL		DATE		INITIAL		DATE	
1. Attendance checked				4. Code entered			
2. Calculations checked				5. Code checked			
3. Corrections checked				6. Cleared to I.B.M.			

I. B. M.

(Date)

APPENDIX D

SPECIAL EDUCATION TEACHER TRAINING PROGRAMS IN CALIFORNIA INSTITUTIONS OF HIGHER EDUCATION

A Coordinating Council for Higher Education Staff Report

(A Report Prepared in Response to a Request of the California
State Assembly Interim Committee on Education)

INTRODUCTION

The Coordinating Council for Higher Education was asked by Assemblyman Charles Garrigus, Chairman of the Assembly Interim Committees on Education, to provide information relative to the subject matter of HR 388 (1964 session) concerning teacher training programs in special education. An outline of the information to be gathered to assist the Assembly committee in its study was approved by the council on September 29, 1964.

In development of this report, the council staff interviewed several institutional directors of special education programs for the purpose of developing a questionnaire to be sent to all California higher educational institutions where programs of this type exist. In addition, supplementary information was provided by the State Department of Education.

TRAINING OF PUBLIC SCHOOL TEACHERS FOR SPECIAL EDUCATION

Hard of Hearing or Deaf. There are three institutions in California accredited by the State Board of Education to prepare teachers of hard of hearing or deaf children: Los Angeles State College, San Francisco State College and the University of Southern California. Some other institutions (Chico, Long Beach, and San Fernando Valley State Colleges, Stanford University and the University of the Pacific) offer a sequence of courses related to the field but are not presently accredited to grant the credential.

In general, this is a five-year program requiring 45-52 semester hours of General Education, a range from 22 to 62 units (average 48 units) in an academic major, 18 to 24 units in professional education for the standard teaching credential and 30-47 units plus 90 hours practicum in the minor of special education—deaf or hard of hearing.

The State Department of Education reports that 155 credentials to teach hard of hearing or deaf children were granted for the school year beginning July 1, 1962, through June 30, 1963. Fourteen of these were on a provisional basis. In addition, six special credentials were granted to teach hard of hearing or deaf children and 70 special credentials for teaching the deaf.

Mentally Retarded. There are 11 institutions in California accredited by the State Board of Education to prepare teachers of mentally

retarded children: Fresno, Long Beach, Los Angeles, Sacramento, San Diego, San Fernando Valley, San Francisco, San Jose State Colleges, University of California at Los Angeles, University of the Pacific and the University of Southern California. Chapman College offers course work in this field but is not accredited to grant the credential.

In general, this is a five-year program requiring 45-52 semester hours of general education, a range from 22 to 62 units (average 48 units) in an academic major, 18 to 24 units in professional education for the standard teaching credential and 26 to 37 units plus 90 hours practicum in the area of special education—mentally retarded.

The State Department of Education reports that 1,510 credentials to teach the mentally retarded were granted for the school year beginning July 1, 1962 through June 30, 1963; 560 of these were on a provisional basis. In addition, 193 special credentials for teaching the **mentally retarded** were granted under 1955 credential regulations. In the past five years the department granted 5,995 credentials, 2,513 of these being on a provisional basis. 1,834 special credentials to teach the mentally retarded were also granted under 1955 credential regulations.

Orthopedically Handicapped Including the Cerebral Palsied. There are two institutions in California accredited by the State Board of Education to prepare teachers of the orthopedically handicapped including the cerebral palsied—Los Angeles and San Francisco State Colleges. No other schools are known to be offering a program of instruction in this area, although UCLA and the University of Southern California have offered summer courses.

In general, this is a five-year program requiring 45-52 semester hours of general education, a range of 22-62 units (average 48 units) in an academic major, 18-24 units in professional education for the standard teaching credential and 22 to 35 units plus 90 hours practicum in the minor of special education—orthopedically handicapped.

The State Department of Education reports that 178 credentials to teach the orthopedically handicapped (including the cerebral palsied) were granted for the school year beginning July 1, 1962 through June 30, 1963. Thirty-nine of these were granted on a provisional basis. The total for the past five years is 917, with 220 being provisional.

Speech Correction and Lip Reading. There are 16 institutions in California accredited by the State Board of Education to prepare therapists in the subjects of speech correction and lip reading: Chico, Fresno, Humboldt, Long Beach, Los Angeles, Sacramento, San Diego, San Fernando Valley, San Francisco, and San Jose State Colleges; Stanford University; UCLA; University of California, Santa Barbara; University of Southern California; University of the Pacific; and Whit-tier College. Five other institutions are known to offer course work in this field but are not accredited to grant the credential. (La Sierra College, La Verne College, University of Redlands, College of the Holy Names, and the California State College at Fullerton).

In general, this is a five-year program requiring 45-52 semester hours of general education, a range of 22-62 units (average 48 units) in an academic major, 18 to 24 units in professional education and 37-66 units plus 135 hours practicum in the minor of special education—speech correction and lip reading.

The State Department of Education reports that 419 credentials were granted to teach speech correction and lip reading in the school year beginning July 1, 1962, through June 30, 1963. Sixteen of these were on a provisional basis. In addition, 51 special credentials were granted to teach correction of speech defects and 13 special credentials were granted to teach lip reading under 1965 credential regulations. The total for the past five years is 1,634 credentials with 46 being provisional, 532 special credentials in speech correction and 158 special credentials in lip reading.

Visually Handicapped. There are two institutions that are accredited by the State Board of Education to prepare teachers to teach the visually handicapped: Los Angeles and San Francisco State Colleges. No other institutions are known to have an accredited sequence of courses in this area.

In general, this is a five-year program requiring 45-52 units of general education, a range of 22 to 62 units (average 48 units) in an academic major, 18 to 24 units in professional education and 22-35 units plus 90 hours practicum in special education.

The State Department of Education reports that 91 credentials were granted to teach the visually handicapped in the school year beginning July 1, 1962, through June 30, 1963; 16 of these were on a provisional basis. In addition, one special credential was issued for teaching the blind and one for teaching the partially sighted child under 1955 credential regulations. The totals for the past five years show that 399 credentials were granted to teach the visually handicapped—79 being provisional, 14 special credentials to teach the blind and 17 special credentials to teach the partially sighted were also granted under 1955 credential regulations.

QUESTIONNAIRE RESPONSES

A questionnaire was sent to 22 institutions in California that were known to have a sequence of courses in the field of special education. Sixteen of these institutions were accredited to grant one or more credentials related to special education. The information received was grouped into the main categories of student assistance, credential requirements, doctoral programs and needed development. The major consensus of opinion presented in the questionnaires is outlined below and recommendations suggested by the institutions are shown under each category.

Student Assistance. This area did not appear to be of major concern to the institutions that replied. Most institutions have resources available such as part-time employment, state and federal scholarships, assistantships, and grants, but increasing needs will require more funds. Therefore, institutions indicated a *general* desire for more student assistance. There was only one specific request in this area. The University of California at Riverside noted that state grants to defray summer session expenses incurred by teachers desiring to qualify for teaching the physically handicapped and mentally retarded were oversubscribed last summer and the funds were thinly spread. More student assistance will be needed as the educational program is extended to five years and

recruitment programs for teachers in this field are increased. The State Department of Education has reviewed this problem and will submit recommendations to the Legislature.

Credential Requirements. The present credentialing system precludes the recruitment of experienced teachers. Most experienced teachers have an original major in education and to acquire a *special education* credential requires spending about two additional years in college. Roughly 15 to 30 units would be needed to complete the academic major and approximately 2-3 semesters to complete the special education minor. There is a loss of salary advancement while attending school and often no increase in salary upon returning to teaching. To correct this situation, the State Department of Education could allow experienced teachers who hold a valid teaching credential (granted prior to September 1964) to add a special education minor and thereby qualify to teach exceptional children without completing other present requirements for the teaching credential (i.e., an academic major).

The Department of Education's credential office reports that there are now 73 combinations or routes through the old and new regulations that may be taken to obtain the special education credential. Requests for revision of the entire section of the *Administrative Code* dealing with Special Education were reported by institutions. Among the suggestions made are: (1) the expansion of credentials to cover the areas of gifted, emotionally and neurologically handicapped; (2) making speech and hearing a service credential and a major; (3) strengthening the severally mentally retarded programs; (4) changing Section 6262(a)(5) of the *Administrative Code* (which relates to a course in mental retardation) to read "elementary and/or secondary" not "elementary and secondary"; (5) clarification of "postponement of requirements" authorization; and (6) allowing of a substitute for observation participation as stated in 6262(a)(7) of the *Administrative Code*. Council staff has not made a judgment on the value of each suggestion presented by the institutions, but an overall need for study is clearly indicated. Considering the complexity of the credential requirements, the high incident of partially qualified teachers and the diversified practices among institutions, a special committee might be established by the State Board of Education to review the credential policies as related to special education.

Doctoral Programs. All institutions surveyed indicated a need for more doctoral programs in special education. There are now only three special education doctoral programs in California. All of them are in Speech and Hearing (Stanford University, University of Southern California, and UCLA). A recent study by the Western Interstate Commission on Higher Education¹ makes a recommendation supporting the statements received in this study. Four strong doctoral programs (with one or more of these in California) were recommended to be established in the West to train people to become state and local

¹ *Teachers of Exceptional Children for the West*, (WICHE: Boulder, Colorado, 1960), p. 7.

supervisors and college faculty members in special education. The Donahoe Higher Education Act of 1960 provides the legal basis for *joint* doctoral programs and in 1964 implementation was begun. One study is currently being made of a joint doctoral program in special education to be conducted by San Francisco State College and the University of California at Berkeley.

Needed Development. Recent state legislation defined a new category of exceptional child: the educationally handicapped (E.H.). This legislation permits public school districts to receive a specified reimbursement if they wish to initiate classes for emotionally disturbed and/or neurologically handicapped children. Now, if it is obligatory upon the state to set minimum teacher preparation standards, then it is necessary that such standards be established for teaching these E.H. children. Precedent is meager in this field. Only New York, Illinois, and Maryland have any extensive experience with this education problem. It appears desirable that the State Department of Education in consultation with the California State Colleges, the University of California and independent institutions conduct an inquiry into the relevant and requisite specialized preparation needed by teachers of the educationally handicapped, and, from this inquiry, develop teacher preparation standards to be included in the California *Administrative Code*.

The expansion or reduction of programs in special education was another topic of concern voiced by the respondents to this questionnaire. Programs conducted by colleges with limited staff and facilities were thought to be in need of state review to see if they possess adequate depth to be effective. Other comments concerned the expansion of statewide programs in the area of deaf and hard of hearing, orthopedically handicapped, visually handicapped and mentally retarded. The State Board of Education has given permission to only two institutions (San Francisco State and Los Angeles State) to grant credentials in the area of deaf and hard of hearing, orthopedically handicapped and visually handicapped. The charge is made that many students, outside these geographic areas, interested in teaching deaf (for example) change their major rather than travel to San Francisco or Los Angeles to complete this training. However, the cost of the programs should be weighed against the need for beginning new programs. Review of existing needs in special education should be conducted in consultation with the California State Colleges, University of California and independent institutions (by the Department of Education) with these objectives: (a) to check the quality of college programs that are operating under limited staff and facilities, and (b) to inventory the need for additional accredited programs in the fields of deaf and hard of hearing, orthopedically handicapped and visually handicapped.

Students who complete a special education program find additional problems in the teaching field. The claim is made that working environments are unsatisfactory, inadequate compensation is made for required travel between schools, budgets are meager, and there is a lack of administrative interest and support despite the fact that the state has been generous in support of these programs.

Institutions conducting special education programs could offer special training sessions for principals and supervisors who are responsible for public school programs in special education and the State Department of Education could seek ways to adequately support special education specialists in the public schools (i.e., providing consultants, reimbursements for training sessions).

Summer sessions currently are supported from tuition without the usual state support. Consequently, small classes are discouraged and often eliminated. Such classes *may* be required of certain students in order to fulfill the requirements for a credential. Failure of a college to offer such a course may mean that a teacher is unable to renew a credential. There is no justification for large numbers in some classes since the field needs only a few teachers. This situation can be remedied by balancing enrollments in consideration of differences in class sizes and needs.

Extensive effort has been directed within both the University of California system and the California State Colleges toward master planning of curricula. Therefore, the machinery is already established for handling many problems related to the programming of special education. The size, complexity and increasing need in this area should continue to be studied. Increased attention needs to be given by both systems of higher education to problems of expansion and coordination of special education in California.

o



Some Facts about Education

Report of the Subcommittee on **RESEARCH STRUCTURE and FUNCTION**

Members of the Subcommittee

Carlos Bee
Chairman

Alfred E. Alquist
Edward M. Gaffney
Charles B. Garrigus
George W. Milias
Carley V. Porter
Victor V. Veysey

JANUARY 1965

Report of the

ASSEMBLY INTERIM COMMITTEE ON EDUCATION



Members of the Committee

Charles B. Garrigus, *Chairman*

Leo J. Ryan, *Vice Chairman*

Alfred E. Alquist	Joe A. Gonsalves
E. Richard Barnes	Leroy F. Greene
Carlos Bee	Stewart Hinckley
Jack T. Casey	George W. Miliias
John L. E. Collier	Robert T. Monagan
Mervyn M. Dymally	Carley V. Porter
Edward E. Elliott	Victor V. Veysey
Houston I. Flournoy	James E. Whetmore
Edward M. Gaffney	Gordon H. Winton, Jr.

January 1965

J. Kenneth Cory, Consultant (June 1963–November 1964)
Michael A. Manley, Consultant (December 1964–January 1965)
Mrs. Cristine B. Trask, Committee Secretary
Gilbert M. Oster, Legislative Intern (June 1963–June 1964)
David M. Blicher, Legislative Intern (September 1964–January 1965)



California Legislature



Assembly Committee on Education

Hon. Jesse M. Unruh
Speaker of the Assembly, and
Members of the Assembly
Assembly Chamber, Sacramento

Gentlemen:

Pursuant to House Resolution No. 500.5, adopted on June 21, 1963, the Assembly Interim Committee on Education herewith submits its final report of the Subcommittee on Research, Structure and Function.

Respectfully submitted,

Charles B. Garrigus

CHARLES B. GARRIGUS, Chairman

Subcommittee on Research,
Structure and Function

Bee, Chairman
Alquist
Gaffney
Garrigus
Miliat
Porter
Veysey

Leo J. Ryan

LEO J. RYAN, Vice Chairman

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Subcommittee on Research, Structure and Function



The Subcommittee on Research, Structure and Function was appointed by the Chairman of the Assembly Interim Committee on Education, Charles B. Garrigus, in July 1963. This subcommittee was instructed by Chairman Garrigus to study specialized subjects within the field of public education, to include curriculum matters, district organization and matters relating to the overall educational system of the state, and to recommend solutions in these areas to the 1965 Legislature.

Measures submitted to the committee include the following: House Resolution 485 (Master Plan for Public Education); House Resolution 81 (relating to the elementary foreign language requirement); House Resolution 361 (improving the teaching of English); House Resolution 337 (advance site acquisition); Assembly Bill 2883 (relating to junior college districts); and House Resolutions 29 and 94, both of which relate to programs of vocational education in the public schools.

The committee has attempted to study each subject in detail but with few exceptions has avoided making specific suggestions in terms of possible new legislation. Rather we have attempted to investigate broad policy areas in an attempt to suggest several possible courses of action to the Legislature.

MASTER PLAN FOR PUBLIC EDUCATION

HOUSE RESOLUTION NO. 485 (1963)

Findings

The committee held four days of hearings in Los Angeles and Monterey devoted to the consideration of House Resolution 485 (Petrís)—A Master Plan for Public Education in California. These hearings gave every indication that the creation of a master plan for primary and secondary public education is both a worthwhile and desirable objective.

At the Los Angeles hearing representatives of farm, labor, business, professional, women's, religious, and minority organizations came before the committee to express their interest in a master plan and to state their ideas on educational philosophy which should be embodied in any such plan. A key element of this hearing was the development of a modest consensus that a master plan would aid in the creation of certain priorities in the structure and functions of the public school program.

The second hearing in Monterey was given over to a wide spectrum of professional education organizations representing all aspects of public education from the classroom teacher to the University of California. While substantive consensus appeared to be less conspicuous at this hearing, there was an agreement that a master plan would aid in deriving the greatest benefit from educational expenditures, and that it would aid in bringing the ultimate goals of the whole system into sharper focus.

In substantive matters the committee finds that great public concern exists regarding increased emphasis on the basic scholastic subjects—the skills of reading, writing, and arithmetic. Most organizations representing economic and social interests, and some of the professional education groups, were in general agreement that the school system should give a first and substantial priority to the basic scholastic disciplines—even if this emphasis entailed a moderate curtailment of other aspects in the school program. This attitude was expressed in regard to both the college-bound and the terminal student.

During the 1964 First Extraordinary Session the committee submitted a report calling for the creation of a joint committee. The committee felt that any undertaking of such scope and gravity should be developed cooperatively by both houses of the Legislature. The committee is pleased to note that the Legislature did, in fact, establish the Joint Committee on Public Elementary and Secondary Education during the 1964 session, and that the joint committee is to render its report by the beginning of the 1967 General Session of the Legislature under the terms of Assembly Concurrent Resolution No. 45. The text of this resolution may be found in Appendix A to this report.



FOREIGN LANGUAGE REQUIREMENT

HOUSE RESOLUTION NO. 81 (1ST EX. 1963)

Recommendations

1. The committee recommends legislation which would permit the staggered introduction of required foreign language instruction in grades 6, 7 and 8 in successive years, beginning in 1965-66.

2. It is recommended that state funds be allocated on a basis which might assist poorer school districts in taking advantage of federal funds under the terms of the amended National Defense Education Act.

3. The committee urges that school districts make maximum use of all available teachers, teacher aides and other nonprofessional but bilingual persons in the community to assist in the foreign language program.

4. We recommend that credential requirements be reformed so as to make maximum use of persons residing in California communities with fluent bilingual language capabilities, and of alien foreign language teachers, in order to reduce the shortage of qualified foreign language teachers.

Findings

The Subcommittee on Research, Structure and Function met in San Diego to consider House Resolution No. 81 (Casey). The committee heard from representatives of the Department of Education, local school districts, and Mexican-American groups.

The committee quickly learned that simultaneous implementation of foreign language instruction in three grades presents numerous unnecessary problems of administration, curriculum development and instruction. It became apparent that a language teacher in the eighth grade would have to teach three different courses in the first three years of the program

because of the varying degrees of prior preparation of the students. Likewise, regular ninth grade language teachers would have students coming to them with three different levels of preparation, requiring additional curriculum planning.

The committee believes that the introduction of foreign language instruction on a grade by grade basis, year by year, will not detract substantially from the educational value of the program, and that such a gradual introduction will minimize technical problems in administration, teacher recruitment and curriculum planning.

The committee finds that two issues loom largest in the area of the elementary foreign language requirement. Due to the strictness of credential regulations, an exaggerated shortage of foreign language teachers is created. Fluent bilingual persons are often not able to teach because they lack one or another of the technical specifications of the credential regulations. The committee notes that persons desiring to teach foreign language under a standard designated services credential must have a baccalaureate degree, whereas persons desiring to teach vocational courses full time may qualify for the same credential with but two years of higher education and some experience. The committee feels that the Legislature should give serious consideration to permitting fluent bilingual persons to teach elementary level foreign language on a credentialing basis equivalent to that allowed to vocational education and business education teachers.

The committee notes with interest a plan whereby qualified language teachers in some local districts change classes with other teachers for a period in the day. We feel that this type of fluidity in personnel matters can substantially alleviate one of the most substantial cost elements in implementing this instruction in 1965-66. Under this system it would not be necessary for the school district to hire additional personnel to relieve regular classroom teachers since those same classroom teachers would be relieving the language specialist for a class in arithmetic, English, or some other daily subject.

The committee has determined that substantial federal funds are available to school districts under the terms of the National Defense Education Act for the purpose of purchasing capital materials in foreign language instruction. Such items include virtually all conceivable materials except regular textbooks. It appears that approximately \$5 million in federal funds will be available this year under NDEA terms, and the committee would recommend to the Department of Education that a substantial

portion of this money be allocated to requests for foreign language equipment.

The committee notes that the federal law requires a 50-50 matching of federal moneys. We also note, however, that the law allows for gross matching on a statewide basis, rather than district by district matching. The committee finds that many poorer districts currently do not take advantage of the federal program because of the strict interpretation of the 50-50 concept. We would urge that the Legislature establish an equalization formula whereby wealthier districts will be required to spend more than the 50 percent, while poorer districts are allowed a lesser percentage as their contribution. We would urge that this revision be accomplished at the earliest possible moment so that local districts can incorporate the new requirements in their budgets for 1965-66.

The committee also heard testimony related to immigration regulations. Expert testimony was received from a representative of the U.S. Immigration and Naturalization Service on the subject of the availability of alien foreign language teachers to California public schools. We are pleased to note that teachers are considered as a first priority category and that immigration from Mexico is contingent only upon the availability of a position. The committee urges the Department of Education to initiate contact with the Mexican Ministry of Education with a view toward the employment of Mexican nationals and their subsequent naturalization under terms of Public Law 414.

Substantively, on the value of foreign language instruction, the committee heard from various statewide groups. Unanimity was expressed as to the positive values inherent in the program. In the light of the variability of staffing policies available to local districts and the availability of teaching materials through federal grants, the committee sees no insurmountable obstacles to the rapid implementation of foreign language instruction, save for the advisability of a grade by grade adjustment in the requirement.



IMPROVING THE TEACHING OF ENGLISH

HOUSE RESOLUTION NO. 361 (1963)

Recommendations

1. The committee recommends that the Legislature authorize state-wide curriculum improvement institutes for the state's English teachers.

2. We urge the University of California and the state colleges, in cooperation with the Department of Education, to seek ways and means of implementing federal funds made available through recent amendments to the National Defense Education Act to support the conduct of institutes for teacher training in English.

3. The committee believes that school districts should give emphasis and attention to the effective teaching of English in the primary and lower elementary grades.

4. It is recommended that schools of education with state-supported institutions of higher learning upgrade and renew efforts to train teachers of all subjects and grades in the effective presentation of the English language as subject matter.

Findings

On October 22 the committee met to hear testimony from teachers, administrators and representatives of business on House Resolution 361, authored by Assemblyman Casey.

The major deficiencies (attested to by witnesses) in the teaching of English in our public schools may be summarized as follows:

1. Programs for preparing teachers of English tend to be poorly planned, faulty in emphasis, and unnecessarily inconsistent with one another.
2. Many currently employed teachers are deficient in their knowledge of their subject matter and in ways of presenting it effectively.

3. Many teachers of English, even though well prepared, are prevented from doing their best teaching by overloads, lack of supervision, poorly planned buildings, and poor library facilities.
4. The products of our secondary schools are, to an alarming extent, so deficient in the basic English language skills as to be unemployable or untrainable.

The problems the committee noted above are not unique to California. In the modern press for technical achievement, concern for the quality of our preparation of teachers of English and methods of presentation of language skills to students has been left to the small voice of English language teachers.

The problems we have noted above are not indicative of a breakdown in any one isolated area in the field, but rather of a weakness of the system as a whole. From the training of teachers in our schools of education, to the teacher in the classroom, to the products of school systems, we have been guilty of neglect.

For example, in the area of teacher training, one witness made reference to a recent survey of the percentage of college units required for the degree of bachelor of science in education which indicated that approximately 74.3 percent of the program is devoted to education courses and only 25.7 percent of the program is devoted to liberal arts courses. It was his opinion that the elementary education program would be better fortified by reversing this percentage.

Another witness pointed to the fact that only three out of four openings are filled with properly credentialed personnel, and even less than that number are persons who have been properly trained to teach English courses but who, because of the shortage of teachers in general, are teaching such courses.

There was universal agreement among witnesses at the lack of follow-through in our system which permits teachers, whether initially ill prepared or not, to fall further behind in their ability to effectively present their subject matter. The committee finds that there is a definite need to provide means by which college and university teachers may meet with elementary and secondary teachers to encourage a productive exchange of insights, talents and skills.

The committee recommends the establishment of low-cost, easily accessible teacher in-service training programs and facilities. We believe these

should be accomplished by teacher training institutes which might be of two types: (1) three- to six-week summer training institutes held at various university or college campuses throughout the state, and (2) two- or three-day institutes held several times during the academic year as part of yearlong teacher training seminars. Such institutes should be held in coordination with college and university authorities and should place emphasis on training in the newest techniques of effective presentation of English subject matter. Furthermore, we believe that when such institutes are established, consideration should be given to stressing the teaching techniques developed so that fundamental English skills may be taught at the lowest possible grade level.

The committee recommends that such teacher training institutes be adequately funded. Full consideration should be given to obtaining funds currently available from the federal government under Title XI of the amended National Defense Education Act, 88th Congress, 2nd Session. We urge the state colleges and the Department of Education to explore ways and means of participating in this authorization for institutes of advanced study.

A sound knowledge of the English language is a prerequisite to success in almost all other fields of knowledge, and time and again has been demonstrated to be absolutely necessary to those individuals our school systems graduate into California's market place.

One of the state's largest employers indicated that less than half of all job applicants were capable of meeting the modicum of English language skills that this employer required. (There were 220,000 applicants interviewed in 1963.) While half of those interviewed were found "unemployable," many of those who survived were terminated shortly after the training process began "as they were unable to comprehend what they read in the training material." The threat of higher yearly rates of unemployment is not a matter of economics alone but is increasingly one of education. We cannot afford to send young men and women into today's job market without assurance that they will be readily trainable individuals. We believe we must look to our school systems to exercise this responsibility.

The committee urges local school boards and program planning authorities to be particularly attuned to the needs and problems of teachers of English. Work loads of 60 to 80 hours per week were cited to the committee as one basic reason why teachers of English may not be doing an

effective job. Effective instruction in composition and grammar, where individual attention to the pupil's special needs are of primary importance, is not enhanced by a pupil load of 175 or more students per day. The severity of overloaded English teachers is particularly serious in the case of teachers at the lowest elementary levels where, as numerous witnesses emphasized to the committee, pupil attitudes toward learning are most firmly established. The natural receptivity and inquisitiveness of a third or fourth grader might readily be damaged by the lack of attention a teacher can devote to helping that child solve his particular learning problems. In the last session the Legislature recognized the necessity for lower class size in grades one through three, having in mind just such a problem.¹ Because English language skills are so basic, we urge school boards to reexamine their teaching programs to discover whether they have placed sufficient priority on the teaching of English in accordance with the most modern and effective methods available.

In order to alleviate the burdens cited as hampering the effectiveness of the teacher, such as the hours spent on administrative paperwork or other nonteaching duties, we urge school districts to develop the latent resources of subprofessionals available in the neighboring community. Some school districts already have teacher assistance and reader programs; more should. High school students and college students, particularly those in educational programs, are a ready and surprisingly willing source of assistance to the teacher who often finds she cannot prepare adequately for each day's lessons. School districts should be encouraged to take every advantage they can muster to free their regular classroom teachers to spend more time with their students or in their own preparation.

Although we have spoken primarily of the responsibility of local school districts to conduct the teaching of English more effectively, we believe that there is much that can be done at the state level, beyond the authorization of teacher inservice training institutes.

One of these has recently been undertaken and we cite it because we believe that it should be continued and made effective. This is the Department of Education's program to coordinate and disseminate research developments in the teaching of English. This is a problem which pervades all areas of education but is particularly shameful in English. We hope that continued provision of this service program at the state level will be directed toward eliminating unnecessary duplication and waste

¹See the provisions of A.B. 145, Chapter 132, First Extraordinary Session.

in program experimentation, as well as serving as an information clearing-house.

There are several other areas which deserve full attention if this problem is to be met, which we initially indicated was a malady of the entire process. We recommend them to the Department of Education as well as the Legislature, and we urge that the recently formed State Advisory Committee on English consider them in their proposed survey of the English curriculum of the public schools. They are:

1. Development of regional centers on a county basis for preparing and distributing sample teaching aids and providing consultant help for teachers.

We have in mind here utilization of the county superintendent's office and the resources currently made available to that office through the County School Service Fund. A viable structure presently exists and we recommend that it be utilized.

2. Assistance in developing satisfactory library and textbook facilities.
3. Experimentation in using electronic, audiovisual, and other aids to improve English teaching.

Both of the above are already receiving attention at the state level but it is apparent that too little productive results have filtered down to local school boards and districts. We urge that both state and local authorities seek greater implementation of library and audiovisual programs toward the end that more effective teaching resources and techniques will be developed, and that teaching methods will be upgraded.



ADVANCE SITE ACQUISITION FOR HIGHER EDUCATION FACILITIES

HOUSE RESOLUTION NO. 337 (1963)

Recommendations

1. The committee recommends that the Legislature extend for an indefinite period the authorization granted in 1963 to the Trustees of the California State Colleges to accept site donations or gifts of land. The committee notes that this authorization to accept gifts expires on October 1, 1965.

2. The committee further recommends that permanent statutory authority be granted to the State College Trustees to acquire sites in advance of college authorization. We recognize that before any particular site could, in fact, be purchased, legislative authorization of the necessary funds would be necessary, constituting a significant and conclusive measure of legislative control over advance site acquisition.

3. The committee commends the Coordinating Council on Higher Education for clearly stating its policy with regard to priorities of college authorization and site acquisition.

Findings

The committee heard testimony on House Resolution 337 by Assemblyman Ryan on October 23, 1964, from representatives of the state colleges and the Coordinating Council on Higher Education. The resolution calls for a study of the feasibility and desirability of acquiring sites for possible college campuses in advance of the actual authorization by the Legislature of the college. Members of the staff of the Coordinating Council pointed out to the committee that authority granted to the Trustees of the State Colleges in 1963 (Chapter 1870, Statutes of 1963) to accept donations of

sites is slated to expire in October 1965. The committee believes that such authority to accept gifts of this nature should be extended to the trustees indefinitely.

The committee is also aware, as demonstrated by much of the testimony received, that substantial savings might be attained through the advance purchase of sites when it appears that such properties may appreciate in value and when the location is deemed a probable future state college site. The committee believes that statutory authority should be extended beyond October 1965 to the trustees to enable them to purchase sites ahead of actual authorization. However, the trustees should be required to fully justify the proposed purchase in terms of the probable future college needs of the area in question. Such justification will, we believe, be indispensable in view of the fact that final approval must be gained from the Legislature if funds are to be appropriated for such purchases. In other words, we see no harm and much possible value in granting authority for advance acquisitions, provided that final authority to appropriate funds rests, as it must, with the Legislature.

The testimony presented on H.R. 337 brought to light the fact that there has been in the past much confusion among the segments of higher education and within the Coordinating Council itself regarding advance site acquisition vis-a-vis actual college authorization. The committee is pleased to note that subsequent to its hearing on this matter the Coordinating Council has adopted a clear and firm policy regarding advance site acquisition and the circumstances in which it may occur:

Where the council finds there is a definite ultimate need for a campus, acquisition of sites in advance of authorization to start a campus may be justified in carefully restricted circumstances, as found by the council, such as where land may not subsequently be available without excessive cost or where there may be special opportunity to obtain the land. (Adopted by the council, November 10, 1964.)

This policy is affirmed by this committee and is seen as essential if advance site acquisition is not to become a vehicle for removing, in fact, if not in law, actual authorization recommendation powers from the Coordinating Council. With these qualifications and within this framework the committee agrees in principle with advance acquisition of college campus sites.



STRUCTURE OF JUNIOR COLLEGE DISTRICTS

ASSEMBLY BILL 2883 (1963)

Recommendations

1. The committee believes that at the present time there is no demonstrated need for new state legislation which would mandate the type of district structure within which junior colleges operate.

2. The committee finds that legislation such as is proposed by Assembly Bill 2883 does not accomplish, in the case of all California junior colleges, the desired end of creating separate boards of education to handle junior college matters exclusively.

3. We urge unified and high school districts which operate junior colleges to give special consideration to the several different needs and functions of junior colleges within their jurisdictions, to insure that California's higher education objectives are well served.

Findings

On December 7 the committee met to hear testimony on Assembly Bill 2883 by Assemblyman Dymally. Witnesses represented faculty and administration within the junior college system.

The committee finds that under the present law junior colleges may be operated under any of the following structural circumstances:

- (a) A separate junior college district with its own governing board.
- (b) A unified district or high school district with a governing board responsible for grades K through 14 or 9-14.
- (c) A unified or high school district and a separate junior college district under a common governing board and administration.

No portion of the Education Code requires either separateness of districts or governing boards. Today the majority of junior colleges are operated as in (a) with some seven districts in one of the other categories.

The provisions of A.B. 2883 were intended to eliminate governing structures other than as in (a). The bill requires that after a fixed date all junior colleges shall be operated by a separate junior college district. The bill does not explicitly require the formation of a separate junior college district governing board, as would be necessary to eliminate the structure in (c), but we infer from its intent and from proponents of the bill that this was intended.

The committee concludes that at the present time state mandation of separate junior college districts with separate governing boards is not advisable. We have arrived at this conclusion by measuring the goal of "separation" against two standards: the *educational* advantages for our young men and women in the community junior colleges and the *financial* advantages of separation on a statewide basis. We do not find that either of these standards has been demonstrated to require state mandation of separation at the present time.

Proponents of A.B. 2883 complained that because members of the governing board were elected to serve in an office that demands knowledge of and interest in a system of grades K through 14, junior colleges often are the least represented segments of the system on a particular board and that because that board must serve so many segments, junior college problems were often subordinated to those of other segments. We do not believe this contention was adequately supported and we find it particularly weak in light of the glowing terms in which the educational quality of such junior colleges as Long Beach and Los Angeles were described. Proponents of the bill admitted that at the present time there was no local pressure for reformation of the junior college structure, and if the issue were put to a vote the present system would be favored overwhelmingly.

In terms of better financing of junior colleges and more certain control over the utilization of moneys that might be afforded by a separate junior college district, the committee finds that such was not sufficiently shown to require state mandation. In fact, we believe that separation might unnecessarily increase administrative costs because of the proliferation of administrative personnel that would be required to manage a separately structured district. Although it was alleged that the junior college in one district was losing a large amount of funds because of unproven allocation of costs to the junior college segment and an unfair distribution of funds to the junior college out of all that went to the unified district, the com-

mittee cannot find that was in fact true; the committee was not shown any facts or figures which demonstrated this loss of funds. Furthermore, we were not shown in what ways the present unified structure was financially disadvantageous from an *educational* point of view.

Other disadvantages cited by proponents of the bill, for example, whether elevating a high school teacher to the junior college teaching ranks in order to remove him from the high school system was a justifiable action by a common governing board, do not, we believe, justify this particular legislative action. These things are more a matter of local concern and should be worked out with local governing boards and district officials. In terms of the criteria we have adopted and which we note above, we do not believe the state's concern for sound educational policies and finances is endangered.

We think it relevant to point out also that we do not refrain from a favorable recommendation on this bill because, as was argued by opponents of the measure, the structure of the educational segments in any particular community is purely a matter of local concern and control. We reject the thesis that "local autonomy" demands that the issue of an independent junior college district be left to the local voters. If the structure were inadequate to serve the needs of the students, was not functioning in accordance with sound educational policies, or not operating up to the standards which the Legislature has determined that junior colleges should accomplish, then we would not hesitate in recommending to the Legislature a structure for the junior college segment which we believe would accomplish those goals.



VOCATIONAL EDUCATION

HOUSE RESOLUTIONS NO. 29 AND 94 (1963)

Recommendations

1. The committee urges school districts to make maximum use of federal funds available under the newly enacted Vocational Education Act of 1963. We understand approximately \$7.6 million is being made available to California school districts in the current school year as a result of this legislation.

2. The committee recommends that careful review be given to existing credential requirements for teachers of vocational education with a view to eliminating unnecessary academic requirements for these individuals. Every attempt should be made to induce qualified tradesmen and skilled technicians from the private sphere of the economy to enter the public school system as vocational education instructors.

3. We suggest that each school district operating a vocational education program carefully evaluate the effectiveness of the training offered to determine whether it has a reasonable relation to the employment available in today's modern economy. To accomplish this end the committee recommends that the Legislature direct the Department of Education to establish minimum standards for programs of vocational education offered by the public school system.

4. In order to aid the able, vocationally oriented student the committee recommends that the Legislature authorize a system of scholarships to such individuals, based upon financial need, for the purpose of aiding them in obtaining vocational training in trade schools or in the terminal programs of the state's junior colleges.

5. The committee recommends clarification and implementation by the Legislature of the provisions of Senate Bill 1379 of the 1963 session, which provided permissive countywide vocational high schools, for the purpose of making feasible central county or regionwide vocational education

facilities. Careful study should be given to the possibilities of financing such centers through funds provided by the Vocational Education Act of 1963.

Findings

The committee heard testimony in Santa Barbara on House Resolution 29, by Assemblyman Quimby, relating to vocational education programs, and House Resolution 94 (Dannemeyer), calling for a feasibility study of public technical and vocational schools. We admit that we were pleasantly surprised to hear the representative of the State Department of Education state, in effect, that in his opinion vocational education in California is in excellent condition. Other than a recommendation that the committee recommend the constitution of a joint legislative committee on vocational education this witness had no recommendations to make to the committee regarding ways and means of improving or extending vocational education programs. Indeed, he summed up:

The program of vocational education in California's public schools, long the most extensive in the United States, has continued to expand in scope, size and the intenseness of activity. Increasingly called upon to bulwark the fast-changing economy and to provide stability to the state's total work force, vocational education is on the move. . . .

Overshadowing this surge of physical accomplishment, however, were two other factors even more important. The first was a significant rise in the status of vocational education. . . . The second factor might be termed a new awareness of the potential for vocational education in California, and a determination to achieve it.

In this witness's opinion, it appears that the new funds made available by the federal Vocational Education Act of 1963 (the Morse-Perkins Act), applied to the existing vocational education structure in California, will be all that is needed to insure that vocational education will rise to new heights of effectiveness. Apparently the view of the Department of Education in this regard is shared by representatives of industry and labor and by local school districts. None of these organizations wished to offer any suggestions or recommendations to this committee; few even desired to appear in order to enlighten the committee regarding their own programs for training workers or students.

The committee cannot agree that vocational education is in such an untroubled position. The mere application of substantial federal moneys, which certainly are to be welcomed, cannot insure that vocational education is relevant to today's rapidly changing and diversifying economy. Indeed, the committee finds it disturbing that the State Department of Education, responsible for supervision over the state's vocational education effort, apparently feels that increases in money, status and "awareness" alone guarantee meaningful programs in this field. All these elements are indeed valuable to vocational education; if, however, we are to construct truly sound programs it will be necessary to examine substantive items such as course content, the qualification of instructors and the attitudes of school administrators toward these programs.

The committee has attempted, through its staff, to examine possible faults in programs of vocational education presently being offered in this state. Our recommendations are directed toward several problem areas which we have observed; this list is not intended to be exclusive, nor is this report a thorough and exhaustive study of vocational education in California.

According to the testimony received, some \$7.6 million will be made available to California through the federal government for vocational education programs in 1964-65. The committee urges school districts, guided by the Department of Education, to make maximum use of these funds to improve and extend their programs. It is our understanding that these moneys are available through matching provisions. Careful study should be made of the possibilities of applying any normal year-to-year increases in present vocational education program expenditures toward the matching requirements, thus reducing the total new money which would otherwise be required of school districts if they are to qualify for federal funds.

The committee has heard comment from time to time regarding a shortage of qualified vocational education instructors. We suggest that there is, perhaps, not a shortage of qualified people but rather that it is unrealistic to require such stringent credential requirements of these individuals. Review should be made of the present credential requirements for vocational teachers to determine whether the supply of such persons might increase if these requirements were lowered.

Vocational education is, essentially, preparation for the world of work. If the programs thereby offered have little relation to this world and to the

job opportunities which it has to offer, the time of both student and teacher is wasted and funds are needlessly expended. Evidence is abundant throughout the country today that many vocational programs are not realistic in the sense that they do not offer training and education which is useful in the private sphere of the economy. California must share a part of this weakness. To cite one example, a recent study showed that one California city school system with four high schools in 1963-64 enrolled 3,325 students in drafting, auto shop, metal shop, machine shop, electricity, wood shop, print shop, crafts and blueprint reading. Not a single one of these subjects was a job-oriented course. Equipment was outmoded and obsolete techniques were being taught. Obviously, it is of little use to the student to learn skills in the high school print shop which are not used in the private printing plants of today.

To remedy this situation the committee urges each school district to carefully examine its vocational education program to determine whether it is job related. The Department of Education, to aid in this effort, might well be directed to establish minimum standards for various types of vocational education programs. As long as the state is committed to support school districts for all their activities, rather than for specific types of courses and methods of training, this responsibility must remain primarily with local authorities. We urge them to make careful review of their programs.

One area in which the Legislature *can* encourage vocational education is in the scholarship field. For many years the State of California has awarded scholarships for high academic achievement. With the exception of a specialized program for agricultural scholarships which was phased out recently, however, no financial encouragement has been given in past years for deserving and needy students who desire to obtain training which will qualify them to enter a specialized trade occupation. In view of the many excellent terminal and trade programs now being offered by California's junior colleges, and with the multiplicity of trade schools available in the private sector, we believe that such a program could be useful. We therefore recommend that a modest scholarship program be established, administered through the State Scholarship Commission, to aid needy vocationally oriented students in obtaining such training. Such a program should amply demonstrate the concern of the Legislature for effective vocational education and may well provide additional motivation to

vocationally oriented students to achieve well in school, and indeed to remain in school until graduation.

Finally, we note that legislation enacted in 1963 (S.B. 1379) provides for the establishment of countywide vocational high schools. Despite the obvious value of such a provision in allowing school districts to pool their resources in the establishment of a regional vocational education facility we are informed that as yet this measure has not been implemented in California. It appears to the committee that only through such a "pooling" can much of the expensive equipment and the scarce instructors be obtained at a reasonable cost. We note that elsewhere in the country such central vocational education facilities have proved most effective. One such example which has gained national prominence is the Bucks County Technical School in Pennsylvania. Here, six school districts jointly participate in a vocational school which offers courses to 10th- through 12th-grade pupils in subjects such as candymaking, cosmetology and appliance repair. Obviously, such subjects train individuals for occupations for which there is presently a ready market. Pupils attending the Bucks County School attend for several weeks, then attend their regular academic high school classes. In this way general education is not sacrificed for technical, vocational training. Evidence exists that this experiment in a regional, purely technical school has been highly successful in the improvement of the motivation of students who otherwise could become school dropouts and in the provision of realistic, job-related educational programs.

The Bucks County School is treated here merely as an example of the type of vocational program which can be made available on a regional, or countywide, basis. The committee believes that the existing authorization provided by S.B. 1379 should be implemented and made financially feasible. Amendments to this bill may well be required in this implementation. Thorough study should be made of the possibilities of obtaining federal Vocational Education Act funds for this purpose, as well as financing such a facility through a transfer of funds apportioned by the state and received for a child who resides in a school district but who attends the countywide facility to the county superintendent of schools. The committee believes that significant improvements can be made in vocational education in California through an implementation of this law.



APPENDIX A

ASSEMBLY CONCURRENT RESOLUTION 45

by Assemblyman Bee

Relative to a study of public elementary and secondary education and creating the Joint Interim Committee on Public Elementary and Secondary Education.

WHEREAS, Several interim legislative investigations have proposed policies and plans for improving public education in California; and

WHEREAS, Local community members elect district and county boards of education to determine local public school policies and plans; and

WHEREAS, The classroom teacher must instruct children in accordance with state and local policies and plans; and

WHEREAS, The development of "A Master Plan for Higher Education" is resulting in improved structure and excellence in higher education; and

WHEREAS, The entire structure of public elementary and secondary education in California needs study for improvement; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, As follows:

1. The Joint Interim Committee on Public Elementary and Secondary Education is hereby created and authorized and directed to ascertain, study and analyze all facts relating to the subject of the entire structure of public elementary and secondary education in California; the clarification of the role of the State Board of Education, the county boards of education, and local district boards of education, relating to responsibility and authority for the fiscal controls of the public schools; the clarification of the role of the individual classroom teacher in policy determination for public education; the clarification of the role of classroom teacher, school administration, and governing bodies for the improvement of instruction; the clarification of the roles and manner of selection of the State Superintendent of Public Instruction, the staff of the State Department of Education, and county superintendents of schools; and the establishment of a Master Plan for Public Elementary and Secondary Education, including but not limited to the operation, effect, administra-

tion, enforcement and needed revision of any and all laws in any way bearing upon or relating to the subject of this resolution, and to report thereon to the Legislature, including in the reports its recommendations for appropriate legislation and a "Master Plan for Public Elementary and Secondary Education."

1.5. The Joint Interim Committee on Public Elementary and Secondary Education is also hereby authorized and directed to ascertain, study and analyze all facts relating to the subject of the duties, powers and responsibilities of the county board of education and the county superintendent of schools, including the interrelation thereof to the State, to the county, and to local school districts, and including a means of establishing an adequate structure of fiscal responsibility for the office of the county superintendent of schools and the county boards of education which would recognize the three-way division of their responsibilities to the State, the county, and the local school districts and yet place the county board of education in a relationship to fiscal matters appropriate to the political importance of that body, including but not limited to the operation, effect, administration, enforcement and needed revision of any and all laws in any way bearing upon or relating to the subject of this resolution, and to report thereon to the Legislature, including in the reports its recommendations for appropriate legislation.

2. The committee shall consist of the members of the Assembly Interim Committee on Education and the members of the Senate Fact Finding Committee on Education. Vacancies occurring in the membership of the committee shall be filled by the appointing power.

3. The committee is authorized to act during this session of the Legislature, including any recess, and after final adjournment, with authority to file a final report not later than the fifth legislative day of the 1967 Regular Session.

4. The committee and its members shall have and exercise all of the rights, duties and powers conferred upon investigating committees and their members by the provisions of the Joint Rules of the Senate and Assembly as they are adopted and amended from time to time at this session, which provisions are incorporated herein and made applicable to this committee and its members.

5. The committee has the following additional powers and duties:

(a) To select a chairman and a vice chairman from its membership.

(b) To contract with such other agencies, public or private, as it deems necessary for the rendition and affording of such services, facilities, studies and reports to the committee as will best assist it to carry out the purposes for which it is created.

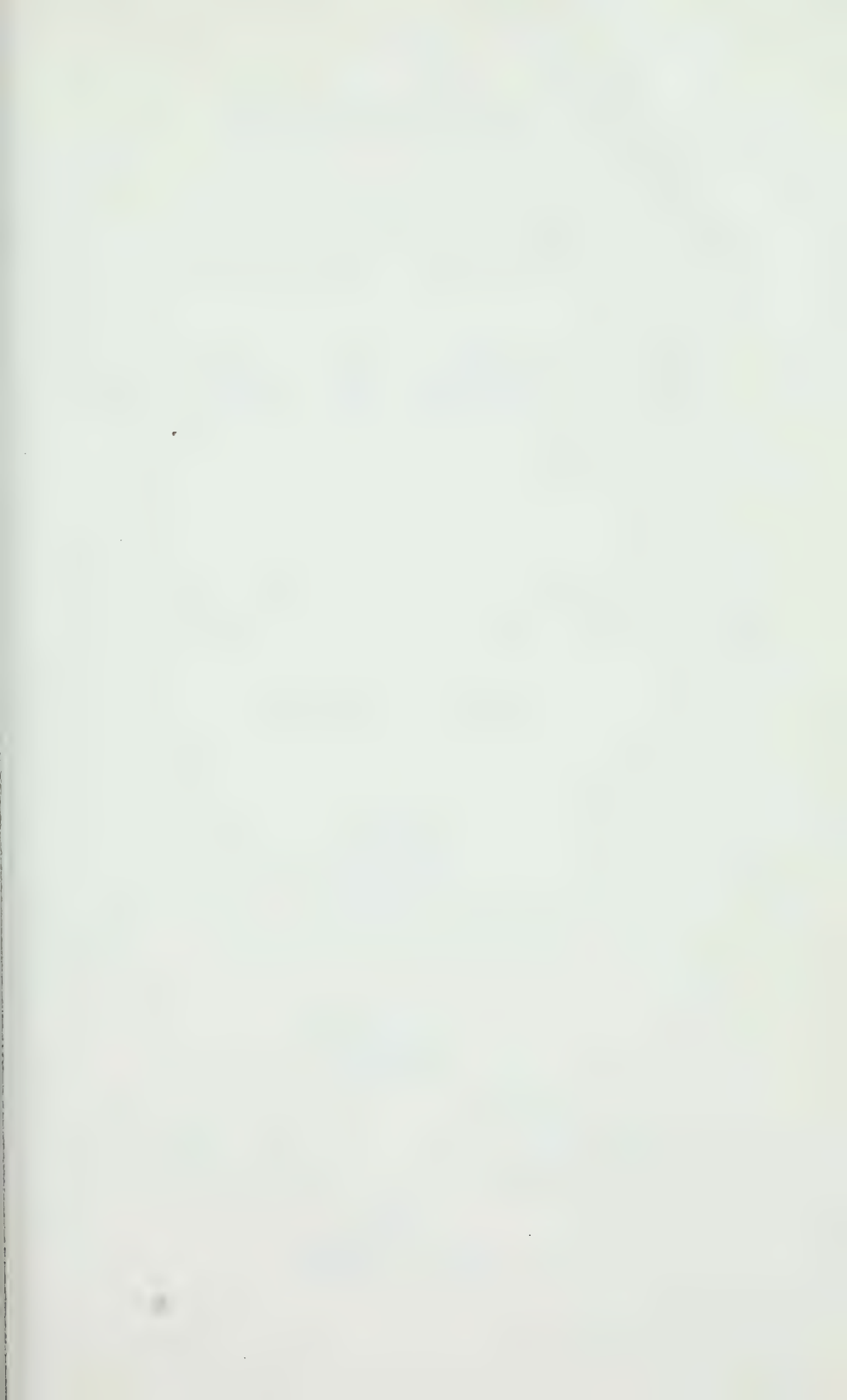
(c) To cooperate with and secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of this resolution and to direct the sheriff of any county to serve subpoenas, orders and other process issued by the committee.

(d) To report its findings and recommendations to the Legislature and to the people from time to time and at any time, not later than herein provided.

(e) To do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties, and accomplish the objects and purposes of this resolution.

6. The sum of nine thousand five hundred dollars (\$9,500) or so much thereof as may be necessary is hereby made available from the Contingent Fund of the Senate and Assembly for the expenses of the committee and its members and for any charges, expenses or claims it may incur under this resolution during the 1964-1965 fiscal year, to be paid from the said contingent funds equally and disbursed, after certification by the chairman of the committee, upon warrants drawn by the State Controller upon the State Treasurer.

o



ASSEMBLY INTERIM COMMITTEE
ON GOVERNMENT ORGANIZATION

CALIFORNIA'S TAX ADMINISTRATION

The Need for a Central Revenue Department

MEMBERS

MILTON MARKS, *Chairman*

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Chief Clerk

JANUARY 1965

LETTER OF TRANSMITTAL

January 11, 1965

To the Speaker and Members of the Assembly

Your Interim Committee on Government Organization in accordance with your instructions, herewith respectfully submits a report concerning the advisability of creating a central revenue department for tax administration, a study conducted by the committee in accordance with House Resolution No. 500 of the 1963 Regular Session.

Respectfully submitted,

MILTON MARKS, *Chairman*

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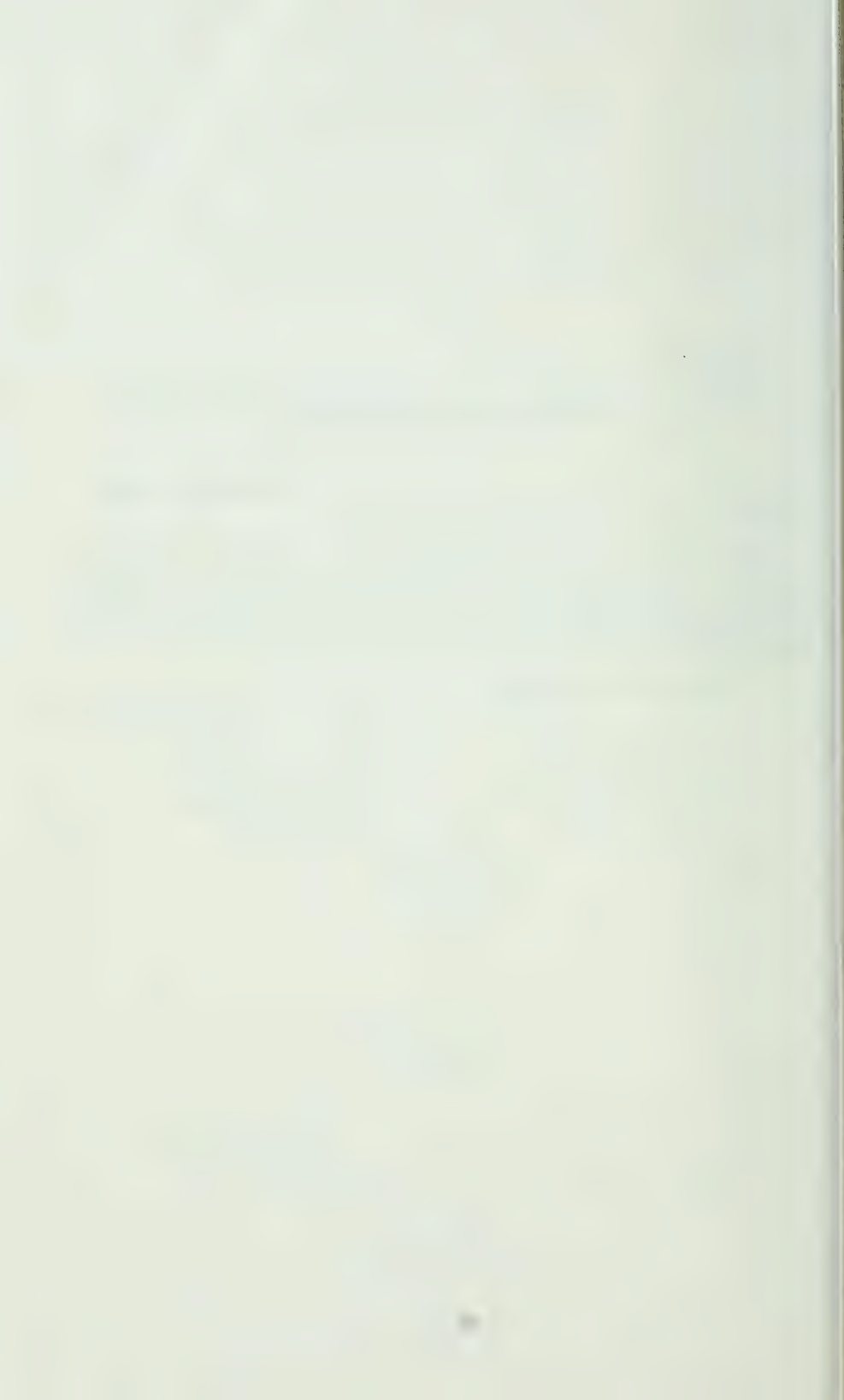
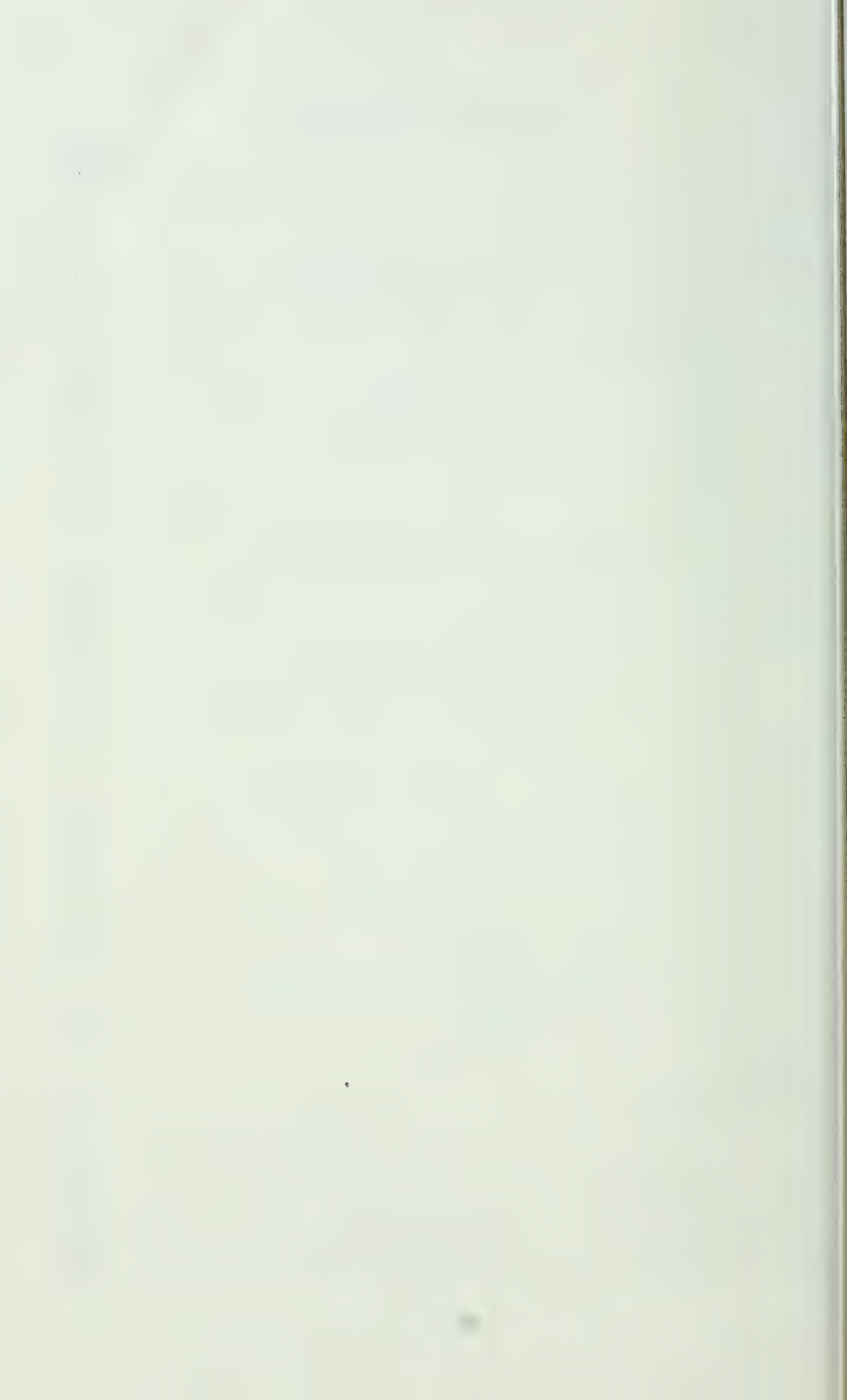


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I. INTRODUCTION

On September 3, 1964, the Assembly Interim Committee on Government Organization was activated, and the present committee members appointed, to study several important measures which had been assigned for interim study pursuant to House Resolution No. 500 adopted June 21, 1963.

This report contains the findings, conclusions and recommendations of the committee on the first of these subjects—the integration of the revenue collection functions of California state government within a central revenue department. Assembly Bill No. 3009 introduced by Assemblyman Milton Marks in the 1963 session was the specific proposal referred to the committee for interim study.

For more than 35 years committees of the Legislature and special study commissions have consistently recommended reorganization of California's structure for tax administration. The last major study by a legislative committee was undertaken 10 years ago, and the present committee has been concerned with reviewing the previous recommendations in the light of more recent developments.

The committee received valuable assistance in the conduct of this study from Governor Edmund G. Brown; Director Hale Champion and the staff of the Department of Finance; Hon. Paul Leake, Member

of the Board of Equalization, Third District; Hon. John W. Lynch, Member of the Board of Equalization, Second District; Herbert F. Freeman, Executive Secretary, Board of Equalization; Hon. Alan Cranston, State Controller; Ralph I. McCarthy, Deputy State Controller; and Martin Huff, Executive Officer, Franchise Tax Board.

It is significant that this is the first study of consolidation of revenue administration which has had the complete cooperation and positive support of the state officials with major responsibilities for tax collection. Each of these officials stated to the committee his belief that the proposed unification would result in substantial economies.

In order to more accurately assess the present structure for tax administration, background chapters have been prepared by the committee staff to provide a brief review of its history and development (Chapter III); an outline of the existing structure (Chapter IV); a survey of developments in other states (Chapter V); and a cross section of the findings and recommendations of previous studies (Chapter VI).

Public hearings were held on the subject matter of AB 3009 (1963) in Sacramento on October 6, 1964, and in Los Angeles on December 10, 1964. The committee expresses its appreciation for those witnesses who contributed to a better understanding of this complex problem.

The committee also wishes to acknowledge the contribution of Legislative Analyst A. Alan Post, whose continued support of revenue unification is well known.

II. SUMMARY

DEVELOPMENT OF REVENUE ADMINISTRATION

The product of 115 years of taxation in California is an administrative structure that has developed to meet specific fiscal crises. While there are historical reasons for the present assignment of tax collection responsibilities among several agencies, there is little over-all administrative rationale to the current structure.

THE TREND IN OTHER STATES

The trend of state tax administration is toward the consolidation of functions within a central revenue agency which is administered by a director appointed by the Governor. States which have established unified revenue administration have experienced a decline in the costs of administration.

Thirty of the 50 states administer the major taxes under no more than two agencies. All of the states which have both the sales and income taxes, except California, administer these under one central agency.

CONSENSUS OF PAST STUDIES

For more than 35 years legislative committees and special commissions have consistently recommended unification of revenue collection.

This consensus has been supported by each of our present state officials with tax administration responsibilities.

ECONOMIES OF CONSOLIDATION

The most serious disadvantage of the present administrative structure is that it has perpetuated inefficient and uneconomical use of personnel and facilities. The committee concludes that significant economies will result from consolidation of the major state tax programs.

TAXPAYER CONVENIENCE

The distribution of tax collection responsibility among several agencies presents a complicated picture to the taxpayer. An individual taxpayer is faced with the confusing situation of having to deal with as many as four separate agencies in the payment of his state taxes and in some instances having to deal with more than one agency in the payment of a single tax.

RESPONSIBILITY TO THE CHIEF EXECUTIVE

The present structure for tax administration violates the principle of concentrating responsibility for administration of the executive branch in the chief executive, results in duplication of certain activities and facilities, and hampers coordinated enforcement of all revenue laws.

TAX APPEALS

One of the essentials of good tax administration is an adequate appeals process. The committee concludes that the tax appeals procedure should be established independently from the administrative functions of tax collection to insure a clear separation of authority.

COMMITTEE RECOMMENDATIONS

The committee makes the following recommendations concerning California's structure for tax administration:

1. That a Department of Revenue be established with responsibility for the statutory state tax collection functions presently exercised by the State Controller, the Board of Equalization, and the Franchise Tax Board.
2. That the Department of Revenue be administered by a Director of Revenue appointed by the Governor with Senate confirmation and removable by the Legislature for cause.
3. That the Board of Equalization be designated as the board of tax appeals to review the decisions of the Department of Revenue.
4. That we move toward the establishment of an effective system of self-assessment of the inheritance tax. A first step should be self-assessment of those assets which have a fairly exact and easily ascertainable market value.
5. That the Director of the Department of Revenue submit progress reports to the Legislature on the internal organization of the department; and that the Legislative Analyst be directed to undertake an intensive review of the operations and organization of the Department of Revenue.

III. THE DEVELOPMENT OF REVENUE ADMINISTRATION IN CALIFORNIA

By the time California was admitted into the Union on September 9, 1850, the First Legislature had already met, approved the necessary laws for the commencement of government operations and adjourned. The enactment by the Legislature of a comprehensive revenue measure in March of that year marked the beginning of state tax administration¹ in California.

The principal feature of the revenue act was a direct state tax on general property.² This tax served as the major source of state revenue until 1911, and became the primary source of problems of tax administration for that 60-year period.

As provided by statute, the county assessors were to determine the value of all taxable property within their respective counties and both the state and county taxes were to be collected by the county treasurers who were allowed a percentage of the state tax collected. The county treasurers proved unable to collect the property tax for 1850³ and

¹ For a detailed analysis of the development of taxation and tax administration in California from statehood to 1935 see William C. Fankhouser, *A Financial History of California*, University of California Publications in Economics, Vol. 3, No. 2, 1913, and Marvel M. Stockwell, *Studies in California State Taxation*, Publications of the University of California at Los Angeles in Social Sciences, Vol. 7, 1939.

² *Statutes of 1850*, Chapter 17.

³ Fankhouser, p. 146.

accordingly an act was passed the following year transferring to the county sheriff of each county the duties of tax collector.⁴

The fact that the state tax rate was applied to property valued locally provided an inducement to local officials to under-assess property in their respective counties in order to enable the property owners in those counties to pay a smaller share of the state tax. The system of competitive undervaluation which resulted has been referred to as "one of the worst in the United States."⁵

An additional problem involved in the collection of the state's share of the property tax was the expense to the state in the form of fees paid to local officials for tax collection. In 1867, State Controller George Oulton criticized this system of collection, indicating that the state expended about 20 percent of the receipts from the property tax for payment of fees. Controller Oulton recommended revision of the revenue laws and the creation of a board of equalization.⁶

THE FIRST STATE BOARD OF EQUALIZATION

By 1869, the practice of underassessment had reached such proportions that Governor H. H. Haight advocated the establishment of a state equalization board to equalize assessments between the various counties. Legislation creating a board, composed of the State Controller and two members appointed by the Governor, was adopted in response to the Governor's recommendation.⁷

The board was hampered in its earliest efforts to enforce the law by a lack of cooperation on the part of county officers. In 1874, the California Supreme Court ruled that the board's statutory power to equalize assessments was in violation of the constitutional requirement that property be assessed by an officer elected by those whose property he was to assess. The court held that the process of equalization was a function of assessment since to change the valuation of a county resulted in a new assessment.⁸ This decision and subsequent removal of the supervisory control which the board had exercised resulted in "a rapid degeneration into the old conditions of underassessment."⁹

A CONSTITUTIONAL BOARD OF EQUALIZATION

With the adoption of California's second Constitution in 1879, the Board of Equalization was given constitutional status and its authority to equalize the assessment of property in the various counties was restored.¹⁰

The board was to consist of one member elected from each of the congressional districts then existing with the Controller as an ex officio member. A constitutional amendment was adopted in 1884 which authorized the Legislature to redistrict the state into four districts " . . . as nearly equal in population as practical. . . ."¹¹

⁴ *Statutes of 1851*, Chapter 6.

⁵ Harley Leist Lutz, *The State Tax Commission*, Harvard Economic Studies, Vol. 17, 1918, p. 85.

⁶ Fankhouser, p. 193.

⁷ *Statutes of 1869-1870*, Chapter 489.

⁸ *Houghton v. Austin*, 47 Cal. 646.

⁹ Lutz, p. 89.

¹⁰ *Constitution of 1879*, Article XIII, Secs. 9, 10.

¹¹ *Constitution of 1879*, Article XIII, Sec. 9. The only redistricting which has been undertaken took place in 1923 establishing the four equalization districts as they exist at present.

From 1881 to 1910, the board frequently exercised its authority to equalize assessments and increased or decreased the valuation of property in various counties.¹²

Following adoption of the new Constitution, the Legislature, in 1880, also authorized the board to assess the property of all railroads which operated in more than one county in the state¹³ and this law was later amended to provide that the State Controller collect the board-assessed tax on railroad property. This established a pattern of joint administration by the Board of Equalization and the Controller which was subsequently followed with the adoption of other taxes.

In 1892, the fee system of collecting the property tax was again criticized. Controller E. P. Colgan called the attention of the Legislature to the deficiencies of the system,¹⁴ and the following year a bill was approved abolishing all commissions and fees paid by the state to local officials for their services in assessing property, auditing the assessments, and collecting and paying over the ad valorem property tax.

THE INHERITANCE TAX OF 1893

In that same year inheritance taxation was introduced into California. The tax was to be collected by the county treasurers, who were allowed a percentage of the tax collected.¹⁵ By the provisions of this act the fee system which had been abolished for the property tax was reintroduced. In 1909 the Controller was authorized to appoint an inheritance tax deputy to assist in the administration of the tax, and in 1911 the law was further amended to authorize the Controller to appoint an inheritance tax appraiser in each county¹⁶ who would receive prescribed fees for his appraisals. This general pattern of administration has continued to the present.

THE TAX REFORM OF 1910

In response to widespread criticism of the revenue system in California, the Legislature created a Commission on Revenue and Taxation in 1905 to recommend a plan for revision and reform of the existing system.¹⁷ The special tax commission condemned the efforts to obtain equalization of the property tax.¹⁸ The commission was interested in securing separation of sources of state and local revenue under which it believed that equalization by a state board would no longer be necessary.¹⁹

The unanimous recommendations of the commission, frequently referred to as the "Plehn Plan," proposed that the state abandon the property tax to the counties and municipalities and adopt a series of gross earnings and franchise taxes on various classes of corporations. The result would be a separation of the sources of revenue available to state and local governments.

¹² Fankhouser, p. 287.

¹³ *Statutes of 1880*, Chapter 31.

¹⁴ Fankhouser, p. 294.

¹⁵ *Statutes of 1893*, Chapter 168.

¹⁶ *Statutes of 1911*, Chapter 395.

¹⁷ As organized the commission consisted of Governor Pardee, Professor Carl L. Plehn (a noted expert on taxation), and two Members of the Senate and Assembly.

¹⁸ *Report of the Commission on Revenue and Taxation*, 1906, p. 10.

¹⁹ *Ibid.*, p. 11.

However, the constitutional amendment proposed by the Legislature to carry out the recommendations of the commission was defeated in 1908.²⁰ A second commission was appointed²¹ and the plan was revised to meet the objections raised during the election campaign. After receiving the commission's report²² the Legislature met in extraordinary session one month prior to the election of 1910 and approved the necessary constitutional amendment for submission to the voters. At the election of 1910, the plan was approved.

The passage of this amendment marked a shift from local administration of state taxes to state control. Under the new system the state received the largest part of its revenue from a gross receipts tax on public service corporations; a gross premium tax on insurance companies; a capital stock tax on banks; and an inheritance tax. The rates were applied on the theory that each class bore some relationship to property value, but it was this theory that resulted in difficulty in adjusting relative tax burdens.

The pattern of joint administration of state taxes, which had been established earlier, was expanded with the adoption of the provision for assessment of the new taxes by the Board of Equalization and collection by the Controller.

THE HIGHWAY USER TAXES OF 1923

The need for additional revenue to finance a growing state highway system resulted in the passage of several state taxes on automobiles and their operation. These new sources of revenue established the principle that "the highway user was the receiver of benefit, and therefore the proper taxpayer."²³

Early efforts to register motor vehicles had proven ineffective and so a flat registration fee for privately owned motor vehicles was instituted by the Motor Vehicle Act of 1923.²⁴ Commercial motor transportation was first taxed under the Motor Vehicle License Tax Act of 1923.²⁵ The Board of Equalization licensed each vehicle operated and payment was made to the Controller on the basis of gross receipts. The most productive in support of highways and the easiest of these highway user taxes to administer was the Motor Vehicle Fuel Tax Act of 1923.²⁶ Responsibility for licensing and assessing the tax was assigned to the Board of Equalization with collection the responsibility of the Controller.

REVENUE REFORM AND THE DEPRESSION

As early as 1917, a special State Tax Commission had recommended the abandonment of the system of separation of sources. The commission noted that the system had failed as a revenue producer at its original rates and its provisions for adjustments in rates were faulty.²⁷

²⁰ Fankhouser, p. 372.

²¹ As members of the commission, Governor Gillett appointed Senator J. B. Curtin and Professor Plehn.

²² *Report of the Commission on Revenue and Taxation, 1910.*

²³ Stockwell, p. 88.

²⁴ *Statutes of 1923*, Chapter 266.

²⁵ *Ibid.*, Chapter 341.

²⁶ *Ibid.*, Chapter 267.

²⁷ *Report of the State Tax Commission of the State of California, 1917*, p. 9.

A California Supreme Court decision²⁸ invalidating the application of the Corporation Tax Law of 1915 to foreign corporations, emphasized the general dissatisfaction with that method of taxation. The 1927 Legislature repealed this act and authorized an extensive study of the system of separation of sources by the California Tax Commission.²⁹ As a result of the commission's study³⁰ a constitutional amendment was submitted to the voters in 1928 changing the concept of corporation taxation by permitting taxation of banks and general corporations on the basis of net income.

FRANCHISE TAX COMMISSIONER

The adoption of the Bank and Corporation Tax Act of 1929³¹ marked a significant departure from the separation of sources which had characterized tax history since 1911. The creation of the new office of Franchise Tax Commissioner also marked a departure from the accepted pattern of assigning new taxes to the Board of Equalization and the Controller with shared administrative responsibilities. This was the first time since the adoption of the *Constitution of 1879* that a new agency for administering taxes had been set up.

The Franchise Tax Commissioner was appointed by a committee consisting of the Controller, the Director of Finance and the Chairman of the Board of Equalization.

The California Tax Commission submitted its final report in 1929. The commission concluded that the faults of the system of separation of sources are "serious and fundamental" and that it should be abandoned.³² In addition to its recommendation that the uniform business franchise tax on all corporations be enacted,³³ the commission recommended the return of public utilities to the local tax rolls,³⁴ and the adoption of a personal income tax.³⁵ All of the commission's recommendations were conditioned upon a fundamental reform of the administrative structure for revenue collection. The commission's report was reviewed by a Joint Legislative Committee on Taxation in 1931, which disagreed with the basic proposals³⁶ and no additional changes were made.

THE RILEY-STEWART PLAN

By 1933, however, the effects of the financial depression upon a tax system which had fundamental defects demanded immediate changes. The measure which was enacted by the Legislature in that year was known as the "Riley-Stewart Plan."³⁷

A constitutional amendment incorporating the major changes in the tax system was submitted to the voters and adopted at a special election held in June 1933. Under this plan the separation of sources was abandoned. Public utility property was returned to local tax rolls

²⁸ *Perkins Mfg. Co. v. Jordan* 200 Cal. 667.

²⁹ Known as the Martin Commission after its chairman, consisted of eight members including State Controller, Ray L. Riley.

³⁰ *Special Report of the California Tax Commission*, 1928.

³¹ *Statutes of 1929*, Chapter 13.

³² *Report of the California Tax Commission*, 1929 p. xxi.

³³ *Ibid.*, p. 79.

³⁴ *Ibid.*, p. 75.

³⁵ *Ibid.*, p. 95.

³⁶ Joint Legislative Committee on Taxation, *Report*, 1931, p. 34.

³⁷ Named after State Controller Ray L. Riley and Board of Equalization Member, Fred E. Stewart.

which involved the resumption of equalizing assessed values of all property in counties throughout the state. In addition, the counties' responsibility for financing public schools was assumed by the state in an effort to relieve the burden on the property tax. An attempt was also made to limit state and local government expenditures.

As a result of the enactment of the Riley-Stewart Plan, the 1933 Legislature was faced with the addition of public school costs to the existing budget deficit. In response to this crisis several new revenue measures were enacted. The most important of these was the retail sales tax.³⁸ Administration of the tax was assigned to the Board of Equalization with the burden of collection upon the retailer.

After having been forbidden since 1909, horseracing at which betting is allowed was permitted with the passage of a constitutional amendment at the special election in June 1933. A license tax was adopted on all parimutuel wagering.³⁹ A board, composed of three members appointed by the Governor, was created to govern horseracing and to collect the revenue. A tax on alcoholic beverages,⁴⁰ to be administered by the Board of Equalization as assessor and enforcer, with the Controller as collector, was also enacted.

A tax on personal income,⁴¹ which had been advocated by the 1929 commission to "supply the missing third leg to the tax stool and provide a logical unity to the system"⁴² was adopted in 1935. Administration of the tax was assigned to the Franchise Tax Commissioner. The adoption of the use tax⁴³ was intended to extend the coverage of the sales tax to property purchased outside California for use in the state. A third tax enacted in 1935 resulted from difficulties in administering the local personal property taxes on motor vehicles. To meet this problem a motor vehicle in lieu tax was enacted⁴⁴ and assigned to the Department of Motor Vehicles which had been established in 1931. Another change in 1935 was the enactment of the Unemployment Insurance Law⁴⁵ to be administered by the newly created Department of Employment.

In 1937, the diesel (use fuel) tax⁴⁶ became a supplement to the gasoline tax in the field of highway user taxes. This tax was to be administered in the same manner as the gas tax. A private car tax⁴⁷ replaced the state-assessed, but locally collected, property taxes on privately owned railroad cars with complete administrative responsibility given to the Board of Equalization. The Franchise Tax Commissioner was assigned the duty of administering the corporation income tax⁴⁸ enacted to supplement the franchise tax. Two years later the gift tax⁴⁹ was added to counteract avoidance of the inheritance tax and administration was assigned to the Controller.

³⁸ *Statutes of 1933*, Chapter 1020.

³⁹ *Ibid.*, Chapter 769.

⁴⁰ *Ibid.*, Chapter 51.

⁴¹ *Statutes of 1935*, Chapter 329.

⁴² *Final Report of the California Tax Commission*, 1929, p. 99.

⁴³ *Statutes of 1935*, Chapter 230.

⁴⁴ *Ibid.*, Chapter 362.

⁴⁵ *Ibid.*, Chapter 352.

⁴⁶ *Statutes of 1937*, Chapter 352.

⁴⁷ *Ibid.*, Chapter 283.

⁴⁸ *Ibid.*, Chapter 765.

⁴⁹ *Statutes of 1939*, Chapter 652.

With the enactment of the major state taxes of the 1930's the revenue system of California was finally established in the form which has existed with only minor changes to the present.

THE FRANCHISE TAX BOARD

With the adoption of the civil service amendment to the Constitution in 1934⁵⁰ every officer and employee of the state was included in the civil service system except elective officers and officers appointed by the Governor. Since the Franchise Tax Commissioner was neither an elective officer nor an officer appointed by the Governor, he became the only civil service employee responsible to no one for his actions.

A legislative investigation in 1948 of the office of the Franchise Tax Commissioner revealed inefficiency and mismanagement and "widespread practice of employees . . . soliciting and performing outside employment which is incompatible with their duties as state employees."⁵¹ The 1949 Legislature transformed the office of the Franchise Tax Commissioner into that of the Franchise Tax Board consisting of the State Controller, the Director of Finance, and the Chairman of the State Board of Equalization.⁵² The Franchise Tax Board appoints an executive officer to whom is delegated the responsibility for directing the activities of the staff of the agency.

The enactment of the Uniform Local Sales and Use Tax Law of 1955⁵³ established a new pattern of state revenue administration through cooperation with local governments for the collection of state-administered local sales and use taxes. By the latter part of 1960 all cities and counties of the state used the Board of Equalization machinery for collecting their sales tax.

In 1959, the cigarette tax⁵⁴ was enacted as part of a program to meet a major budget deficit. This tax was added to the revenues administered by the Board of Equalization.

The most recent tax enacted was the subscription television tax.⁵⁵ It became operative in 1963, but was repealed by an initiative constitutional amendment approved by the electorate in November 1964.

SUMMARY

The product of 115 years of taxation in California is an administrative structure that has developed to meet specific fiscal crises. While there are historical reasons for the present assignment of tax collection responsibilities among several agencies, there is little over-all administrative rationale to the current structure.

⁵⁰ *Constitution of 1879, Article XXIV.*

⁵¹ *Assembly Interim Committee on Governmental Efficiency and Economy, Partial Report on the San Francisco Office of the Franchise Tax Commissioner, 1949, p. 19.*

⁵² *Statutes of 1949, Chapter 1188.*

⁵³ *Statutes of 1955, Chapter 1311.*

⁵⁴ *Statutes of 1959, Chapter 1040.*

⁵⁵ *Statutes of 1963, First Extraordinary Session, Chapter 5.*

IV. THE PRESENT STRUCTURE FOR TAX ADMINISTRATION

Administration of most California revenue laws is divided among three major tax collection agencies: the State Controller, the Board of Equalization and the Franchise Tax Board.¹

STATE CONTROLLER

The State Controller is an elected constitutional officer. As enumerated in the Constitution, the Controller's duties are limited to drawing warrants² and serving on designated constitutional boards.

The Controller has been assigned responsibilities in the administration of most state taxes. (See the organizational chart on the following page for an outline of the existing responsibilities for tax administration.) He serves as Chairman of the Franchise Tax Board and as a member of the Board of Equalization.

The Controller has direct administrative responsibilities for the collection of the gasoline tax (motor vehicle fuel license tax), the truck tax (motor vehicle transportation license tax), and the insurance com-

¹ For a review of the organizational structure of these agencies see William Hauck, *The Current Organizational Structure of the Franchise Tax Board, Board of Equalization and State Controller of California*, April 30, 1964. A Coro Foundation study, it was conducted under the auspices of the California State Commission on Government Organization and Economy.

² *Constitution of 1879*, Article IV, Sec. 22.

panies tax and assessment of these taxes is made by the Board of Equalization. The petroleum and gas production assessment and the subsidence abatement assessment are made by the Department of Conservation and have been assigned to the Controller for collection. Administration of these tax collection activities has been placed in the Tax Collection and Refund Division in the Controller's office. In addition, the division is responsible for refunds of the tax on fuels used for non-highway purposes.

The Controller through his Inheritance and Gift Tax Division is also responsible for administration of the inheritance and gift taxes. While inheritance taxes are fixed by the local superior court in which the estate of the particular decedent is being probated, the decision of the court is based upon valuations made by inheritance tax appraisers assigned by the court from the panel of appraisers appointed by the Controller. Probate and inheritance tax fees amounted to \$3,035,000 and \$142,000 respectively during 1963.

The county treasurer in each county receives the taxes fixed by the court and also participates in the administration of the inheritance tax by examining safe deposit boxes, issuing consents to transfer property and transmitting collections to the State Treasurer. The county treasurers receive 3 percent of their collections as a commission. The Controller's office estimates the 1964-65 commissions at \$670,000.

The Controller is also responsible for supervision of redemption and tax deed procedures. The Tax Deeded Land Division acts as a coordinating agency and assists local officials in returning tax-deeded property to local tax rolls. Until redeemed or sold by the county tax collector, title to tax-deeded property is held by the state.

In addition to serving as a member of the State Board of Equalization and the Franchise Tax Board, the Controller is a member of the Reciprocity Commission, the Reapportionment Commission, the San Francisco Harbor Finance Board, the State Highway Finance Board, the State Park Finance Board, the Unemployment Relief Finance Committee, the State Board of Control, the Pooled Money Investment Board, the State Teachers' Retirement Investment Board, the Veterans Finance Committee, the Committee to Fix Interest on Registered War-rants, the State School Building Finance Committee, the Harbor Improvement Board Committee, the California Water Resources Development Finance Committee and the California Exposition and Fair Executive Committee.

THE BOARD OF EQUALIZATION

The State Board of Equalization was created under the *Constitution of 1879*. It is composed of five members elected for four-year terms. One is elected from each of the four equalization districts of the state and the fifth is the State Controller, who serves as an *ex officio* member. Each of the four full-time members is responsible within his district for administration of the laws for which the board as a whole has statewide responsibility.

The board administers several major state taxes, values public utility property for purposes of local property taxation and equalizes average levels of locally assessed property in each of the 58 counties.

The state taxes which have been assigned to the board are administered by the Department of Business Taxes. The business taxes constitute over half of the total state revenues.

The most important of these taxes is the retail sales and use tax which is the largest source of state revenue (amounting to 30.54 percent of the total during the 1963-64 fiscal year). The board administers the diesel fuel tax (use fuel tax), and is responsible for the licensing and assessment provisions of the gasoline tax (motor vehicle fuel license tax) and the truck tax (motor vehicle transportation license tax) which are collected by the Controller. The assessment of the insurance company tax is a constitutional function of the board. The assessment is based upon information provided by the Insurance Commissioner.

Following the repeal of prohibition the board was designated as the agency responsible for liquor control functions. When these duties were transferred to the Department of Alcoholic Beverage Control in 1955, the board retained the administration of the excise taxes on alcoholic beverages. The board is also responsible for the cigarette tax. Another function of the Department of Business Taxes is the collection of local sales and use taxes for all California cities and counties as an integral part of the collection of the state levy. During the 1963-64 fiscal year \$287 million were returned to the 58 counties and 383 cities.

The state is divided into 10 districts for purposes of business tax administration. Each of these districts consists of a group of counties within an equalization district.

The constitutional duties of the board for equalization of county assessment levels is administered within a Department of Property Taxes. The department also assists local assessors in establishing assessment standards, administers the private (railroad) car tax, and has the constitutionally assigned function of valuing public utility property for local purposes.

FRANCHISE TAX BOARD

California's second largest revenue agency is the Franchise Tax Board. The three members of the board are the State Controller, the Chairman of the Board of Equalization and the Director of Finance. An executive officer appointed by the board is directly in charge of the agency's operations.

The Franchise Tax Board administers the bank and corporation franchise tax, the personal income tax and the corporation income tax which account for about one-third of the total state tax and license revenues.

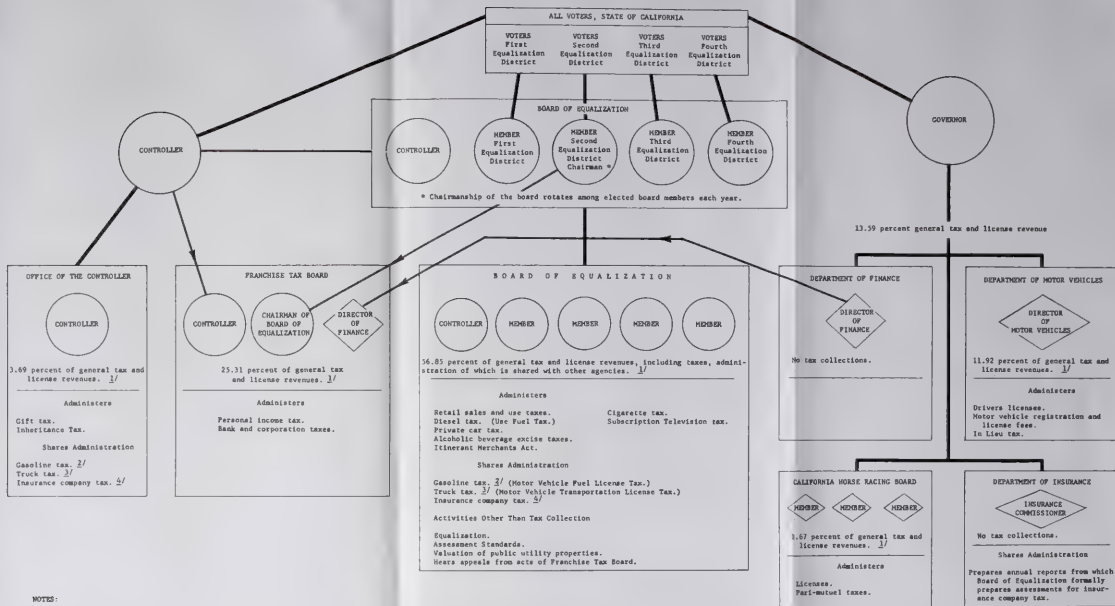
The board is divided into two organizational divisions: the Operations Division and the Administrative Division. The Operations Division consists of two regional offices (San Francisco and Los Angeles) and the headquarters office (Sacramento).

OTHER AGENCIES ADMINISTERING STATE TAXES

The Department of Employment has important tax administration responsibilities in the collection of payroll taxes for unemployment and disability payments. The department administers the provisions of the Unemployment Insurance Code which, in conjunction with the

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NOTES:

1/ Tax collection percents based on general tax and license revenue, Annual Report June 30, 1963.

2/ The Board of Equalization and the Controller share in administering the gasoline tax as follows:
Board of Equalization--licensees distributors, determines amounts of tax due, audits taxpayers' accounts and is broadly responsible for compliance with the provisions of the act.
Controller--responsible for collections of the tax and handles refunds.3/ The Board of Equalization and the Controller share in administration of the Truck tax as follows:
Board of Equalization--licensees taxpayers, determines amounts of tax due, conducts audits and is broadly responsible for compliance with provisions of the tax act.
Controller--responsible for collection of the tax.4/ The Department of Insurance, the Board of Equalization and the Controller share administration of the insurance company tax as follows:
Board of Insurance--prepares annual reports from which the Board of Equalization prepares assessments.
Board of Equalization--formally determines amount of tax due from statistical data supplied by Department of Insurance.
Controller--responsible for collection.

LEGEND

- Direct lines of authority or responsibility
- Position held by virtue of holding another office
- Elected official
- ◇ Appointee of the Governor (non-civil service)



Federal Social Security Law, provides a program of unemployment benefits.

The Department of Motor Vehicles is also a major revenue collecting agency. Taxes and fees collected by the department amount to more than 11 percent of the total taxes administered by state agencies. In addition to registration fees, the department collects the vehicle license fee ("in lieu" tax).

The California Horse Racing Board administers laws governing horseracing on which there is parimutuel wagering. The board consists of three members appointed by the Governor. Collection of the parimutuel license tax is supervised by the board. The tax is largely self-assessed and the state's share is transmitted daily to the State Treasurer.

Virtually every state agency collects some revenue either through issuing licenses or charging fees for certain services. The total of fees collected in 1962-63 was equal to approximately 20 percent of General Fund revenues for that year.³

For an outline of the revenue produced from taxes administered by state agencies see Table 1 on the following page.

³ Assembly Interim Committee on Revenue and Taxation *Fees and Licenses*, July 1964, p. 74.

TABLE 1
OUTLINE OF TAXES ADMINISTERED BY STATE AGENCIES ¹

<i>Major taxes and fees</i>	<i>Administering Agency</i>	<i>Fund</i>	<i>Revenue fiscal year ended June 30, 1964</i>	<i>Percent of total</i>
Alcoholic beverage excises	Board of Equalization	General	\$51,443,287	2.14
Bank and corporation	Franchise Tax Board	General	405,431,368	14.12
Cigarette	Board of Equalization	General	71,821,679	2.50
Horseracing license	Horse Racing Board	Fair and Exposition and General	43,442,480	1.51
Inheritance and gift	Controller	General	102,194,566	3.56
Insurance	Board of Equalization ²	General	107,199,636	3.73
Liquor license fees	Alcoholic Beverage Control Department	Alcoholic Beverage and General	14,274,209	.50
Motor vehicle: Vehicle registration and operator's license fees	Motor Vehicle Department	Vehicle License Fee and Motor Vehicle Fund	167,808,188	5.84
Fuel—gasoline	Board of Equalization ³	Fuel	424,018,659	14.77
Fuel—diesel	Board of Equalization	Fuel	26,175,974	.91
Weight fees	Motor Vehicle Department	Motor Vehicle	161,775,445	5.63
Transportation	Board of Equalization ³	Transportation Tax	15,182,676	.53
Personal income	Franchise Tax Board	General	392,341,874	13.66
Private (railroad) car	Board of Equalization	General	1,846,205	.06
Retail sale and use	Board of Equalization	General	876,943,856	30.54

¹ Excluding unemployment and disability insurance taxes.

² Board of Equalization and Controller share in administering tax.

³ The Department of Insurance, the Board of Equalization and the Controller share in administration of the tax.

SOURCE: State Controller.

V. TAX ADMINISTRATION IN OTHER STATES

The history of taxation in the majority of states closely parallels the California experience. A significant difference has been the reluctance in this state to follow the movement to reorganize revenue administration.

The first centralized tax agency was established in 1891 in Indiana as a result of a movement for tax reform.¹ Only six states had established permanent state tax departments by 1900. The remainder of the states assigned functions of revenue administration to existing elective officials. The increasing demands for state services accompanying the shift from a rural to an urban economy placed new demands on tax administration in the various states. The majority of states continued to assign new taxes to existing tax agencies, usually on the basis of administrative leadership or the workload of the respective agencies. In some cases, new state agencies were created to administer particular taxes. Following the fiscal crisis of the 1930's, various states adopted

¹ Harley L. Lutz, *The State Tax Commission*, (Cambridge: Harvard University Press, 1918) p. 149.

plans for centralized tax administration. These improvements closely paralleled the state government reorganization movement.²

Today, the majority of states have adopted centralized administrative structures for tax collection. Considering the seven major sources of revenue utilized by the states (income, sales, gasoline, motor vehicle, tobacco, death and alcoholic beverages), 10 states have all of these taxes administered by one central agency. (See Table II.) Twenty additional states administer these taxes under two agencies. The second agency usually has the responsibility of taxes on motor vehicles in connection with other administrative responsibility relating to automobiles (14 states). Only six states have as many as four agencies administering the seven major state taxes. With the exception of California these are relatively small states (Delaware, Florida, Nebraska, North Dakota and Oregon).

In summary, 30 of the 50 states administer the major taxes under no more than two agencies. In 28 of these states, the central tax agency administers all but one of the major tax sources.

Another aspect of centralized administration of taxes was presented to the committee by Elton McQuery,³ Western Representative of the Council of State Governments in response to a question from Assemblyman Marks concerning revenue collection in the larger states.

MR. MCQUERY: The 10 most populous states according to 1962 population figures are California, Florida, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania and Texas.

For those states, California has four agencies; Florida has four agencies; Illinois, three; Massachusetts, two; Michigan, three; New Jersey, two; New York, two; Ohio, two; Pennsylvania, one; and Texas, three.

I'd like to direct your attention to the three largest revenue producers (income tax, sales tax, and gasoline tax). These are the three largest producers of state tax revenue.

For those three tax sources, taking again the 10 most populous states, California and Pennsylvania are the only two states that levy all three of those taxes. California has two agencies administering those three taxes. All of the other top 10 states in terms of population have a single agency administering those three major tax producing sources.

Now with respect to all other states, and again those three major sources, there are 27 states that levy all three. Twenty-two of those 27 have a single agency. Twenty other states levy two out of the three, and 15 of those 20 have a single agency. Of the 47 states which administer two or three of the major tax sources, 37 have centralized administration within a single agency.

The major taxes which are most frequently administered by the dominant tax agency are the income and sales taxes. California is the only state which has both of these revenue sources where each is ad-

² For a more extended review see A. E. Buck, *Reorganization of State Government*, (New York: The Columbia University Press, 1938).

³ Unless specifically cited by footnote, statements quoted herein were presented to this committee at public hearings held in Sacramento on October 6, 1964, or Los Angeles on December 10, 1964.

TABLE II

AGENCIES ADMINISTERING MAJOR STATE TAXES: JULY 1, 1963

State	Income	Sales	Gasoline	Motor Vehicle ¹	Tobacco	Death	Alcoholic Beverages	No. of agencies ²	State
Alabama	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Al. Bev. Contr. Bd.	2	Alabama
Alaska	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	1	Alaska
Arizona	Tax Commn.	Tax Commn.	Highway Dept.	Highway Dept.	Tax Commn.	Treasurer	Tax Commn.	3	Arizona
Arkansas	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	1	Arkansas
California	Frtn. Tax Bd.	Bd. of Equal.	Bd. of Equal.	Dept. Mot. Veh.	Bd. of Equal.	Controller	Bd. of Equal.	4	California
Colorado	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	1	Colorado
Connecticut	Tax Commisr.	Tax Commisr.	Tax Commisr.	Commisr. Mot. Veh.	Tax Commisr.	Tax Commisr.	Tax Commisr.	2	Connecticut
Delaware	Tax Dept.	Tax Dept.	Highway Dept.	Commisr. Mot. Veh.	Tax Dept.	Tax Dept.	Al. Bev. Contr. Commn.	4	Delaware
Florida		Rev. Commn.	Rev. Commn.	Commisr. Mot. Veh.	Bev. Dept.	Comptroller	Bev. Dept.	4	Florida
Georgia	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	1	Georgia
Hawaii	Dept. of Tax.	Dept. of Tax.	Dept. of Tax.	County Treas.	Dept. of Tax.	Dept. of Tax.	Dept. of Tax.	2	Hawaii
Idaho	Tax Collector	Tax Collector	Tax Collector	Dept. of Law Enf.	Tax Collector	Tax Collector	Tax Collector	2	Idaho
Illinois		Dept. of Rev.	Dept. of Rev.	Sec. of State	Dept. of Rev.	Atty. Gen.	Dept. of Rev.	3	Illinois
Indiana	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Sec. of State	Dept. of Rev.	Dept. of Rev.	Alcoh. Bev. Commn.	3	Indiana
Iowa	Tax Commn.	Tax Commn.	Treasurer	Dept. Pub. Safety	Tax Commn.	Tax Commn.	Tax Commn.	3	Iowa
Kansas	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Highway Commn.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev. & Dir. Al. Bev. Contr.	3	Kansas
Kentucky	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	1	Kentucky
Louisiana	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Local	Dept. of Rev.	2	Louisiana
Maine		Bur. of Tax	Bur. of Tax	Sec. of State	Bur. of Tax	Bur. of Tax.	Liquor Commn.	3	Maine
Maryland	Comptroller	Comptroller	Comptroller	Commisr. Mot. Veh.	Comptroller	Local	Comptroller	3	Maryland
Massachusetts	Commisr. Corp. & Tax	Commisr. Corp. & Tax	Commisr. Corp. & Tax	Reg. Mot. Veh.	Commisr. Corp. & Tax	Comm. Corp. & Tax.	Commisr. Corp. & Tax	2	Massachusetts
Michigan		Dept. of Rev.	Dept. of Rev.	Sec. of State	Dept. of Rev.	Dept. of Rev.	Liquor Contr. Commn.	3	Michigan
Minnesota	Dept. of Tax.	Dept. of Tax.	Dept. of Tax.	Sec. of State	Dept. of Tax.	Dept. of Tax.	Liquor Contr. Commn.	3	Minnesota
Mississippi	Tax Commn.	Tax Commn.	Mot. Veh. Compt.	Mot. Veh. Compt.	Tax Commn.	Tax Commn.	Tax Commn.	2	Mississippi
Missouri	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	1	Missouri
Montana	Bd. of Equal.		Bd. of Equal.	Reg. Mot. Veh.	Bd. of Equal.	Bd. of Equal.	Liquor Contr. Bd.	3	Montana
Nebraska			Dept. Agric. & Insp.	Dept. Rds. & Irrg.	Dept. Agric. & Insp.	Tax Commisr.	Liquor Contr. Commn.	4	Nebraska
Nevada		Tax Commn.	Tax Commn.	Dept. Mot. Veh.	Tax Commn.	Tax Commn.	Tax Commn.	2	Nevada
New Hampshire			Commisr. Mot. Veh.	Commisr. Mot. Veh.	Tax Commn.	Tax Commn.	Liquor Commn.	3	New Hampshire
New Jersey			Dept. of Treas.	Dept. Law & Pub. Sfty.	Dept. of Treas.	Dept. of Treas.	Dept. of Treas.	2	New Jersey
New Mexico									New Mexico
New York	Bur. of Rev.	Bur. of Rev.	Bur. of Rev.	Dept. Mot. Veh.	Bur. of Rev.	Bur. of Rev.	Bur. of Rev.	2	New York
North Carolina	Dept. Tax. & Fin.	Dept. Tax. & Fin.	Dept. Tax. & Fin.	Dept. Mot. Veh.	Dept. Tax. & Fin.	Dept. Tax. & Fin.	Dept. Tax. & Fin.	2	North Carolina
North Dakota	Tax Commisr.	Tax Commisr.	Auditor	Highway Dept.	Tax Commisr.	Tax Commisr.	Treasurer	4	North Dakota
Ohio		Tax Commisr.	Tax Commisr.	Reg. Mot. Veh.	Tax Commisr.	Tax Commisr.	Tax Commisr.	2	Ohio
Oklahoma	Tax Commn.	Tax Commn.	Tax Commn.	Tax Commn.	Tax Commn.	Tax Commn.	Tax Commn.	1	Oklahoma
Oregon	Tax Commn.	Tax Commn.	Dept. Mot. Veh.	Dept. Mot. Veh.	Tax Commn.	Treasurer	Liquor Contr. Commn.	4	Oregon
Pennsylvania	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	1	Pennsylvania
Rhode Island	Dept. of Admin.	Dept. of Admin.	Dept. of Admin.	Reg. Mot. Veh.	Dept. of Admin.	Dept. of Admin.	Dept. of Admin.	2	Rhode Island
South Carolina	Tax Commn.	Tax Commn.	Tax Commn.	Highway Commn.	Tax Commn.	Tax Commn.	Tax Commn.	2	South Carolina
South Dakota									South Dakota
Tennessee	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. Mot. Veh.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	2	Tennessee
Texas		Comptroller	Comptroller	Highway Dept.	Comptroller	Comptroller	Liquor Contr. Bd.	1	Texas
Utah	Tax Commn.	Tax Commn.	Tax Commn.	Tax Commn.	Tax Commn.	Tax Commn.	Tax Commn.	3	Utah
Vermont	Commisr. of Taxes	Commisr. of Taxes	Mot. Veh. Dept.	Mot. Veh. Dept.	Commisr. of Taxes	Commisr. of Taxes	Commisr. of Taxes	2	Vermont
Virginia									Virginia
Washington	Dept. of Tax	Dept. of Tax	Div. Mot. Veh.	Div. Mot. Veh.	Dept. of Tax.	Dept. of Tax.	Dept. of Tax.	2	Washington
West Virginia	Tax Commisr.	Tax Commisr.	Dept. of Licenses	Dept. of Licenses	Tax Commisr.	Tax Commisr.	Liquor Contr. Commn.	3	West Virginia
Wisconsin	Dept. of Tax	Dept. of Tax	Dept. of Tax	Dept. Mot. Veh.	Dept. of Tax	Dept. of Tax	Dept. of Tax	2	Wisconsin
Wyoming	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Dept. of Rev.	Liquor Commn.	2	Wyoming

¹Source: Federation of Tax Administrators, Tax Administrators News, Vol. 27, No. 7, 1963, p. 23.²The motor vehicle column refers to the administration of motor vehicle registration fees and special tax laws on motor carriers. The latter include mileage taxes, gross receipt taxes and special taxes on a weight or capacity basis, but exclude motor fuel use taxes imposed on carriers.

ministered by a separate agency.⁴ Mr. McQuery also presented some information concerning the top administrative structure of the state tax agencies:

MR. McQUERY: Mr. Chairman, I don't have detailed information regarding the internal organization of all the state revenue collecting agencies, however, the material that I have here reflects that in 40 of the 50 states, the major tax collecting agencies are agencies headed by a single official rather than by a commission. And in all but a half dozen states, the responsible administrative officials are appointed by the Governor with legislative approval or by the Governor alone.

Assemblyman Bagley questioned Mr. McQuery concerning central administration of death taxes.

ASSEMBLYMAN BAGLEY: I note from the chart . . . that in all of the states which have to some extent a centralized department of revenue . . . the death tax administration falls within that single operation and is not spun off into some other area. . . .

MR. McQUERY: I believe that is generally true . . . in two states, Louisiana and Maryland, death taxes are collected locally . . . and in one other state⁵ the Attorney General, collects death taxes.

Generally speaking, the death tax is collected by the major collection agencies in those states where there is a major collection agency.

Another aspect of revenue administration is the appeals process. Among the various states efforts have been made to provide an independent review of the decisions of the revenue department. Presently, 15 states have independent agencies concerned exclusively with the review of tax rulings by state or local officials or both.⁶ (See table III below.)

In summary, the trend of state tax administration is toward the consolidation of functions within a central revenue agency which is administered by a director appointed by the Governor. States which have established unified revenue administration have experienced a decline in the costs of administration.

⁴ Federation of Tax Administrators, *Tax Administrators News*, Vol. 27, No. 7, July 1963, p. 73.

⁵ Illinois.

⁶ Federation of Tax Administrators, *Tax Administrators News*, Vol. 28, No. 6, June 1964, p. 61.

TABLE III
INDEPENDENT TAX REVIEW AGENCIES *

<i>Jurisdiction</i>	<i>Agency title</i>
Delaware	Tax Board
District of Columbia	Tax Court
Hawaii	Tax Appeals Court
Kansas	Board of Tax Appeals
Kentucky	Board of Tax Appeals
Louisiana	Board of Tax Appeals
Maryland	Tax Court
Massachusetts	Appellate Tax Board
Michigan	Board of Tax Appeals
	Corporation Tax Appeal Board
Minnesota	Board of Tax Appeals
New Jersey	Division of Tax Appeals
North Carolina	Tax Review Board
Ohio	Board of Tax Appeals
Oregon	Tax Court †
Pennsylvania	Board of Finance and Revenue
Wisconsin	Board of Tax Appeals

SOURCE: Federation of Tax Administrators, *Tax Administrators News*, Vol. 28, No. 6, June 1964, p. 61.

* Excludes agencies which have administrative duties in addition to tax services.

† The Oregon Tax Court is part of the state's judicial system.

VI. PREVIOUS COMMENT

Integration of revenue collection functions is by no means a new concept. Since 1929, special commissions and legislative committees have consistently recommended unification of revenue administration. Findings and recommendations selected from these studies provide a comprehensive commentary on California's tax administrative structure.

Even before the 1933 Legislature adopted the major changes embodied in the Riley-Stewart Plan which forms the basis of our present revenue system, the California Tax Commission criticized the lack of centralization in the state's tax administrative machinery and recommended:

"That the elective State Board of Equalization be abolished and that in its place a permanent professional tax commission be established consisting of three members appointed by the Governor with powers to administer state taxes."¹

During the period from the 1930's to the present these selected comments have been made by special commissions and committees of this Legislature:

¹ California Tax Commission, *Final Report*, Sacramento, March 5, 1929, pp. 130-131.

Committee on State Organization—1941²

Since no state officer had originally been set up as a tax collector, the responsibility for the collection of new taxes was assigned either to one of the existing officers, boards or departments that had been created for a fundamentally different purpose, or to some new agency, created to administer that particular tax. The existing situation is the result of a long series of separate decisions. Undoubtedly some of the assignments were originally made for purely political or personal reasons that have long ceased to apply. The present allocating of duties has no logic or principle behind it.³

To simplify the organization, eliminate duplication, make allocation of official responsibility more definite, and permit greater economy and effectiveness in the process of collection, the committee recommends: That a Department of Revenue be created, administered by a single executive, who shall be known as the Director of Revenue and who shall be appointed by the Governor, with the consent of the Senate, on the basis of proper qualifications; that the department shall have charge of state revenue collections and state tax administration, shall collect all state taxes and revenues. . . .⁴

Senate Interim Committee on State and Local Taxation—January 1947

The complexity of the tax system of the state and the distribution of the administration of this system among several different agencies, leads the committee to recommend that the question of consolidating all revenue administrations in one agency be studied with a view to determining whether such consolidation would result in greater economy and efficiency in state government as well as greater convenience to the taxpayer.⁵

Assembly Interim Committee on State and Local Taxation—January 1947

A reorganization of the state's tax administrative set-up should facilitate the assessment and collection of state taxes and lend greater convenience to the taxpayer.⁶

Senate Interim Committee on Governmental Reorganization—January 1951

1. The multiplicity of revenue agencies leads to duplication of effort, complicated procedures, higher costs of government, and confusion to the taxpayer.

2. The advantages of an integrated state revenue system are many and compelling. States which have led the way in developing an integrated system uniformly agree that it is far superior in every way to the diffused revenue system existing in California.⁷

² The committee was also known as the Interim Committee of Twenty-five of the California Conference on Government and Taxation. The study grew out of a statewide conference called by Governor Frank H. Merriam in 1936 and was based on the reports of Griffenhagen and Associates, 1936-1938.

³ Committee on State Organization, *Final Report*, 1941, p. 50.

⁴ *Ibid.*, p. 51.

⁵ Senate Interim Committee on State and Local Taxation, *Report*, Part I, II, January 1947, pp. 58, 393.

⁶ Assembly Interim Committee on State and Local Taxation, *Report*, January 1947, p. 17.

⁷ Senate Interim Committee on Governmental Reorganization, *Second Partial Report*, January 1951, p. 53.

Assembly Interim Committee on Governmental Reorganization—March 1951

A department should be established for the administration of the revenue of the state, with a director appointed by the Governor, subject to confirmation by the Senate, and holding office at the pleasure of the Governor. The department should be organized according to function of revenue administration rather than according to kind of taxes. One division should examine and assess all taxes. Another division should collect all taxes. There should be a central research set-up to study and report on tax policies and practices.

There should be a board attached to, but independent of Department of Revenue, to hear appeals from all assessments and decisions of that department. This board should consist of members with overlapping terms, appointed by the Governor with the concurrence of the Senate. As an alternative the Board of Equalization could be made a board of tax appeals, with all of its executive functions removed.⁸

Senate Interim Committee on Governmental Reorganization—March 1953

A Board of Tax Appeals should be established to provide a means of impartial determination of appeals from tax assessments.

The State Board of Equalization now hears appeals from decisions of its several tax assessment divisions and also hears appeals from the administrative decisions of the Franchise Tax Board. Since two members of the Franchise Tax Board are also members of the State Board of Equalization, this board, in effect, hears appeals from its own decisions. The Board of Tax Appeals should also have the authority to hear appeals from county boards of equalization on questions involving the valuation of property for tax purposes.⁹

Subcommittee of the Assembly Interim Committee on Government Organization—February 1955

California's present administrative structure is characterized by overlapping, duplication, financial waste, and diffusion of activities and responsibilities. It is a hodgepodge of boards and elective and appointive officials and is not truly responsible to the Governor, the Legislature, or the people. Such adequacy of tax administration as we have in California is in spite of, rather than because of "organization."

California's revenue administration structure should be organized to provide a reasonably efficient, economical, understandable, and responsible vehicle for administering our tax laws. This can be accomplished best by placing the administration of major state taxes in a Department of Revenue headed by a Director appointed by the Governor, confirmed by the State Senate, removable by the Legislature for cause, and, therefore, responsible to the Governor and the Legislature, and through them to all of the people.¹⁰

⁸ Assembly Interim Committee on Governmental Reorganization, *First Partial Report*, March 1951, pp. 34, 35.

⁹ Senate Interim Committee on Governmental Reorganization, *Third Report*, March 1953, p. 9.

¹⁰ Report of the Subcommittee of the Assembly Interim Committee on Government Organization, *The Need for a Department of Revenue in California*, February 8, 1955, p. 9.

Executive Committee of the Task Forces—November 1959

The grouping of like functions together for purposes of executive management is one of the premises on which the agency concept rests. We are unable to find any cogent reason why this principle should not apply with equal force and persuasiveness to revenue functions.

Accordingly, we recommend the creation of a revenue department within a Revenue and Management Agency.¹¹

¹¹ *Report to the Governor on Reorganization of State Government by the Task Forces*, November 1959, p. 18.

VII. THE NEED FOR A CENTRAL REVENUE DEPARTMENT

Administration of revenue laws is basic to the operation of state government and is a principal responsibility of the executive branch. And yet California's first Constitution did not include any provision for tax administration. When new tax levies were adopted a method of collection was improvised for the particular tax.

As a result of this pattern of development there is no central agency with responsibilities for tax collection. There is no single administrator who can be held responsible by the Governor, the Legislature, or the people for the administration of revenue laws. And there is no one tax agency to which a taxpayer may pay all of his state taxes. Instead, tax administration has been divided among a number of officers, boards and departments. The Board of Equalization is a five-member constitutional body with four members elected by district and the State Controller as an ex officio member. The Franchise Tax Board consists of the Chairman of the Board of Equalization, the State Controller, and the Director of Finance who is appointed by the Governor. The State Controller is a constitutional officer elected by the voters. The Department of Motor Vehicles and the Department of Employment are administered by directors who are appointed by the Governor. The Cali-

fornia Horse Racing Board consists of three persons appointed by the Governor for fixed terms. It is generally agreed that this diffusion of tax collection responsibility has several detrimental effects.

ECONOMIES OF CONSOLIDATION

The most important disadvantage of the present administrative structure is that it has perpetuated inefficient and uneconomical use of personnel and facilities. Every state official with major responsibilities for tax administration presented testimony to the committee indicating that substantial savings would be realized through unification of most tax collection functions.

Governor's Proposal

At the first public hearing of the committee, in Sacramento on October 6, 1964, Governor Edmund G. Brown submitted a proposal (prepared by the Department of Finance) for consolidating tax collecting agencies (see Appendix A). In his letter accompanying the report the Governor stated:

"I hope your committee shares my wish that the needed consolidation of the revenue administration of this state be achieved. The details are less important than the objectives, and I know that . . . the committee will explore all possible means of accomplishing the basic purpose."

With reference to the possibilities of savings through a consolidated tax agency, the Department of Finance's report states: "It is significant that in every state where a consolidation has occurred, there have been significant reductions in the collection costs per dollar of tax return."

Board of Equalization Plan

At the request of the committee, the Board of Equalization presented a proposal for consolidation of major revenue responsibility (See Appendix C). This report included detailed estimates of savings which would result from bringing together the revenue programs of the Board of Equalization, the Franchise Tax Board and the State Controller.

Appearing before the committee in Los Angeles on December 10, 1964, Board of Equalization Member John W. Lynch¹ discussed potential savings in response to a question by Assemblyman Marks:

CHAIRMAN MARKS: I assume that you do agree with the general principle that a consolidation of tax collection functions would save the State of California money?

MR. LYNCH: It would. It would save a great deal of money. It would be more efficient and more economical. No one on the board quarrels with that.

CHAIRMAN MARKS: And that would apply regardless of whether or not tax collection functions are consolidated under the Board of Equalization or under some other agency.

¹ Unless specifically cited by footnote, statements quoted herein were presented to this committee at public hearings held in Sacramento on October 6, 1964, or Los Angeles on December 10, 1964.

MR. LYNCH: That is true. Any consolidation would be more efficient, more economical.

Mr. Martin Huff, Executive Officer of the Franchise Tax Board, told the committee that he agreed that the areas cited by the Board of Equalization lend themselves to savings and further commented:

MR. HUFF: My only criticism would be that in the specifics of their analysis, due to a total lack of understanding of our needs and problems, they have advanced the wrong reasons and in my judgment have substantially understated the potential for savings.

Proposal by the Legislative Analyst

The committee also received a specific reorganization plan prepared by the office of the Legislative Analyst proposing the consolidation of tax functions into a Department of Revenue (See Appendix B). A similar recommendation was made to the Legislature in 1943 in the first formal report of the Legislative Auditor.² Legislative Analyst A. Alan Post testified to the economies of consolidation:

MR. POST: I think it's perfectly clear, and I would say that without being able to put specific price tags on it, that there would be a significant efficiency and economy achieved by the state by a consolidation of what is, at the present time, a very complex hodgepodge of tax administering agencies.

The "Little Hoover" Commission Report

The Commission on California State Government Organization and Economy (more commonly known as the "Little Hoover" Commission) submitted a report to the Governor and the Legislature on December 28, 1964, concluding a comprehensive review of state tax administration (See Appendix F). The commission reported:

"The use of qualified personnel employed . . . in such matters as the administration of functionally integrated systems of tax appraisals, audits and collection through consolidated field offices and shared housekeeping and staff services will do much toward the effective implementation of a uniform tax collection policy. This commission is convinced that taxpayer convenience as well as economy and increased efficiency can result from the establishment of a Department of Revenue as proposed, when organized and operated in accordance with modern revenue management principles."

Estimates of Savings

It is impossible to predict with any precision the specific savings that would result from consolidation without making detailed recommendations as to the internal structure of the consolidated agency. The Board of Equalization made specific recommendations when they itemized savings in administrative costs by consolidating legal functions, electronic data processing, collections, fiscal functions, personnel and training, cashiering, mailing, supply and use of temporary help. The board estimated that total savings gained through consolidation of the revenue programs of the Board of Equalization, the Franchise Tax

² The title of the office was changed to Legislative Analyst in 1957.

Board and the State Controller would be at least \$1,517,412. They also indicated in their report that, "the conservative projection of savings by no means represents the total eventually possible as the consolidated agency learns from experience the further improvements and economies which are possible through integrated operations."³

Past recommendations for unification of revenue administration were challenged by officials of the various tax administering agencies who testified that consolidation would not produce savings. In contrast, each of the present state officials stressed the possible economies which could be realized through central revenue administration.

In the final analysis, proposals for consolidation must be based on generally recognized opportunities for savings and increased efficiency. The committee concludes that significant economies will result from consolidation of the major state tax programs.

CONSOLIDATION vs INTEGRATION

Consolidation of the administration of different taxes into a central agency, must also reflect consideration of the integration of activities common to more than one tax. As Clara Penniman and Walter W. Heller point out in their authoritative study of state income taxation, "consolidation may go no further than merely housing a number of taxes under a single administrative roof. Integration implies a marital relation among taxes."⁴

In other words, consolidation of different taxes into a central agency makes possible integration of activities common to more than one tax. Such an integrated structure was recommended to the Legislature in 1947 by the Assembly Interim Committee on state and local taxation:

"The administration of revenue laws should be reorganized along functional lines. That is, the section or division which is responsible for the assessment of one tax should be concerned with all taxes. The board which hears appeals for one tax should hear appeals for all taxes. And the division or office which collects one state tax should collect all state taxes."⁵

Integration of Staff Services and Line Functions

The savings estimated by the Board of Equalization which would result from consolidation of their operations with those of the Franchise Tax Board are based on integration of staff services—personnel, budgeting, legal purchasing, accounting. The board proposal also provides for joint use of electronic data processing systems. Although the board contemplates further savings from experience with "integrated operations," Board of Equalization member Lynch told the committee that under the board's proposal Franchise Tax Board operations would remain as a separate unit:

MR. LYNCH: The Franchise Tax Board is an efficient, going concern. Under our proposal, it would remain just as it is, because

³ Board of Equalization, *A Proposal for Consolidation of Major California State Revenue Responsibility in One Agency*, December 1964, p. 7.

⁴ Clara Penniman and Walter W. Heller, *State Income Tax Administration*, (Chicago: Public Administration Service, 1959) p. 46.

⁵ Assembly Interim Committee on State and Local Taxation, *Report*, January 1947, p. 50.

there would be savings in staffing and so forth. But for the most part, it would remain practically as it is, as another division under us.

Such an approach does not emphasize the importance of savings through integration of line functions in the area of assessment and collections. While it is conceded that integration of these activities require detailed planning, the potential for savings through greater efficiency and economy of operation is impressive.

Penniman and Heller, for example, suggest improvements in administration are possible through freer exchange of the information collected for each tax. With reference to the income and death taxes they point out:

"Death tax returns permit checks on the decedent's property income, on fees reported by attorneys and executors, and on appraisal values which serve as bases for capital gain or loss on inherited property. Income returns provide an excellent index of the size and composition of a decedent's estate and furnish information on ownership of bearer securities and other elusive holdings. Even more important are the 'either or' situations in which dual authority is required to prevent evasion."⁶

Cooperative agreements have been arranged between the present tax collection agencies for the exchange of information for several purposes including the prevention of evasion of taxes, and the committee is encouraged at the prospect of greater utilization of this procedure through a consolidated operation.

The 1955 Legislative Study

The organizational structure proposed by Kroegeer and Associates for the 1955 Assembly committee study of revenue administration was based upon the function of tax administration rather than according to particular taxes:

"We propose that the department be organized according to function rather than according to purpose. Stated another way, we propose that the employees be utilized in such a way that they will each concentrate on doing a certain thing with respect to all taxes rather than doing a number of things with respect to one tax, or doing one thing for one tax which is then duplicated by someone else doing the same thing for another tax."⁷

At the time of the 1955 study the Franchise Tax Board was divided into two tax divisions and seven administrative divisions. Today the board is divided into just two divisions: Administration and Operations. While the Board of Equalization was divided into eight separate divisions in 1955, today it is divided into a Department of Business Taxes, a Department of Property Taxes and an Administrative Services Division. These significant changes have taken advantage of functional organization and as a recent survey of the structure of these agencies observed:

⁶ Penniman and Heller, p. 46.

⁷ Subcommittee of Assembly Interim Committee on Government Organization, *The Need for a Department of Revenue in California*, February 1955, p. A-11.

"One is strongly led to suspect that the findings of the Subcommittee of the Interim Committee on Government Organization provided the impetus for self-evaluation and change."⁸

In their report to the committee, the Board of Equalization indicates, with reference to further reorganization on a functional basis, that:

"Many of the possible economies that have been claimed possible in years past have been realized as a result of a major reorganization of the Board of Equalization which was initiated in 1959. As a result business taxes were organized on a functional basis rather than by purpose and functions common to several tax programs were consolidated."⁹

While it is apparent that the tax administrative functions of the state's principal revenue agencies are now organized to a large extent on an integrated basis, it has been contended that additional savings will be possible by consolidation of these agencies into a central revenue department so that further integration of operations is possible. *The committee concludes that further savings should follow additional integration of tax collection functions with proper planning to insure that the present level of administration will be maintained.*

TAXPAYER CONVENIENCE

Many of the prior studies of California tax administration have pointed out that another effect of the distribution of tax collection responsibility among several agencies is the complicated picture it presents to the taxpayer.

A taxpayer engaged in a small business, for example, pays his sales tax to the Board of Equalization, his corporation income tax to the Franchise Tax Board, his unemployment and disability insurance taxes to the Department of Employment, his registration fees for commercial vehicles to the Department of Motor Vehicles and so on.

To add to this complexity, several taxes are jointly administered by more than one agency. The Insurance Commissioner and the Board of Equalization have joint responsibilities in the assessment of the gross premiums tax on insurance companies and the tax is then collected by the State Controller.

Legislative Analyst A. Alan Post commented on this complexity:

MR. POST: I would make the case that it would be beneficial to the public to be able to go to one tax agency, and to know that you could get your tax business done there, rather than having the present complex decision of knowing whether to go, with respect to one tax to the Controller, another to the Board of Equalization, and then to another agency, and so forth. This is just bad business from the standpoint of the public and the public's time is wasted by the present system and there's no doubt about it."

⁸ William Hauck, *The Current Organization Structure of the Franchise Tax Board, Board of Equalization and State Controller*, April 30, 1964, p. 3.

⁹ Board of Equalization, *A proposal for Consolidation of Major California State Revenue Responsibility in One Agency*, December 1964, p. 19.

Board of Equalization Chairman John W. Lynch testified to the magnitude of the confusion:

MR. LYNCH: We will be harassed from January the 1st until April the 15th by people coming into our office wanting assistance with their state income tax returns, wanting the form . . .

CHAIRMAN MARKS: Maybe the taxpayers are being harassed too.

RESPONSIBILITY TO THE CHIEF EXECUTIVE

Under the California Constitution, the Governor is responsible for the enforcement of all laws.¹⁰ The present structure for revenue administration violates the principle of concentrating administration of the executive branch under the chief executive. In addition to having several tax agencies, the responsibility for administration is shared by various elective and appointive officials.

Legislative Analyst A. Alan Post discussed the division of responsibility among several administrators:

MR. POST: I would contend that this is a dangerous way to organize, because as in the case of liquor administration, as in the case of other scandals in other states, the real problems come about primarily in those cases where nobody was responsible because everybody appeared to be responsible.

Effective Administration

Sound organization and competent personnel are basic to effective administration of revenue laws. While it is possible for a capable staff to overcome many problems in organization, sound organization cannot be expected to replace the requirement of capable personnel.

A recent study of state sales tax administration, commented on the effectiveness of California's Board of Equalization: "... California is widely regarded as the only state that has attained a nearly optimum level of efficiency in administration of the tax," and indicates that this is possible because, "the generally high standards of state administration in California have facilitated the maintenance of high standards in tax administration."¹¹

Penniman and Heller make a similar comment about the Franchise Tax Board:

"The unconsolidated agency which is obviously doing an effective job—e.g., the California Franchise Tax Board, administering only the individual and corporate income tax—remains a thorn in the side of students of administration. Does effectiveness here result primarily from a high quality and relatively large staff *in spite of* California's organization iconoclasm?"¹²

The Executive Officer of the Franchise Tax Board, Martin Huff, told the committee that the fact California tax administration is one of the most efficient in the nation should be viewed in relative terms:

¹⁰ *Constitution of 1879*, Article V, Sec. 8, "He shall see that the laws are faithfully executed."

¹¹ John F. Due, *State Sales Tax Administration*, (Chicago: Public Administration Service, 1963), p. 20.

¹² Penniman and Heller, p. 35.

MR. HUFF: With minor exceptions, the standards in most states are not sufficiently high to give us much of a feeling of pride in using them as yardsticks. The high standards that have been set in California are despite its organizational structure—and not because of it. They are the direct result of the general high standards of administration found throughout California state government and of the efforts of the highly competent technical staffs in the two tax administration units.

Specific Proposals

The several proposals placed before the committee varied as to the top administrative structure of the consolidated tax agency. The plan submitted by the Governor called for the creation of a California Tax Commission consisting of the Controller, Director of Finance and the Treasurer. This commission would head the proposed Department of Revenue and would appoint the executive officer. Under the proposal presented to the committee by the Board of Equalization the administration of taxes would be consolidated under the present board. The Legislative Analyst and others recommended administration by a single director appointed by the Governor.

Legislative Analyst A. Alan Post stressed the advantage to the public through concentration of responsibility under the Governor:

MR. POST: Another benefit that I think . . . would accrue to the public is that if you have . . . an organization that is responsible directly to the elected chief executive of the state, the Governor, you would know who was truly responsible for tax administration.

Penniman and Heller make a similar comment on the top administrative structure:

“As several tax agencies operate to fragment the total tax administrative effort, so a multiple executive head fragments administrative effort and diffuses responsibility within a particular department.”¹³

This conclusion is also reached by John Due:

“In terms of usually accepted standards for good administration, a state tax agency should be headed by a single administrator appointed by, and responsible to, the Governor.”¹⁴

The question of a single director was considered by the committee. Board of Equalization Member Lynch indicated the proposal for a director would be weak because, “as an appointee of the Governor, there would be no control by the taxpaying electorate.” Legislative Analyst Alan Post responded to that statement:

MR. POST: This in effect . . . says that the elected Governor when he appoints an administrative official is cutting off this function that is under his supervision from the public. It means that . . . all of the administrative agencies of the state should be under elected administrators and that the role of the Governor and the Legislature, as elected officials, responsible and responsive to the public

¹³ Penniman and Heller, p. 36.

¹⁴ Due, p. 18.

and providing surveillance over the public functions would be needless. . . .

Some additional problems that would result from consolidation under the existing Board of Equalization were outlined by the Legislative Analyst:

MR. POST: . . . I think with respect to the objective of the centralized administration that, whereas there is a high degree of centralized administrative control in the Franchise Tax Board at the present time, consolidation with the Board of Equalization . . . would be a step backward in the sense that it would take this more efficient centralized operation and subject it to the deficiencies in our State Board of Equalization organization with its 10 districts, with the pattern of organization which has to conform to the elective districts of the state.

Martin Huff testified that adapting the Franchise Tax Board to the Board of Equalization would result in "fragmentation of our present structure into one that ignores economic areas, the worst example of which is the serving of the San Francisco Bay area by three separate equalization districts."

The possibility of an additional problem was pointed out by Alan Post. He noted that as of July 1, 1962, the Third Equalization District had 7.6 percent of the population while the Fifth Equalization District had 57.8 percent of the population, and suggested that redistricting might be required.

It has been argued that placement of tax collection responsibility under a single director encourages the development of a "tax czar" who would not be responsive to the taxpayer. This contention does not reflect objective analysis. No one is contending, for example, that the members of the Board of Equalization are "tax czars," and yet their authority for tax administration is extensive. A director would certainly have no more authority than the members of the board now exercise. It should be realized that poor administration of tax functions is possible under any administrative structure. In the case of a multi-membered body—particularly a constitutionally elected one—it is difficult to fix responsibility for poor administration. A director serving at the pleasure of the Governor and removable by the Legislature for cause would be responsive to the Governor and the Legislature and through them to the people. This structure offers a clearly defined, and easily understood channel to protect the taxpayer from arbitrary actions by a tax administrator. The committee feels confident, however, that California will continue to be served by capable tax officials.

With respect to the responsiveness of tax administrators to the electorate the Executive Officer of the Franchise Tax Board noted:

MR. HUFF: It is a political reality that the people of the state hold the Governor and no one else responsible for proper tax administration whether he actually has the authority over tax administration or not.

TAX APPEALS

One of the most important functions of tax administrators is the determination of tax liability. Because these day-to-day administrative functions take on the aspect of judicial determinations, the necessity of an adequate appeals process is essential to good tax administration.

The present procedure has frequently been criticized because two of the three members of the Franchise Tax Board also sit on the Board of Equalization and in this capacity hear appeals from the Franchise Tax Board's decisions. In addition, the Board of Equalization hears appeals from the decisions of its own staff on board-administered taxes.

While no evidence was presented to the committee that the Board of Equalization decisions were not equitable, it was contended that the present structure presents a confused hearing procedure and violates, "the usual Anglo-American philosophy of justice in which the taxpayer has the privilege of appealing to some impartial agency outside the sphere of influence of those whose decisions are being appealed."¹⁵

On the subject of the appeals procedure Legislative Analyst Post made the following recommendation:

MR. POST: Now, originally, when we did the research for other committees of the Legislature we had recommended, and we would still recommend as a model form of organization, that the tax appeals board be one which would be appointed by the Governor. I am prepared, however, to say that . . . it would seem to me that there would be no harm whatsoever done to have the present Board of Equalization reconstituted as a Board of Tax Appeals and a Board of Equalization.

The committee concludes that the tax appeals procedure should be established independently from the administrative functions of tax collection to insure a clear separation of authority easily understood by every taxpayer.

INHERITANCE TAX ADMINISTRATION

For many years the method of assessment and collection of the inheritance tax has been the subject of serious discussion. The present system of local administration of the tax as part of the probate process has both its critics and ardent supporters. Criticism has centered on two main points: the fee system and the present method of appointing inheritance tax appraisers.

The Fee System

Inheritance tax appraisers are allowed to collect probate appraisal fees and inheritance tax fees for their services in valuing estates. It has been pointed out that these fees are assigned to the appraiser by the probate court based on values determined by the appraiser and are not related to the work involved in conducting the appraisal. In the case of those estates consisting primarily of assets which have an easily ascertainable market value, the relation of the work involved to the compensation received is difficult to justify.

¹⁵ Martin Huff quoting from the 1955 Report of the Subcommittee of the Assembly Interim Committee on Government Organization, *The Need for a Department of Revenue in California*.

Appointment of Appraisers

When the Legislature adopted the inheritance tax in 1893, it was decided to take advantage of the existing probate process for determining the amount of tax due the state. Since there was no state officer with tax collection responsibilities tax functions were assigned to one of the existing state officials and as a result of an expansion of the inheritance tax in 1911, the Controller was directed to appoint an inheritance tax appraiser who was to serve as one of the three probate appraisers appointed by the court. In practice the courts came to assign only the inheritance tax appraiser.

The appointment of appraisers by the Controller has been severely criticized because there is no legal or formal requirement for competence in appraising. Because the appraisers serve at the pleasure of the Controller there is extensive turnover accompanying a change in Controllers. In the absence of any standards for qualification as an appraiser or for appraisal operations, it is contended that the inevitable result is lack of uniformity in inheritance tax appraisals.

Alternatives to the Present Method

An alternative to the present system of administering the inheritance tax, presented to the committee by the Board of Equalization, proposed that this function be assigned to the board, and performed at a lesser cost by a staff of civil service appraisers within the board's existing Property Tax Department. The board also proposed the transfer of the civil service staff of the Controller's Inheritance and Gift Tax Division to the board's Property Tax Department. The board estimated savings of \$899,000 would result from the transfer of the appraisal functions. An estate tax of one-tenth of 1 percent was proposed as a substitute for the fees now received by appointed appraisers for the probate appraisals.

Legislative Analyst A. Alan Post proposed self-assessment of the inheritance tax (See Appendix G) and indicated that this method could be adopted with a minimum of changes in the existing inheritance tax and probate process. The principal change would be that the estate prepare its own inventory, value the assets, complete the tax return and submit it to the Department of Revenue for examination and audit. Under this proposal the valuation for inheritance tax purposes would serve also for probate, and the court would continue to have final jurisdiction over setting the tax and serving as an appeal body for any disputes. This method would not affect the existing delinquency dates, the discount period or rate, the statutory attorney or executor fees. The Legislative Analyst indicates that under the self-assessment method the Inheritance and Gift Tax Division would have to modify its operations to coincide more closely to those of the Franchise Tax Board.

Another aspect of this proposal would be the elimination of the county treasurers from participation in administration of the tax. Presently, the county treasurers inventory the contents of safe deposit boxes, receive the payment of the inheritance tax for transmission to the state and issue consents to administrators and executors of estates to dispose of certain assets. If this method of collection was enacted the Legislative Analyst estimates that there would be gross

savings in the amount of \$1,160,000: from county treasurer commissions (\$670,000); gift tax appraisal fees (\$20,000); inheritance tax appraisal fees (\$170,000); and, interest from earlier receipt of taxes (\$300,000). From these savings it is estimated that between \$500,000 and \$750,000 per year would be deducted for additional personnel and equipment so that the estimated net savings would range between \$400,000 and \$650,000 per year.

If the probate appraisal fees for inheritance tax appraisers were abolished the estates would save over \$3,000,000 annually. Legislative Analyst Post commented on this point in response to a question by Assemblyman Bagley:

ASSEMBLYMAN BAGLEY: One approach, and apparently the approach you are recommending, would be that the State of California not collect these appraisal fees, but simply forgive appraisal fees—forgive the estate from paying the fee. Would you . . . comment on that . . . ?

MR. POST: The question of whether you retain the present fee as a probate, or on the other hand, eliminated the fee and passed this benefit on to the taxpayer is obviously a clearcut policy issue for the Legislature. We had felt that it might be desirable to treat this as a benefit to the taxpayer. On the other hand, I would point out . . . that I think this is still a fee which can be regarded as a probate fee because it serves that purpose and . . . I have no reason to believe that it would not be accepted in every sense under our proposal as . . . the appraisal would be accepted as a probate appraisal.

Another proposal received by the committee was recommended by the Commission on California State Government Organization and Economy (See Appendix H). The commission recommended a modified self-assessed method for administering the inheritance and gift tax with the executor or the attorney continuing to prepare the inventory of the entire estate and actually valuing for tax and probate purposes the assets which have a fairly exact and ascertainable market value (cash, stocks, bonds, mortgages, securities, insured personal property and some chattels) and establishing the value of all real property that has a current assessed value of \$6,250 or less (the appraisal value would be deemed to be four times the amount of the current assessed valuation). The commission recommended the continuation of present appointed inheritance tax appraisers to appraise the value of real property with an assessed valuation of over \$6,250 and specialized personal property such as jewelry, antique furniture, paintings and closely held businesses and certain other chattels for which the determination of market value requires specialized knowledge.

The commission estimates that if this proposal had been in effect in 1963, the state would have received approximately \$1,150,000 in probate and inheritance appraisal fees. The Legislative Analyst informed the committee that, in his opinion, this estimate was too conservative and the state's share of the probate and inheritance fees would be nearly \$2,000,000. The commission also suggests the savings of \$670,000 in inheritance tax commissions paid county treasurers and \$300,000 in interest value from earlier receipts of the tax, less the costs of administration and collection now provided by the county treasurers.

COMMITTEE RECOMMENDATIONS

The committee makes the following recommendations concerning California's organizational structure for tax administration:

1. *That a Department of Revenue be established with responsibility for the statutory state tax collection functions presently exercised by the State Controller, the Board of Equalization and the Franchise Tax Board.*

A Department of Revenue so established would be responsible for the administration of more than 85 percent of state taxes. The tax collection and refund activities of the State Controller with respect to the gasoline tax, the truck tax, the insurance companies tax, the petroleum and gas assessments and subsidence abatement assessments would be transferred to the Department of Revenue. In addition, the administration of the inheritance and gift tax would also be transferred.

The following state taxes which have been assigned to the Board of Equalization would be administered by the Department of Revenue under the committee proposal: the retail sales and use tax (including the collection of local sales and use taxes); the diesel fuel tax; and the cigarette tax. The department would also be responsible for the licensing and assessment provisions of the gasoline tax and the truck tax. Among other things this would bring together functions of the highway tax program which are now split between the Controller and the Board of Equalization.

All operations involved in the administration of the personal income tax, corporation income tax, and the bank and corporation franchise tax would be transferred to the new department and the Franchise Tax Board would be abolished.

Although it is not imperative to achieving the major benefits from consolidation, the constitutional duties of the Board of Equalization for the administration of the alcoholic beverage excise taxes and the assessment of the insurance tax should be incorporated in the Department of Revenue. These sources account for approximately 5 percent of total state revenues and a constitutional amendment is necessary to transfer Board of Equalization duties with respect to these taxes to the Department of Revenue.

2. *That the Department of Revenue be administered by a Director of Revenue appointed by the Governor with Senate confirmation and removable by the Legislature for cause.*

The administrative duties which would be assigned to the Director of Revenue are now split among several administrators. The director would carry out all of the responsibilities presently performed under the general supervision of the three-member Franchise Tax Board; the duties with respect to business taxes presently under the direction of the Board of Equalization; and the Controller's tax collection and refund and inheritance and gift tax operations. Administration of these taxes by a Director of Revenue would serve to clearly fix the responsibility for tax administration under the chief executive.

3. *That the Board of Equalization be designated as the board of tax appeals to review the decisions of the Department of Revenue.*

The Board of Equalization presently hears appeals from the decisions of its own staff with respect to the present board-administered state taxes, and is also designated as the appeal body for Franchise Tax Board decisions. Assigning the responsibility for hearing appeals from the decisions of the Department of Revenue to the Board of Equalization would not be a significant departure from the present procedure. However, with the transfer of the state tax duties of the Board of Equalization to the Department of Revenue it is possible to provide a clear separation of administrative and appeals functions.

4. *That we move toward the establishment of an effective system of self-assessment of the inheritance tax. A first step should be self-assessment of those assets which have a fairly exact and easily ascertainable market value.*

The essential element of the committee's proposal with reference to the inheritance tax is consolidation of the administrative functions with the Department of Revenue. This would permit certain economies through consolidation of staff and facilities and make possible integration of information received through inheritance tax administration with other taxes, notably with the income tax.

At the same time, the committee is concerned with achieving savings in costs of government and greater efficiency in administration of taxes whenever it is possible to do so. In this respect, the system of complete self-assessment of the inheritance tax, as outlined by the Legislative Analyst, offers impressive savings. The committee's recommendation for self-assessment of those assets which have a fairly exact and easily ascertainable market value (cash, stocks, bonds, mortgages, securities, insured personal property and real property with a current assessed value of less than \$6,250) provides a basis for further study of the integration of self-assessment for these assets with the probate process.

Partial self-assessment would also remove one of the principal objections by eliminating the appraisal, and therefore the fees, for recording the value of assets such as stocks which are a matter of common knowledge. Under the committee's proposal the inheritance tax would be paid directly to the state. This would eliminate the county treasurers' duties with respect to receipt of the tax and payment to the state. It is also suggested that the inheritance tax commissions paid to county treasurers be eliminated. Since the county treasurers would no longer inventory safe deposit boxes, a new method of performing this function would have to be found. The Legislative Analyst's proposal that bank officials receive a nominal per box fee is a possibility. The convenience to the taxpayer of having local officials available for these purposes could be retained through the personnel in the field offices of the Department of Revenue.

An important policy decision for the Legislature is involved in the adoption of any self-assessment proposal. Placing all or part of the appraisals for an estate on a self-assessed basis alters the present justification for the inheritance and probate fees. If the probate fees were abolished for the valuation of assets that are self-assessed this would result in savings to the estate. On the other hand, the appraisal is audited by the state and still serves as the appraisal for the probate court: by retaining the fees for self-assessed assets there would be ad-

ditional revenue to the state without an additional increase in expense to the estate. A third alternative would be the adoption of an estate tax to correspond to the fee now received by the appraiser.

While this committee's study is concerned with inheritance tax administration as it relates to consolidating tax functions and other committees of the Legislature are dealing with the whole subject of inheritance tax administration, additional deficiencies in the present system were noted. A continuing criticism of the appointment of appraisers by the Controller has been that there is an apparent lack of standards or qualifications. It has been suggested that a formal set of qualifications be adopted by the Controller and approved by the Legislature to serve as a standard for judging appraisers. Provision could also be made for review of the operations of inheritance tax appraisers by authorizing an audit by the Auditor General.

5. *That the director of the Department of Revenue submit progress reports to the legislature on the internal organization of the Department; and that the Legislative Analyst undertake an intensive review of the operations and organization of the Department of Revenue.*

A major reorganization of tax administration as proposed by the committee will present practical problems in establishing a Department of Revenue in accord with legislative intent. It is imperative that the Legislature have available a means of continuing oversight of the operations and organizational problems of the department. Too often the criteria adopted by the Legislature in approving reorganization of the executive branch are not relied on as a basis for continuing review.

For this reason the committee recommends that the Director of the Department of Revenue submit reports to the Legislature on his progress in establishing an internal administrative structure for the new department and on the savings achieved through consolidation. In addition, the committee recommends that the Legislative Analyst be directed to report to the Legislature on the operations and organization of the department.

While it is not intended that the Legislature prescribe a detailed organizational structure for executive departments, the effectiveness of the structure should be a matter of continued review to insure that legislative intent is carried out, to anticipate additional organizational needs and to provide an additional criteria in evaluating expenditures.

A NOTE ON TAX FUNCTIONS NOT INCLUDED IN THE DEPARTMENT OF REVENUE

Since this study has been concerned with consolidation of the administration of state taxes, the committee does not recommend any change in the constitutional responsibility of the Board of Equalization for equalizing county assessment levels and valuation of public utility property for local tax purposes. Similarly, the Controller's responsibility for supervision of delinquent and tax-deeded properties would not be changed.

In addition, the administration of some state taxes are closely integrated with other administrative functions and consolidation within the Department of Revenue would be of questionable value. These in-

clude the private (railroad) car tax administered by the Board of Equalization, the taxes and fees collected by the Department of Motor Vehicles, the payroll taxes collected by the Department of Employment, the parimutuel license tax collected by the Horse Racing Board, and the revenue collected by virtually every agency through issuing licenses or charging fees. Additional study should be undertaken after the Department of Revenue has been established to determine the feasibility of further consolidation of some of these functions.

VIII. ADDITIONAL COMMENTS

HON. JESSE M. UNRUH
*Speaker of the Assembly
and Members of the Assembly:*

With reference to the report of the Interim Committee on Government Organization, I would like to make these additional comments.

I agree with the committee report as it relates to the necessity of consolidating revenue collection functions of the State of California, and agree with the proposal to create a Department of Revenue. Parenthetically, it would seem equally acceptable to lodge the various revenue collecting functions in the already existing structure of the State Board of Equalization. Either the creation of a new Department of Revenue, under the Governor, or a consolidation under the State Board of Equalization would be acceptable.

I must register disapproval, however, of one concept outlined in the report. The method of assessing and collecting state inheritance taxes has been the subject of much public discussion over the years. Within the last several years, more and more public attention has been brought to bear on the real deficiencies which presently exist in the present system. The committee is cognizant of these deficiencies and has recom-

mended that we "move toward the establishment of an effective system of self-assessment of inheritance tax." I have no quarrel with that objective, and on the contrary, endorse the objective.

However, a proposal which is made as a "first step" toward this objective would be unworkable. This proposal can be best characterized as a weak, unworkable compromise which should not, at this point, be given committee approval. Though the committee unanimously favored the Department of Revenue concept, committee opinion was varied and uncertain regarding the committee recommendation on inheritance tax appraisers. The proposed self-assessment of part of the assets of an estate (cash, stocks and bonds, etc.) is, in and of itself, not unpalatable, but to allow the existing system to continue for the purpose of appraising all other assets, would be unworkable.

While significantly cutting the income of the presently appointed appraisers, which is salutatory, this proposal would do nothing to insure attracting qualified appraisers to do the admittedly more complicated work of appraising other properties which would not be subject to self-assessment. These would include properties such as timber rights, oil and other mineral rights, large real estate holdings, closely owned businesses and the like. For the appraisal of this type of property, obviously the most qualified appraiser is needed and desired. Under the modified self-assessment plan, however, the existing appraisers would receive less income but would be called upon to do only the complicated appraisal above-mentioned. This, it is submitted, would lead to a breakdown of the entire system were we to attempt a continuation of the present system of political appointed appraisers within the context of the proposed modified self-assessment system.

Much more desirable, and much more worthwhile as an initial attempt toward real reform, would be a system of complete self-assessment as proposed by Legislative Analyst, A. Alan Post. Under such a system all estate properties would be self-assessed by the executor of the estate and a return filed with the State of California. An auditing and supervisory staff would then review these returns with a view toward correcting, if necessary, the appraisals made of the more complicated valuation properties. Under such a system, the presently existing body of inheritance tax appraisers, with their staff, would be entirely unnecessary. It should be pointed out that such a system is now working well in other states, Massachusetts being the best example.

There would be no risk of escaping taxation because of a failure to list any of the estate properties by the executor. In order to attain transfer of the properties to the heirs in any estate, it would be necessary, obviously, to physically list all of those properties to be transferred. Secondly, there would be little risk that properties would be undervalued by this system of self-assessment. When property is transferred by probate, that property acquires a new tax basis. That new basis is then used for the purpose of calculating later capital gains, upon sale, and later depreciation which can be deducted by the heir or devisee. Therefore, in the vast majority of instances, the estate, including the heirs, will want a relatively high value placed upon the properties which are to be distributed so that there will not be a risk

of substantial capital gain at a later date, and so that substantial depreciation deductions can be taken from year to year after distribution of the assets.

All in all, it would seem that we should make a major attempt during the 1965 session to effect a complete reform of our present inheritance tax appraisal system. Certainly, there will be practical questions which must be considered during the legislative course of any proposal. It is submitted, however, that this practical question can be met when encountered, and should not be anticipated in advance to the extent that a proposal for reform is watered down, weakened, and submitted on a basis where the workability of the proposal can be seriously questioned.

Sincerely,

WILLIAM T. BAGLEY

HON. JESSE M. UNRUH

Speaker of the Assembly

and Members of the Assembly :

I agree with the committee that there will be important savings through consolidating tax administration. However, I believe that this can best be accomplished within the Board of Equalization.

Sincerely,

TOM CARRELL

HON. JESSE M. UNRUH

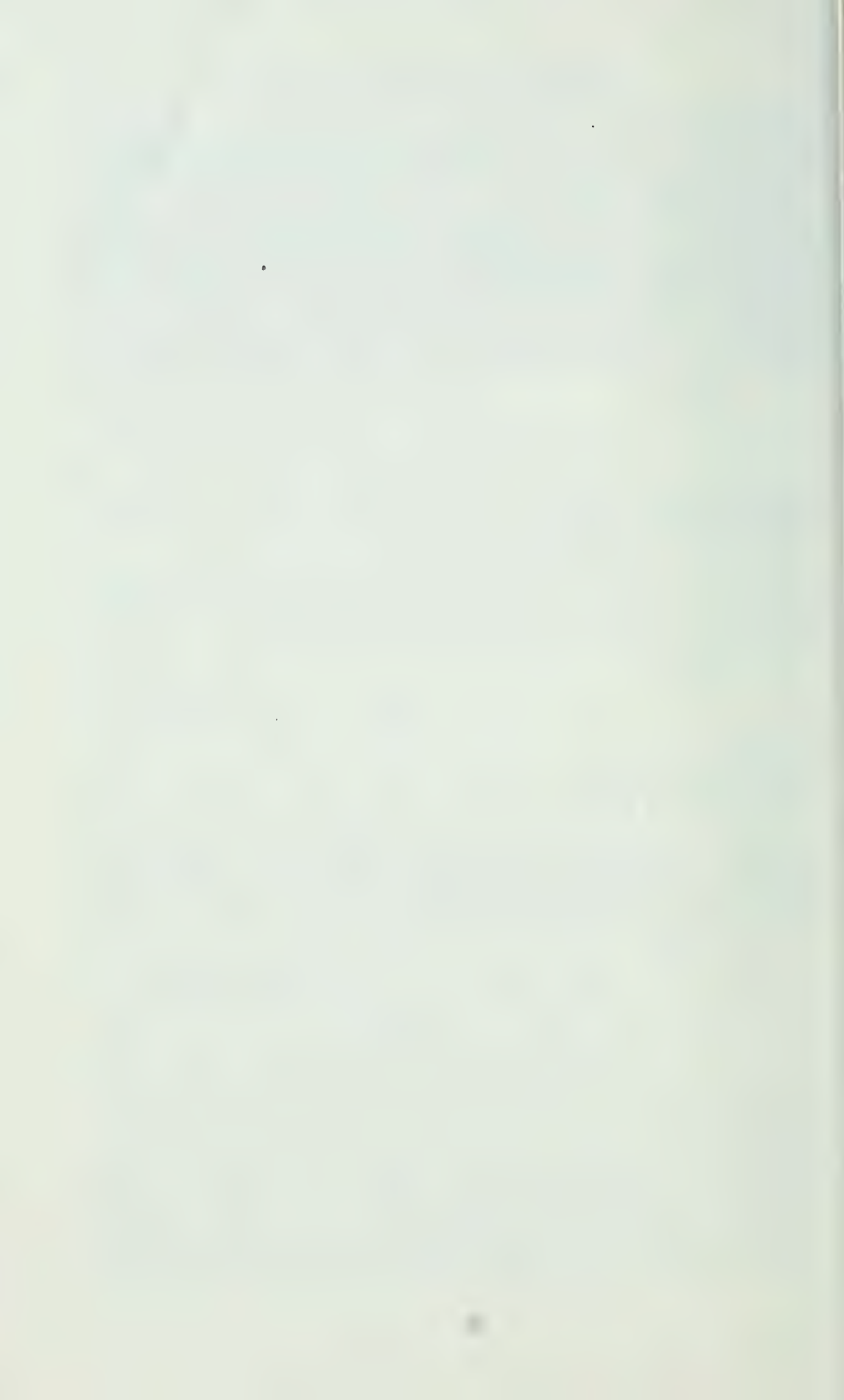
Speaker of the Assembly

and Members of the Assembly :

I concur in the findings and recommendations of the committee with reference to the need for a Department of Revenue. It is my feeling that the specific recommendation for modified self-assessment of the inheritance tax would prove unworkable.

Sincerely,

HARVEY JOHNSON



APPENDICES

APPENDIX A

October 2, 1964

THE HONORABLE MILTON MARKS
Member of the Assembly
State Capitol
Sacramento, California

Dear Milt:

I sincerely appreciate your invitation to have a representative of my office appear before the Assembly Committee on Government Organization during its consideration of the recommendations relating to the establishment of a Department of Revenue. As you know, the administration has submitted a proposal to the Commission on California State Government Organization and Economy for its analysis and evaluation. I hope that proposal and the anticipated report by the commission may be the basis for further study by your committee and appropriate legislative action.

The commission will make its report available to me, the committee and the Legislature, and I may have further observations to make at that time. For the present, however, I have nothing to add to the proposal made to the commission, a copy of which is enclosed.

I hope your committee shares my wish that the needed consolidation of the revenue administration of this state can be achieved. The details are less important than the objective, and I know that both the commission and the committee will explore all possible means of accomplishing the basic purposes.

EDMUND G. BROWN
Governor
State of California

A GENERAL PROPOSAL FOR THE CONSOLIDATION OF TAX-COLLECTING AGENCIES IN THE STATE OF CALIFORNIA

The organization of California's state government is outstanding among the states. Good principles of public administration have been followed, particularly in the development of strong departments for major state functions, headed by Governor-appointed directors. In 1961, the state government's organization was enhanced with the implementation of an agency plan which further consolidated similar functions and provided the Chief Executive with a more manageable organization.

While California's government organization is far superior to that of most other states, much remains to be done in the field of tax administration. Tax organization in California is complex as well as con-

fusing. Collection responsibility for the state's major taxes is spread among several state organizations as shown on the first chart (Exhibit I) attached to this proposal.

Six agencies collect the state's major taxes: The Board of Equalization, the Franchise Tax Board, the Controller, the Department of Motor Vehicles, the Department of Employment, and the Horse Racing Board. Because of this dispersal of responsibility, taxpayers must deal with a number of state tax agencies. Not only is responsibility for the collection of taxes dispersed, but in some cases, several agencies handle different parts of the work involved in administering a particular tax.

This complex organization and diffused responsibility cannot be attributed to any grand design. Like many governmental organizations, the various California tax agencies grew in response to particular needs, but without much foresight or logic.

"Since no state officer had originally been set up as a tax collector, the responsibility for the collection of new taxes was assigned either to one of the existing officers, boards, or departments that had been created to administer that particular tax. The existing situation is the result of a long series of separate decisions. Undoubtedly some of the assignments were originally made for purely political or personal reasons that have long since ceased to apply. The present allocation of duties has no logic or principle behind it." (Committee of Twenty-five-Keesling Committee, *Final Report*, 1941, page 50).

Certainly the topic of consolidation is not a new one. Since the 1927 Tax Commission study, there have been at least 15 separate studies by outside agencies or legislative committees that have recommended some consolidation of the major tax agencies as a sound organizational objective. In addition, the Legislative Analyst has been consistent in his recommendations for a consolidation of tax administration organizations into a Department of Revenue.

The primary advantages of reorganizing revenue administration in California into a Department of Revenue are:

1. To fix more clearly the responsibility for results in tax administration.
2. To make possible more uniform tax policy and administration.
3. To promote greater efficiency and productiveness in tax administration.
4. To reduce and simplify contacts between taxpayers and the State.

Probably the most famous of the previous studies on revenue consolidation was the 1955 Weinberger subcommittee's *The Need for a Department of Revenue in California*. This report recommended the creation of a Department of Revenue with a director appointed by the Governor to administer most of the taxes now under the Board of Equalization and the Franchise Tax Board. The Board of Equalization would have been left with the private car tax and the constitutionally assigned alcoholic beverage excise taxes and assessment of insurance companies. The controller would have retained the inheritance and gift taxes, while the Department of Motor Vehicles, the Depart-

ment of Employment, and the California Horse Racing Board would have been unaffected. Under the Weinberger proposal, the Franchise Tax Board would have ceased to exist. The report also advocated the establishment of a three-member Governor-appointed Tax Appeals Board to hear appeals from the acts of the Department of Revenue. The second chart attached to this proposal (Exhibit II) outlines this organization. Bills to implement the provisions of the Weinberger report were introduced in the 1955 General Session, and in subsequent general sessions, but with no success.

Another important proposal for a consolidated tax agency was contained in the December 1959 *The Agency Plan for California* (Governor's Committee on Organization of State Government). This proposal would have created a Revenue Department headed by a director appointed by the Governor, and succeeding to all activities of the Franchise Tax Board, all tax administration activities of the State Controller, and all tax administration activities of the Board of Equalization, with the exception of those which have been assigned by the Constitution (Alcoholic Beverage Excise Taxes, and Insurance Company Assessments). In this proposal, the Board of Equalization would have become the Board of Tax Appeals for all taxes collected by the Revenue Department. These organizational proposals are illustrated by the third chart attached to this proposal (Exhibit III). Although the *Agency Plan* does not deal with the point specifically, presumably this proposal would have extended civil service status to Inheritance Tax Appraisers. There was no success in implementing any of these recommendations.

While most of the impetus for consolidation has come from sources outside the tax administering agencies, most of the inertia has developed from within these agencies. The 1955 Weinberger report was damaged by testimony to the effect that consolidation would not produce savings of any significant size, but would actually result in a loss of revenue. It is difficult to discuss specific economies when a reorganization is proposed, since it is impossible to precisely identify sources of savings before the reorganization goes into effect. There are certainly possibilities at least insofar as combining some supportive or staff services. It is significant that in every state where a consolidation has occurred, there have been significant reductions in the collection costs per dollar of tax return.

The strongest argument against consolidation is the fact that California's tax administration has long been recognized as outstanding among the states. The fact that we have been able to provide an excellent tax administration in spite of a clumsy organizational structure is a tribute to the dedication and high principles of the individuals working within this organization rather than to the organization itself. However, it is difficult to appraise how well the California system is working when it is so diffused. It must be recognized that the past history of tax agency reorganization has usually had a parallel history of scandal. There is not the slightest indication of scandal in the present California situation, but good administrative practice would dictate establishment of sound organizational structure.

The advantages of tax agency consolidation encourage us to advance a two-part proposal for the reorganization of the tax administration structure in California. The first part of the proposal can be accom-

plished through legislative action alone. The second step may or may not follow, but would require a constitutional amendment. Neither of these steps affect taxes administered by the Department of Motor Vehicles, the Department of Employment, or the Horse Racing Board. These would be matters for additional consideration by the Commission on California State Government Organization and Economy, but it is believed that there is no basis for separating the revenue collection responsibilities of these agencies from their other, closely allied functions.

Organization charts which illustrate both parts of this proposal are being prepared. They will be furnished to the Commission on California State Government as soon as possible.

PROPOSED TAX AGENCY REORGANIZATION

Part 1

- A. Create a "California Tax Commission" consisting of the Controller, Director of Finance, and Treasurer. This commission would head the proposed Department of Revenue (see "B" below) and would appoint the Executive Officer of the Department of Revenue (to whom any administrative functions could be delegated), as well as the panel of inheritance tax appraisers for each county. In addition, this commission would adopt all tax rules and regulations for Department of Revenue administered taxes, and establish the bank tax rate. The Controller would serve as permanent chairman of the California Tax Commission.
- B. Create a "Department of Revenue" (see "A" above) to succeed to all tax administration duties of the Franchise Tax Board, the State Controller, and all statutory tax administration duties of the State Board of Equalization. The taxes administered by this new department would include the personal income tax, the bank and corporations taxes, the gift tax, the inheritance tax, the retail sales and use taxes, the diesel tax, the private car tax, the cigarette tax, the subscription television tax, the gasoline tax (refunds would remain in the Controller's Office because of the warrant procedure), the truck tax, and the insurance company tax (collection only).
- C. The Franchise Tax Board would cease to exist.
- D. The Board of Equalization would retain the tax administration duties assigned by the Constitution (alcoholic beverage excise taxes and insurance company assessments) as well as responsibility for equalization, assessment standards, and valuation of public utility properties. In addition, the Board of Equalization would, ex officio, become the Board of Tax Appeals for all taxes administered by the Department of Revenue. At present the Board of Equalization hears appeals on taxes under its own administration and that of the Franchise Tax Board (two members sit on both boards—the State Controller and the Chairman of the Board of Equalization). The proposed organization removes this objectionable arrangement and, in addition, provides a clear administrative appeal procedure.

The second part would require a constitutional amendment and would have the effect of shortening the executive ballot. However, it is not

dependent upon the first part, nor, for that matter, is the first part dependent upon the future constitutional revision proposed in the second part.

Part 2

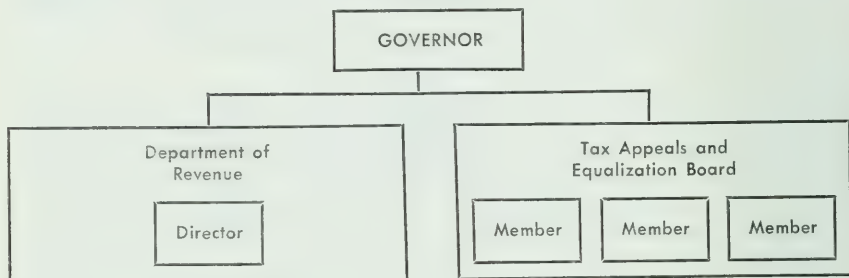
- A. Create a "California Tax Commission" identical to that proposed under Part 1, A, with the same responsibilities.
- B. Create a "Department of Revenue" to succeed to all tax administration duties of the Franchise Tax Board, the State Controller, and the Board of Equalization. If the Department of Revenue were already in existence, as proposed under Part 1, B, this would mean the shift of the Alcoholic Beverage Excise Taxes and the Assessment of Insurance Companies from the Board of Equalization to the Department of Revenue.
- C. The Franchise Tax Board would cease to exist.
- D. Create a separate Board of Tax Appeals made up of the individuals who are members of the State Board of Equalization, with the Controller as an ex officio member. However, as the present Board of Equalization incumbents retire, they would be replaced, not by election, but with appointments by the Governor from four separate regions determined on a population basis. In addition to hearing appeals on all taxes administered by the Department of Revenue, this board would formally determine equalization, assessment standards, and valuation of public utility properties. However, the administrative work behind these determinations would be done by the Department of Revenue.

The foregoing constitutes an outline of a reorganization proposal for the consolidation of tax collecting agencies in California. It is offered in the hope that it will be helpful in the important work of the Commission on California State Government Organization and Economy. The staff of the Department of Finance is available to assist in the development of this proposal.

APPENDIX B

PROPOSED STRUCTURE FOR A DEPARTMENT OF REVENUE AND A TAX APPEALS AND EQUALIZATION BOARD IN CALIFORNIA

Prepared by
Office of Legislative Analyst
September 8, 1964



Administer

1. Retail sales and use taxes
2. Personal income tax
3. Bank and corporation taxes
4. Alcoholic beverage excise taxes
5. Cigarette tax
6. Diesel tax (use fuel tax)
7. Gasoline tax (motor vehicle fuel license tax)
8. Truck tax (motor vehicle transportation license tax)
9. Insurance company tax (present Board of Equalization and Controller duties)
10. Inheritance tax
11. Gift tax
12. Private car tax
13. Subscription television tax

Other Activities

1. Assessment standards
2. Tax-deeded lands
3. Valuation of utility properties short of final determinations
4. Equalization activities short of final determinations.

1. Hear appeals from acts of Department of Revenue.
2. Make final equalization determinations.
3. Make final public utility valuation determinations.

Pertinent Points

1. A constitutional amendment is required to abolish the Board of Equalization and to eliminate loose ends such as the alcoholic beverage excise tax and assessment of the insurance tax.

2. Even if it is desired to retain the elective Board of Equalization, a constitutional amendment would be necessary to eliminate the loose ends noted above.
3. We make no recommendation as to the internal organization of the new department. The proper top structure (i.e., a director appointed by and responsible to the Governor), assisted by the management and organizational services available, and with the approval of the Legislature, should be free to work out the internal details of integration, responsibility and geographic distribution to meet the requirements of effective administration.
4. It is assumed that the inheritance appraiser activity would be incorporated into the new department with civil service personnel, comparable to tax administration personnel concerned with all other taxes in the new department.
5. It is contemplated that the Tax Appeals and Equalization Board would have a minimal staff directly under it, because the new Department of Revenue would be responsible for developing all factual data and providing all clerical and technical effort which would be essential to (1) appeals hearings, (2) equalization determinations and (3) public utility valuation determinations. The board therefore would be limited to a "personal" staff consisting of an executive secretary and minimal clerical persons.

APPENDIX C

December 2, 1964

HON. MILTON MARKS, *Chairman*
Interim Committee on Government Organization
State Capitol
Sacramento 14, California

Dear Mr. Marks:

Herewith is the Board of Equalization proposal to consolidate revenue functions under the Board if a change in the state's tax administrative structure is decided upon.

Our report is submitted to your committee in accordance with your request.

Very truly yours,

PAUL R. LEAKE
Chairman

CONSOLIDATION OF MAJOR CALIFORNIA STATE REVENUE PROGRAM RESPONSIBILITY IN ONE AGENCY—THE STATE BOARD OF EQUALIZATION

I. INTRODUCTION

This is a plan for bringing together within the state's principal revenue agency—the Board of Equalization—the administration of the remainder of California's major revenue programs not already part of board operations: the total operations of the Franchise Tax Board (income and franchise taxes); the State Controller's tax collection functions (highway and related taxes); and the inheritance and gift tax operations of the state (now involving both the State Controller's office and local jurisdictions).

A conservative estimate of eventual saving resulting from the initial changes proposed is \$358,412 through consolidation of the Franchise Tax Board and State Controller highway tax collection operations under the Board of Equalization, and an additional \$1,159,000 through the board's administration of the inheritance and gift tax functions. The total saving gained through board consolidation of these three operations would be at least \$1,517,412.

In reaching this conservative estimate, several likely sources of additional budgetary gain under consolidation have not been included. These include a possible one-half to one million dollar increase in inheritance tax revenue under more exacting appraisal standards. (This does not include another possible \$300,000 which could be gained in interest if the state received directly the inheritance tax money now held by the counties for up to 60 days.) There is also no estimate of the very probable savings which would result from improvements in organization,

programs, and systems after the shakedown period of integration and after the opportunity for additional study in depth.

The Board of Equalization is already responsible for the various business taxes (sales and use tax, highway taxes audit, etc.) which form the majority of the state revenue dollar. The Board of Equalization is already responsible for the state's property tax programs. Grouping within one agency the administration of all major tax programs has been the virtually unanimous recommendation of past study groups and of executive and legislative advisers. The Board of Equalization proposal is in accord with this consensus in favor of efficiency and economy. The board plan advances the further proposition that the quality of tax administration by the board is a recognized fact which argues most strongly for continued experienced Board of Equalization direction under the consolidation plan.

Much past discussion has invariably centered about the composition of any proposed consolidated agency's top policy-executive structure. This is well summarized in the comment in the January 1947 report of the Assembly Interim Committee on State and Local Taxation (page 46):

"In brief, the choice lies between an elective administrative board, an appointive administrative board and an appointive administrator. Each plan has advantages and disadvantages. These must be studied carefully and if any change is to be effected, due consideration must be given to the interests of the state, the taxpayers and the general public. Finally it must be determined that suggested changes will improve the administration of state taxes and not accomplish the reverse. There is nothing to be gained from changes made only for the sake of change."

The Board of Equalization plan supports that philosophy. Its advocacy of the first alternative—*elected board administration* of an integrated agency—can quite naturally be attributed in part to pride in its internationally recognized successful tax operations. Without by any means claiming infallibility, the board believes (and documents with facts in this plan) that its structure has already proved itself in tax administration. This pragmatic test of good organization appears too often lacking in previous proposals to establish a State Revenue Department.

II. MAJOR GOALS AND ADVANTAGES OF BOARD OF EQUALIZATION CONSOLIDATED TAX AGENCY PLAN

As an administrative body, the existing Board of Equalization offers unique characteristics supporting its proposed direction of a consolidated tax agency:

A. *Service to the public*

As a constitutional and elective board, sensitive to the public, the Board of Equalization, is immediately responsible (and responsive) to the taxpayer's problems in every part of the State.

This most important consideration cannot be given secondary ranking in any search for a program intended to supply maximum economy and efficiency.

In addition to this atmosphere of responsiveness at the top level, the Board of Equalization's existing widespread network of officers provides for rapid, direct local service throughout California. This establishes the base for eventual one-stop information and assistance services to the taxpayer, who now must visit three locations—and finds only Board of Equalization offices convenient to him if he is outside the larger metropolitan centers.

B. *Savings in administrative costs*

Under the proposed plan administration would be in an agency with a recorded reputation for economical operations. In the face of a growing workload—both in addition of new tax programs and in sheer volume of business—the total authorized positions in the Board of Equalization's business tax operations (where by far the majority of the board's employees are engaged) are *fewer* than they were 10 years ago. There is only one more position authorized for the entire Board of Equalization than there was 10 years ago. Business tax costs are now only 1.15 percent of revenues produced by the board's administration of business tax programs. (See chart following Section VI.)

The Board of Equalization proposes the application of the proved approaches used in achieving this record to an integrated agency which adds the present Franchise Tax Board's functions, the State Controller's highway tax collection, and the inheritance and gift tax operations. An objective and conservative analysis of the economies resulting from this combination shows substantial minimum savings when compared to the cost of the present separate operations. These savings are detailed in a following section.

C. *Public confidence and acceptance*

Much of the earlier opposition to proposals for an integrated tax agency has been attributed to public fear of centralizing authority for the state's tax collections in a single, Governor-appointed administrator, far removed from the taxpayer and reachable only through the office of the Governor—which is already overburdened with a vast number and variety of responsibilities in addition to tax problems.

The existing Board of Equalization offers an elective body, responsible directly to the taxpayer, and devoting full time to one concept: fair and equitable tax administration.

The board provides the unique advantage of an *administrative* body which is *elective* and therefore particularly accessible and sensitive to individual taxpayers and to the public in general.

D. *Continuity of tax operations and local relationships under an experienced and demonstrably successful leadership structure*

The Board of Equalization has shown a continuing record of accomplishment based upon knowledge and experience in tax administration—covering both business and property taxes and both state and local operations. The concluding section of this document details the record. No other body offers this comprehensive background in all tax areas and the immediate ability to administer the additional

programs of income and franchise taxes, the collection phases of highway taxes, and the inheritance and gift taxes.

Unlikely any other agency, the board already plays a predominant role in California's total state *and* local tax picture. As one example, acting on a cooperative, contractual basis for local jurisdictions, it collected during the past fiscal year \$287,000,000 in *local* sales and use taxes alone, which were transmitted directly to local jurisdictions. Of particular import, the board's activities were directly contributory to the collection of some \$2.8 billion dollars in local property taxes. This has been accomplished through such activities as direct board assessment of utilities, intercounty equalization determinations (a constitutional responsibility), and assistance to county assessors in achieving appropriate assessment standards.

More detail on the unmatched part played by the Board of Equalization in the state's total state-local revenue picture is presented in Section VII, Exhibit B.

E. *Achievement of a consolidated agency without constitutional revision*

Unlike other plans, the Board of Equalization proposal would gain the benefits of consolidation by *legislative* action rather than by the costly, cumbersome, and inflexible route of constitutional amendment. All other plans have required a splitting of various tax functions between some proposed new central agency and a truncated Board of Equalization, pending completion of the complex constitutional amendment processes which would be required to consolidate tax programs under any body other than the Board of Equalization.

F. *Elimination of need for a superimposed tax appeals board*

Past proposals for a substitute appointee or body in lieu of the present Board of Equalization have included the resultant need for a separate new tax appeals board. By continuing the present elective board structure, there is no need for a superimposed tax appeals board. It is estimated that such an additional board would cost some \$400,000 to \$500,000 a year for board members and their legal and other staff.

The Board of Equalization now provides to all taxpayers full opportunity for a fair and impartial hearing in controversies relating to board-administered taxes. The board has shown in its handling of income and franchise tax appeals that it is fully competent in this area of taxation. The board has amply demonstrated its policy of giving each taxpayer a full opportunity to present the facts and arguments in support of his case. The record of the board shows clearly that it is not a body which tends to approve automatically the tax determinations recommended by the staff. The board makes its own decisions based on its own evaluation of the case presented by the taxpayer. This assures the taxpayer a fair hearing.

G. *Opportunities for board to contribute to personal income and corporation franchise tax programs*

The existing larger network of offices under the Board of Equalization would make possible immediate advantages to the current Franchise Tax Board programs. An example is the already-established

Equalization compliance system, which puts Board of Equalization fieldmen in approximately four times the number of locations in which there are now Franchise Tax Board offices, greatly increasing collection opportunities.

The established Board of Equalization statewide staff development and training programs—recognized as among the best in state service—would be made available to Franchise Tax Board employees under a consolidated agency, as would the increased promotional opportunities in a larger agency.

II. Compatibility with the inheritance and gift tax program

The existing Property Tax Department of the Board of Equalization already has related functions in real and tangible personal property appraisal as part of its day-to-day work. The required skills and experience are thus already available as a foundation for addition of the inheritance and gift tax operations to the board structure.

I. Opportunities for economies through consolidation of highway tax activities

As part of its own regular processes, the Board of Equalization already covers the major parts of the various highway tax programs. By consolidation, substantial gains can be achieved through such means as combining EDP processes and use of the board's already-existing, widespread collection system operating out of established offices throughout the state.

III. ECONOMIES OF CONSOLIDATION—SAVINGS OF \$1,517,412

Policy

This report predicts only those savings which are supported by sound and valid reasons stemming from conservative analysis. Future growth of the state and the specific tax programs finally consolidated are critical factors in eventual actual savings. This approach is in contrast to some earlier studies having many findings which are now considered by most unbiased analysts as without foundation in fact.

The projected savings under the proposed Board of Equalization plan cannot be attributed to the first year under the new plan. Savings take time; it would be the intention and expectation of the board that savings resulting from consolidation would be realized through attrition. This policy should avoid the inevitable loss of morale which would result from any wholesale layoffs or demotions.

On the other hand, the conservative projection of savings by no means represents the total eventually possible as the consolidated agency learns from experience the further improvements and economies which are possible through integrated operations.

Method

Savings are cited by agency and function. Where eliminated positions are cited as savings, both salary and overhead costs attributable to the positions are shown as a summary figure. In computing savings, the midstep in the salary range of a position was used and, except where otherwise specified, a 20-percent allowance was applied to salaries to cover all other costs.

The standard 20-percent addition allows for actual savings made possible by the elimination of a position. It includes costs of service rendered by Finance, General Services, Controller, Treasurer, Personnel Board, Attorney General, Secretary of State, and the Legislature, as well as the state's contributions to employee retirement and health and welfare benefits. It also includes costs of operating expense such as space, equipment, supplies, and travel expenses.

A summary of the estimated savings is shown below. Following that is a more detailed account of the sources of savings.

SUMMARY OF ESTIMATED SAVINGS

A. *Transfer of Franchise Tax Board Functions to Board of Equalization*

Legal	\$ 31,996
Electronic data processing	123,145
Collections	53,282
Fiscal	11,204
Personnel and training	5,602
Cashiering	22,408
Mailing	16,057
Supply	16,806
Temporary help	29,385

\$ 309,885

B. *Transfer of State Controller Tax Collection Functions to Board of Equalization*

Headquarters	\$ 31,521
Field	17,006

48,527

C. *Transfer of Inheritance and Gift Tax Functions to Board of Equalization*

Inheritance tax appraisal	\$739,000*
County treasurers' services	420,000†

1,159,000

Total estimated savings \$1,517,412

* \$899,000 less an estimated \$160,000 of appraisers' expenses now charged against estates which it is assumed will be absorbed by the state. In addition, from \$500,000 to \$1,000,000 further revenue is likely from changes in appraisal practices.

† In addition, approximately \$300,000 could be gained in interest on inheritance tax funds now remitted by counties at bimonthly intervals.

SAVINGS IN FRANCHISE TAX BOARD PROGRAMS

Legal \$31,996

From a functional standpoint, the main effect in the legal area would be to consolidate the handling of all legal functions under the Board of Equalization.

Administrative routine for the several tax programs would require approximately the same total legal services under the Board of Equalization as now needed by the separate agencies. This type of work includes answering inquiries from taxpayers or the staff; interpreting

laws, rules, and regulations; assistance in collections; counseling services for tax administrators; etc.

Under the proposed consolidation plan it is probable that appeals to decisions made with respect to laws now administered by the Franchise Tax Board can be handled on a less formalized basis since it would no longer be necessary to transmit an appeal from one agency to another. Thus, it would be expected that the handling of an appeal case would be simplified with a reduction in work, such as the elimination of duplicate legal review, and less formalized documentation (briefs, summaries, background data, etc.). It is estimated that this reduction of work would eliminate at least two legal positions and produce a savings of \$31,996.

Electronic Data Processing **\$123,145**

Consolidation of this function would make it possible to reduce the cost of handling it for two main reasons.

First, two common electronic data processing systems could be secured with identical configurations including printing and card handling facilities and switchable tape drives. Operation of the equipment would be planned for two shifts to take advantage of additional lower rental charges. As a result it is estimated that machine utilization of each of the two EDP systems would approximate $1\frac{1}{2}$ shifts. This would leave enough reserve capacity so that increased machine use for special jobs or emergency situations could be handled with a third shift of personnel.

This plan would make it possible for one crew to operate both systems on each shift. It would also provide flexibility so that either system could be enlarged for a specific job by shifting equipment (such as tape drives) from one to another. This flexibility would increase system capacity and facilitate work scheduling. It is estimated that annual EDP machine costs could be reduced approximately \$50,000 and that a reduction of five positions (\$39,484) in the staff handling the EDP equipment could be made.

Second, it would be possible to achieve greater utilization of electric accounting machine (EAM—punchcard processing) equipment. This would be accomplished by operating the equipment on a two-shift basis and by releasing equipment not needed after consolidation. This action would make possible using state-owned equipment on a second shift at no additional cost (no rental charge) and using rented equipment for the second shift at half the cost of the first shift. It is estimated that annual EAM machine costs could be reduced approximately \$13,000 and that a reduction of three positions (\$20,661) in the staff handling the EAM equipment could be made.

Total estimated savings for this function are \$123,145.

Collections **\$53,282**

Consolidation of this function in headquarters and field would make it possible to reduce the cost of handling collections for several reasons.

A single contact could be made by the headquarters and field staff with any taxpayer owing liability for more than one tax, such as sales and income.

More frequent and earlier contact with taxpayers for tax matters other than franchise and income taxes would make it possible to view

an account for possible franchise and income tax liability and take appropriate action before normal revelation of the liability.

In headquarters, consolidation of the handling of liabilities for the same taxpayer would be possible, such as release of liens, preparation of writeoffs, and collection aid services. This would make possible a savings of two clerical positions. Another clerical position could be saved by consolidation of accounts receivable file maintenance.

A substantially larger headquarters collection organization would also result. One additional clerical position could be saved through a reduction in the need for clerical supervision made possible by consolidation of similar functions under subunit heads.

The widespread network of board field offices that would be available, and the staff assigned to them, would make possible a more decentralized, concentrated, specialized, and accelerated collection effort. A substantially larger technical staff would also be available to work on a consolidated field collection program particularly for franchise and income taxes. For these reasons it would be possible to handle the field collection program with four fewer technical (compliance or enforcement) positions.

The total estimated position savings for handling of the collection function on a consolidated basis is eight, which total \$53,282.

***Fiscal Functions* \$11,204**

The combined administration of the consolidated tax programs would result in the preparation of one budget instead of two. Consolidation of accounting, purchasing, and other fiscal functions would also be possible.

It is estimated that this reduction of work would eliminate two positions in a headquarters consolidated fiscal organization for the reasons given. The amount of savings would be \$11,204.

***Personnel and Training* \$5,602**

Consolidation of personnel and training functions would make it more economical to handle documentation of normal personnel transactions. Increased specialization and standardization would also be possible in a larger unit. For these reasons the functions could be handled with one fewer position and produce a savings of \$5,602.

***Cashiering* \$22,408**

Integration of headquarters cashiering functions would make possible a greater utilization of the consolidated staff. Some leveling of peak and valley workloads would also be possible. As a result the headquarters cashiering functions could be performed with two fewer positions.

Under the proposed plan duplicate field offices would be eliminated and all Board of Equalization personnel would be housed at one location in each area. Action would also be taken to extend franchise and income tax payment services to areas other than the 17 where they are now available.

As a result cashiering functions can be consolidated and decentralized. The field cashiering functions could then be performed with two fewer positions.

In summary it is estimated that consolidation of cashiering functions would eliminate four positions for a savings of \$22,408.

Mailing \$16,057

The Board of Equalization operates a highly specialized headquarters mail room with a permanent staff on a year-round basis. It also operates stuffing, decollating, folding, inserting, and addressing equipment. Consolidation of this staff with staff performing similar functions for franchise and income taxes should make possible greater utilization of the staff and equipment and reduce the need for temporary help.

The estimated position savings for handling of headquarters mail and related functions on a consolidated basis is three, for a savings of \$16,057.

Supply \$16,806

The Board of Equalization operates a headquarters supply unit which stores and distributes forms and office supplies to headquarters and field offices. It also performs duplicating services, including assembling forms and bulletin releases. In addition, other miscellaneous services are provided.

Consolidation of this staff with staff performing similar functions for franchise and income taxes should make possible greater utilization of the staff and equipment and enable the consolidated unit to operate with one fewer position.

Stocks of supplies and forms are now maintained in various field offices of the Board of Equalization and Franchise Tax Board. Copying and other miscellaneous services are also provided. Under the proposed plan all personnel would be housed at one location in each area and staff would be deployed to additional offices. As a result the field supply and other related services could be performed with two fewer positions.

In summary it is estimated that consolidation of supply and related functions would eliminate three positions for savings of \$16,806.

Use of Temporary Help \$29,385

The Franchise Tax Board 1964-65 budget contains approximately 264 authorized positions classified as temporary. Of this total 21 are assigned for field use and 243 for headquarters use.

Spreading of income and franchise tax workload to staff located in more field offices and housing of all personnel at one location in each field area would make it possible to utilize the consolidated permanent staff to a greater extent and reduce the need for temporary help. It is estimated that the need for temporary positions could be reduced the equivalent of two positions in field offices.

In headquarters consolidation of electronic data processing, cashiering, mail, and other functions where temporary help is used, as well as increased utilization of the staff performing these integrated functions, should result in a modest reduction of the equivalent of five positions in the use of temporary help.

In summary it is estimated that the use of temporary help can be reduced an equivalent of seven positions for a total saving of \$29,385.

**SAVINGS IN STATE CONTROLLER'S TAX COLLECTION PROGRAMS
(Other than Inheritance and Gift Taxes)**

Headquarters Collections..... \$31,521

Consolidation of the headquarters Controller's tax collection functions and the Board of Equalization business tax collection functions would result in savings for several reasons.

The Administrative Service Division of the board is already handling moneys collected from most of these taxpayers. The additional workload as a result of the consolidation could be absorbed at a savings of two positions.

If the technical aspects of the collection activity, which are those functions dealing with analysis of posting, correspondence, and special collection action, were performed in a substantially larger consolidated section, with standardized procedures and increased specialization, the same functions could be performed with one fewer position.

The elimination of interagency duplication and standardization of procedures in the preparation of billings and correspondence would make it possible to absorb these activities in a consolidated section with one fewer position.

Consolidation of these functions would make possible the absorption of the supervisory responsibilities and result in the saving of one additional position.

The total savings in absorbing the Controller's headquarters tax collection function is five positions, which total \$31,521.

Field Collections..... \$17,006

The Controller's statewide field collection staff is located in only three district or regional offices. This results in a great deal of travel expense and time to contact and collect from delinquent taxpayers. Consolidation of this function would bring the field collection activities into a large and well-dispersed field organization and make it possible to save much of this expense and time.

Consolidation of this activity would also save duplication of effort which now exists because two agencies are contacting the same taxpayer for different tax programs.

A substantially larger technical staff would be available to work on an integrated field collection program which could absorb a portion of the collection activities now performed.

For the above reasons it is estimated that consolidation of the Controller's field collection program would eliminate three positions for a savings of \$17,006.

**SAVINGS IN STATE CONTROLLER AND COUNTY INHERITANCE
AND GIFT TAX PROGRAMS**

Inheritance and Gift Tax Appraisal Function..... \$899,000

(See Section VII, Exhibit E, Analysis of Appraisal Function)

The inheritance tax appraisers' primary source of compensation is from fees charged against probated estates. They also receive small sums for appraising properties in connection with the gift tax, etc., and a small amount from the state for filing inheritance tax reports. Their gross income from fees and expenses charged against estates alone plus their payments for filing inheritance tax reports amounted

to \$3,130,874 in 1963 and is projected for 1964-65 as approximately \$3,367,000. It is estimated that a staff of 202 employees would be required to perform the appraisal function in the Board of Equalization consisting of

Property Tax Department	
Field operations	
150 property appraisers (including supervision)	
18 clerks	
Inheritance and Gift Tax Division	
(new positions to be added to the 109.5 already authorized for this division)	
24 examiners	
10 clerks	

The total annual cost in the Board of Equalization for salaries, operating expenses, and equipment would be approximately \$2,468,000. When compared with the projected cost of about \$3,367,000, the estimated annual savings are \$899,000. (See Section VII for details of these computations.)

Inheritance and Gift

***Tax Legal and Examination Functions*..... (no estimated savings)**

The Inheritance and Gift Tax Division of the Controller's office has a staff of 109.5 in positions which may be grouped as follows:

Attorneys	22
Inheritance and gift tax examiners	20
Accountants and auditors	11
Stenographers, typists, and clerks	54
Other	2.5
Total	109.5

The division's 1964-65 budget, exclusive of commissions to county treasurers (\$670,000) and inheritance tax appraisers' report fees (\$170,000) totals \$1,045,082.

No substantial savings are to be anticipated from transfer of the work now performed by the Inheritance and Gift Tax Division to the Board of Equalization. It seems probable that association with a larger agency wholly devoted to tax administration would afford advantages, but it is impossible to translate these advantages into estimated savings.

***County Treasurer's Inheritance Tax Function*..... \$420,000**

The county treasurers participate in the administration of the inheritance tax by examining safe-deposit boxes, issuing consents to transfer property, making tax collections, and transmitting collections to the State Treasurer. For these services they receive 3 percent of their collections up to certain statutory maxima. The Controller's office estimates the 1964-65 commissions at \$670,000, a sum which is about six-tenths of one percent of anticipated revenues.

If the Board of Equalization were to take over the work now performed by the county treasurers, it would be done through the board's network of 60 offices at relatively little expense. It is estimated that the total annual cost of administering this function in the Board of Equalization would not exceed \$250,000. The savings would, therefore, amount to at least \$420,000 annually.

The counties also benefit by being allowed under the law to hold the money for 90 days without penalty. We are informed that the counties do not take full advantage of the law and actually remit

collections to the State Treasurer at bimonthly intervals, holding no money longer than approximately 60 days. If the state can earn $3\frac{1}{2}$ percent on its investments of General Fund moneys, interest foregone on the anticipated 1964-65 collections of \$105 million could amount to as much as \$900,000 were the counties to take full advantage of the law and \$300,000 were they to take full advantage of the 60-day practice.

Certain Other Economies Are Not Now Feasible

Earlier studies included other kinds of savings which are not found in this proposal since, as previously stated, this proposal predicts only those savings which can be supported by sound and valid reasons stemming from conservative analysis.

ONE AUDIT FOR ALL TAXES

One of these is based on the theory that it is advantageous to make one audit of a taxpayer's records for all taxes. This theory was explored recently by an interagency committee using a representative sample of tax returns, and, based upon the results, it was not possible to predict any savings through general implementation of such a plan.

Board of Equalization experience has proven that where auditing needs and processes are generally similar, such as in sales, transportation, and use fuel taxes, the theory of one audit has merit where feasible and practical. Conversely, it has also found that it is advantageous to train a specialized staff to audit separately for beverage, cigarette, and gasoline taxes.

Under this proposal the question is raised as to whether it would be advantageous to make one audit for income and franchise taxes as well as others, such as sales tax. This could not be accepted as a standard practice for several reasons.

Under this theory it would be necessary to train the bulk of the audit staff to check a taxpayer's records for all taxes. As a result one auditor could not possess the same skills and knowledge that an auditor specializing in one or related laws could attain. Where an audit was made for more than one tax, particularly those taxes where needs and processes are not similar, the time necessary to complete the audit could increase.

Another factor is the basic difference in audit needs. Information required for auditing the taxes administered by the Business Tax Department is generally found in the taxpayer's records or is based upon returns filed or other information in the taxpayer's file. For income and franchise taxes, however, a majority of the data needed for auditing are obtained from Internal Revenue Service reports, information returns from California employers, and a comparison of federal and state tax returns through the use of EDP methods.

Audit processing is also a basic difference in many respects. The same records would not generally be used. In some instances records for one tax (such as sales) may be found at one location while records for income tax may be found at another. The handling of relations with taxpayers dealing in multistate operations would be difficult with respect to income tax and questions of allocation of income. The timing of the audit would be difficult to establish with returns due for various intervals, particularly for taxpayers filing income tax returns on a yearly basis. Timing would also be a problem in auditing a taxpayer

closing out a business subject to sales tax, for example, where it would be desirable to review the records for possible sales tax liability as soon as possible and not wait for information needed for income tax auditing.

The close relationship that exists between the federal government and the state with respect to income and franchise taxes is also a valid reason for not integrating auditing of these taxes with others. The state tends to follow changes in federal law provisions. These changes have been of sufficient volume and complexity in recent years that specialization in auditing would seem highly desirable.

None of the above reasons should be interpreted as endorsing a policy of no coordination of efforts between tax programs. All auditors would receive training in all tax programs to permit recognition of audit needs in programs outside their basic responsibility. A planned procedure would continue to exist for exchanging information between one program and another in those instances where the state's interests are in jeopardy.

Further Decentralization of Headquarters Staff and Operations

Headquarters functions were examined and none could be readily identified for change to field responsibility. This is not to say that some decentralization would not be possible in the future after some experience has been gained from consolidation of all taxes as proposed.

Research shows that considerable decentralization has taken place in the Board of Equalization since 1958. Functions decentralized include refunds of sales and highway cash deposits, responsibility for final audit review, handling of undelivered tax return mail, complete control of highway tax clearances, sales and highway taxes registration record control, complete responsibility for collection control and followup of dormant accounts, establishment and control of installment payment proposals, delinquent return control for vendor use fuel tax accounts, business and area coding, highway tax audit selection, etc.

The installation of electronic data processing equipment in 1961 gave the board reason to centralize the processing of data. Consequently, any thoughts to decentralize such operations as alpha files, accounts receivable control files, and other control records has been discouraged.

FURTHER REORGANIZATION ON A FUNCTIONAL BASIS

Many of the possible economies that have been claimed possible in years past have been realized as a result of a major reorganization of the Board of Equalization which was initiated in 1959. As a result business taxes were organized on a functional basis rather than by purpose and functions common to several tax programs were consolidated. The savings occurred over a period of years and were used to handle increasing workloads.

IV. MAJOR FEATURES OF THE BOARD OF EQUALIZATION PLAN FOR A CONSOLIDATED REVENUE AGENCY

General

The proposed master plan provides for gathering together under the overall supervision of the established Board of Equalization—

already the state's principal tax administration body—the remainder of California's major tax programs.

The Board of Equalization already administers all or the major elements of the following tax programs:

- State sales and use tax
- Local sales and use tax
- Gasoline tax
- Use fuel tax
- Motor vehicle transportation tax
- Cigarette tax
- Alcoholic beverage tax
- Private (railroad) car tax

The Board of Equalization also *assesses* the insurance company tax.

Under this proposal, the following tax programs—now split wholly or partially to other agencies—would be brought under integrated direction:

From the Franchise Tax Board—all operations:

- Personal income tax
- Corporation income tax
- Bank and corporation franchise tax

From the State Controller's office—all the following highway and other tax *collection* programs (the Board of Equalization is already responsible for all phases of the highway tax programs except collections and one type of gas tax refund):

- Gasoline tax
- Motor vehicle transportation tax
- Insurance company tax (now split between the Insurance Commissioner, the Board of Equalization, and the State Controller)—

Plus two relatively minor programs from the administrative standpoint:

- Petroleum and gas assessments
- Subsidence abatement assessments

From the State Controller's office *and* local jurisdictions:
The inheritance and gift taxes

This logical consolidation of tax administration under an experienced, full-time, constitutional, elective board combines usual advantages (economy, efficiency) of grouping allied functions in one agency with the unique advantage of recognized knowledgeable leadership from a democratically chosen body immediately responsible to the taxpayer. The proposed consolidated agency is shown in Section VII, Exhibit A.

The foundation for adding the additional taxes has already been established successfully within the existing Board of Equalization organization.

Income and Franchise Tax Operations

It is proposed that the Franchise Tax Board operations be added as a third tax department (major division), equivalent to the existing Business Tax Department and Property Tax Department. This new

major segment would be headed by an Assistant Executive Secretary, Income and Franchise Tax, paralleling the top organization of the other two tax departments of the Board of Equalization. Such operations of the present Franchise Tax Board such as personnel, fiscal, general services, etc., not directly tied to income and franchise tax subject-matter techniques, would be combined in central staff services for the total new agency.

Because of differences in audit requirements, income and franchise tax audits would—at least initially—be carried on in the field under a chain of command stemming from the proposed head of the new department, rather than integrating the field crews under the district tax administrators now responsible for the Board of Equalization's present business taxes programs. However, for purposes of economy and coordination, common housing would be provided. Later experience may show basis for further integration.

State Controller's Tax Collection Operations

The great majority of the direct tax collection activities of the State Controller's office (mainly in highway taxes) stem from work already performed within the Board of Equalization, and, in a real sense, represent fragments missing from a total board operation. These activities of the State Controller's office can be added readily to present board operations without organizational change. The board already has the necessary systems, plus a much greater deployment of field personnel to enhance the collection effort.

It is not proposed that the State Controller's tax refund operation be assumed by the board, as this has been considered an appropriate, standard function for a State Controller's office.

Inheritance and Gift Tax Operations

The appraisal element is now carried out by persons chosen by local courts from panels compiled by the State Controller. Appointees (who are not state employees) receive fees from estates based upon their appraisals.

It is proposed that this function be assigned to the Board of Equalization and performed at lesser cost by a staff of civil service appraisers to be located within the board's existing Property Tax Department. Organizational changes to provide for proper deployment and direction of the department's expanded field force are included in the plan, resulting in an organization more closely resembling that of the present Business Tax Department and the proposed Income and Franchise Tax Department. An estate tax is proposed to correspond to the fee now received by appointed appraisers.

It is also proposed that consideration be given to the board's assuming certain work in inheritance tax administration now carried out on a commission basis by county treasurers. This includes opening and listing the contents of safe-deposit boxes, issuing consents to transfer property, and making tax collections and transmitting collections to the State Treasurer. The widespread network of Business Tax Department offices makes this a logical function for performance at less cost by the board's field compliance personnel.

The State Controller's inheritance and gift tax organization includes a civil service staff in an Inheritance and Gift Tax Division. It is pro-

posed that this unit be transferred to the board's Property Tax Department as a major staff unit, with whatever further redeployment of personnel within the agency as is found advantageous.

Implementation Plan

Putting into effect the proposed plan would of course require appropriate legislation. The Board of Equalization will be prepared to present its proposals in bill form for consideration. Attached is a *partial* draft of proposed legislation. A draft of the remaining proposed legislation required to accomplish the board's total proposal (including the transfer of inheritance and gift tax functions) is now in preparation.

Programs Not Included in Plan

Any consideration of a consolidated state tax agency must take into consideration all current revenue-producing organizations.

As has been the case in past considerations, the analysis leading to this present Board of Equalization proposal has given thought to the following activities which deliberately are *not* in the board proposal. These include the following:

- Department of Employment payroll tax
- Horse Racing Board fees
- Department of Motor Vehicles registration and license fees
- Motor vehicle auto use tax
- ABC liquor license fees
- The various licensing or certification fees connected with businesses and professions (contractors, engineers, etc.)

Although past study group recommendations have varied in specific detail, there has been general agreement that these revenue activities would be a questionable addition to a consolidated tax agency—at least pending further experience with integrated administration of the basic grouping proposed.

The tax, license, or fee activities of the group of agencies not included in the plan can generally be characterized as auxiliary to their fundamental operations, but closely linked from the public service, reference, control, or recordkeeping standpoint to those fundamental operations. Separation of the revenue collecting from the primary operational activities in these agencies would seem to create more problems in coordination and in multiplication of contacts required of either the taxpayer or the agencies than consolidation would appear to offer superficially in paperwork savings.

These programs which are not proposed for consolidation differ from those which are proposed as part of an expanded Board of Equalization operation—for example, the Franchise Tax Board operation. That operation is totally one of tax administration and is proposed for movement as a whole to a consolidated agency. No splitting of programs is involved. In the case of the State Controller's functions proposed for transfer, these are incidental *tax* operations which are not allied to primary responsibilities of that office. In the highway tax field, the proposed transfer of functions brings together related operations which are now split.

The Department of Employment's payroll taxes for unemployment and disability benefits have been discussed in some past reviews as

possibly more suited to a consolidated agency than the others in the group not recommended for consolidation. The Board of Equalization plan does not include the Department of Employment's tax functions for several reasons which are considered compelling:

1. The same records which are used for the computation of payroll tax—the records of individual wages—are also used to determine employee benefit rights. This very close relationship of functions would make most cumbersome any arrangement whereby the Department of Employment would have to check constantly with the Board of Equalization to determine audit findings and then apply these to Employment's benefit operations.
2. The amount of tax due from the employer is affected by the amount of benefits paid. Here again there is a close interrelationship between tax operations and benefit operations.
3. The Department of Employment operates its tax functions under federal budgetary regulations. A problem is presented by anticipated federal refusal to support any pro rata charge to the employment tax programs of any consolidated audit and collection program placed under the Board of Equalization. The federal program is not built on the selective sampling concept, designed by the Board of Equalization to provide concentration of audit time on the most likely predicted sources of tax change while covering a representative group of various types of businesses. Audits in the Department of Employment are initiated directly by followup on employee claims for benefits not supported by employer tax returns. It is believed that the federal government would not, therefore, support a charge against payroll tax revenue for audit costs incurred in routinely checking payroll records for employment tax conformity while the auditor may be reviewing firm records for sales tax (or other) purposes.

The allocation of partial payment tax receipts would also present serious problems under a program of federal involvement. The federal government could assert priority rights under a common fund approach.

V. DETAILED STATEMENT OF THE THREE MAIN ELEMENTS OF THE BOARD OF EQUALIZATION ORGANIZATIONAL PLAN FOR A CONSOLIDATED REVENUE AGENCY

A. *Transfer of Franchise Tax Board Operations*

1. *A New Department of Income and Franchise Taxes Would Be Established Within the Board of Equalization*

The Board of Equalization already operates with two tax departments (major divisions): business tax and property tax. The creation of a third tax department, responsible for administration of income and franchise taxes, would be in keeping with the organizational structure of the board. All three departments, as well as the existing staff management functions (legal, personnel, internal audit, etc.) and the Administrative Service Division, would report to the executive secretary. His office would coordinate the activities of the three tax departments.

The Department of Income and Franchise Taxes would be headed by an assistant executive secretary in the same manner as the existing assistant executive secretaries in charge of business and property taxes. His office would be provided with needed top-level assistants to ensure continued successful accomplishment of the objectives and programs of the department.

The Department of Income and Franchise Taxes would be responsible for handling present activities of the Franchise Tax Board, with the exception of central management and administrative services which would be combined with similar activities already performed in the board and other functions as described in Sections 3, 4, 5, and 6.

2. *Headquarters and Field Audit and Attendant Support Operations Would Be Separated*

The Board of Equalization business tax organizational structure is now divided into headquarters and field components. Pending further study, the new Department of Income and Franchise Taxes would be organized in a similar manner.

A position would be designated in charge of field operations and would be responsible for activities performed in the 16 field offices, including those located in New York and Chicago. His office would be provided with staff assistance necessary to ensure accomplishment of field activities.

A second position would be designated in charge of headquarters operations (such as operational accounting, files, typing pool, etc.) and would be responsible for audit and attendant support activities performed in the headquarters office. He would not be responsible for the investigations function which would report directly to the assistant executive secretary in charge of the department.

It is possible that study may reveal that some of the functions initially assigned to the department should be integrated or consolidated with like or similar functions performed in the Department of Business Tax or Administrative Service Division.

3. *Management Functions Would Be Combined With Similar Activities Already Performed in the Board of Equalization*

Both the Franchise Tax Board and the Board of Equalization have common management services which would be combined. They are administrative analysis, legal, personnel and training, and tax service information.

Internal audit services now provided in the Board of Equalization would be expanded to cover the operations of the Department of Income and Franchise Taxes.

This action would result in all management functions named being available to all three tax departments of the Board of Equalization. Each of these management services would report to the executive secretary, who would be responsible for their direction and coordination (See Exhibit A).

4. *Electronic Data Processing Operations Would Be Integrated With Those of the Board of Equalization*

The substantial data processing programs required by the two currently separate agencies would supplement each other and provide improved services at a reduction in cost. The combined operation would be part of the Administrative Service Division.

5. *Other Administrative Service Functions Would Be Combined With Similar Activities Already Performed in the Board of Equalization*

Both the Franchise Tax Board and the Board of Equalization have common administrative services which would also be combined. These include research and statistics, fiscal, administrative accounting, mail, cashier, supply, duplicating, addressograph, and general housekeeping services.

The consolidated functions would be the responsibility of the Administrative Service Division.

6. *The Handling of Collections Would Be Integrated With the Business Tax Collection Program*

The collection programs of both business and income and franchise taxes would be consolidated. Headquarters collection units would be integrated and placed under a single head. Field collection personnel would handle matters for both tax departments.

7. *Field Personnel Would Be Housed at the Same Location as Business Tax Personnel*

Duplicate offices would be eliminated. This would be accomplished by developing a plan for housing all Board of Equalization personnel at one location in each area.

Action would be taken to extend income and franchise taxes services to areas other than the 17 where they are now available.

It is considered necessary, at least at the outset, to have separate lines of authority for business tax personnel and for income and franchise tax personnel. While personnel would work under separate supervisors, one department would be designated as in charge of general housekeeping services at a field office. This form of operation may lead to a later conclusion that full operational integration is desirable at the district level, with one district administrator in overall charge of both programs in the district.

B. Transfer of State Controller Tax Collection Operations

1. *The Controller's Tax Collection Functions Would Be Integrated With the Existing Collection Program of the Department of Business Tax*

The existing Department of Business Tax already operates a headquarters and field collection organization similar to, but substantially larger than, the existing collection organization of the Controller. The collection functions of the Controller would be consolidated with this organization in both headquarters and field. This action can be achieved by expanding the collection organization of the Department of Business Tax to handle the added staff and responsibilities.

2. *The Field Collection Program Would Be Extended*

The existing field collection program is handled by a staff located in three field offices. Action would be taken so that the program could be handled by board staff in additional offices.

3. *Management and Administrative Service Functions Would Be Performed by Existing Board of Equalization Units*

Management functions such as administrative analysis, legal, internal audit, personnel and training, and tax service information would be performed by existing units reporting to the executive secretary.

Administrative service and housekeeping functions would be performed by the Administrative Service Division. These would include mail, cashier, supply, duplicating, fiscal, EDP, and research and statistics.

C. *Transfer of Inheritance and Gift Tax Operations*

1. *The Method of Administering Inheritance and Gift Tax Would Be Changed*

The inheritance and gift tax administration is now handled by three groups: (1) the inheritance tax appraisers, appointed by the Controller, of which there are one or more in each county with a total of about 150; (2) the 58 county treasurers; and (3) the Inheritance and Gift Tax Division of the Controller's office with a combined legal, tax examiner, and clerical staff of about 110.

Under the Board of Equalization the inheritance tax appraisal work would be performed by civil service appraisers. Under a proposed estate tax, the state would receive the equivalent of the fees now received by appointed appraisers. The county treasurers' inheritance tax functions, which include examining and listing contents of safe-deposit boxes, issuing consents to transfer property, making tax collections and transmitting collections to the State Treasurer, would be performed by board employees. The existing Inheritance and Gift Tax Division would be integrated with the Board of Equalization.

2. *Most of the Inheritance and Gift Tax Work Would Be Integrated With the Board of Equalization Property Tax Department*

With the addition of a large number of appraisers to the board's staff, it would seem desirable to organize the work of the Property Tax Department by function rather than by program. An organization closely paralleling that of the Business Tax Department would then become feasible for the Property Tax Department. All appraisals would be performed by property tax field offices under a chief of field operations.

3. *A New Inheritance and Gift Tax Division Would Be Established in the Property Tax Department*

Inheritance tax appraisers under the existing law are responsible for the preparation of inheritance tax reports and much of their employee cost appears to be incurred in connection with

this duty. The Inheritance and Gift Tax Division reviews all reports. It appears that it would be more efficient to prepare the reports centrally under the supervision of inheritance and gift tax examiners using appraisals prepared in the field by appraisers. Inheritance tax appraisals and support documents would, therefore, be sent for processing to the new Property Tax Department Division of Inheritance and Gift Tax.

The existing Inheritance and Gift Tax Division attorneys, except as they might be assigned to administrative duties in the new division, would be taken, along with the functions they perform, into the board's legal staff.

4. *The County Treasurers' Inheritance and Gift Tax Function Could Be Integrated Into the Board's Business Tax Organization*

Upon direction by the Legislature to the board to take over the county treasurers' inheritance tax duties, these duties would be assigned to the Business Tax Department because of its larger number of offices and its staffing with compliance personnel well qualified to perform the work.

VI. RECORD OF THE BOARD OF EQUALIZATION IN TAX ADMINISTRATION

The accomplishments of the State Board of Equalization in tax administration constitute an outstanding record of progress and increasingly effective use of the resources of state government. They prove conclusively that thorough and impartial execution of our revenue laws can be achieved in combination with good management and economy of operation.

In another section of this report reference is made to the board's dominant position in the California revenue structure. The fact that it has responsibility for 60 percent of all state taxes and license fees is cited and the dollar volume of tax receipts from various sources is summarized. In order to view these facts in proper perspective, it is necessary to consider also the means by which they have been achieved.

During the past 10 years the board's workload has increased steadily through expansion of established tax functions and addition of entirely new programs. Yet, despite this growth in workload and responsibility, the board is now operating with a smaller number of authorized business tax positions and with approximately the same number of total authorized positions as in July 1955.

The total number of business tax positions authorized on July 1, 1955, was 2,001, compared with only 1,884 positions on July 1, 1964. These figures show a reduction of 117 positions, or 5.8 percent, for the period reviewed.

Total authorized board positions (business tax, property tax, administration, etc.) as of July 1, 1955, were 2,327. By comparison, total positions authorized in the 1964-65 budget are 2,328. Thus, the many new functions added during this 10-year period are being handled virtually without any staff increase.

In sharp contrast to the comparative personnel data, the board's workload has increased in many ways. Some examples will serve as illustrations.

In the 1955-56 fiscal year there were slightly fewer than 315,000 sales and use tax accounts and outlets, but by 1964 the total had increased to 378,000 for a gain of 20.4 percent. Other business tax accounts also increased, though in smaller numbers.

During the 1955-56 fiscal year, total board-administered taxes brought in about \$932,200,000. For the fiscal year ended June 30, 1964, total revenues were \$1,600,000,000, exclusive of local sales and use tax collections.

In addition to the growing workload for existing business taxes, two entirely new programs of great importance were added during the period under review. These programs were:

1. State-administered local sales and use taxes, assigned to the board under the Bradley-Burns Uniform Local Sales and Use Tax Law, enacted in 1955.

The first few local ordinances for state-administered taxes became effective in April 1956 under procedures developed by the board to integrate the administration of these new taxes with state sales and use tax procedures. As the success of the plan became apparent, more and more local jurisdictions were added, until all California cities and counties were included by late 1960.

As previously indicated, total *local* sales and use taxes collected during the fiscal year ended June 30, 1964, were \$287,000,000. These funds were all properly accounted for and allocated accurately to California's 58 counties and 383 cities with a minimum of administrative cost since local jurisdictions were charged only 1.53 percent for 1963-64 collections. This cost is down 0.12 of a percentage point from the figure of 1.65 percent for the 1956-57 year.

2. The cigarette tax was added as a completely new program in 1959. It required new operating procedures and involved different types of enforcement measures than those in effect for other business taxes.

Although the cigarette tax accounts for approximately \$72,000,000 in revenue annually, it was added to the board's duties without any increase in authorized staff.

The board's impressive record in property tax administration gives clear evidence of the important services to California in this vital sector of public finance. Property taxation is the cornerstone in the fiscal structure of local government and collections from this source now approach \$3 billion annually—a figure almost three times as great as that of a decade ago.

This tremendous increase underscores the need for board services in the field of assessment standards, intercounty equalization of assessment levels, and the assessment of public utility properties for local tax purposes. Property tax administration has been extended and brought into closer cooperation with local taxing jurisdictions through establishment of several additional field offices. Programs have been enlarged in significant areas, and improvements have been developed throughout the Property Tax Department to increase the value of its services to the entire state.

Yet, needed growth and improvement have been accomplished with only a slight increase in personnel. The total property tax staff of 167 positions, exclusive of fully reimbursed contract mapping services, is only about 15 percent over that of July 1955.

Operating efficiency of the Board has been improved steadily through vigorous efforts in several directions, including the following which are of prime importance:

1. Through careful reviews and analyses of the board's organization, operations, and costs many important improvements have been developed.

In 1959 a major reorganization was initiated as a result of a boardwide survey conducted principally by the board's own staff. Through streamlining and consolidation of functions, it was possible to handle the increasing workloads and to operate more effectively without increasing total staff.

2. Improvements in systems and procedures, including the installation of an electronic data processing system in 1961, have contributed greatly to operating efficiency in many important ways.

These improvements have led to increased productivity of the board's personnel and to substitution of mechanical processes for hand labor in many repetitive clerical operations.

3. Development of a comprehensive training program was commenced in 1960 to improve the working skills of board employees at all levels. The cumulative benefits from this program are reflected in increased productivity and have aided in carrying out the board's increasing responsibilities without added staff.

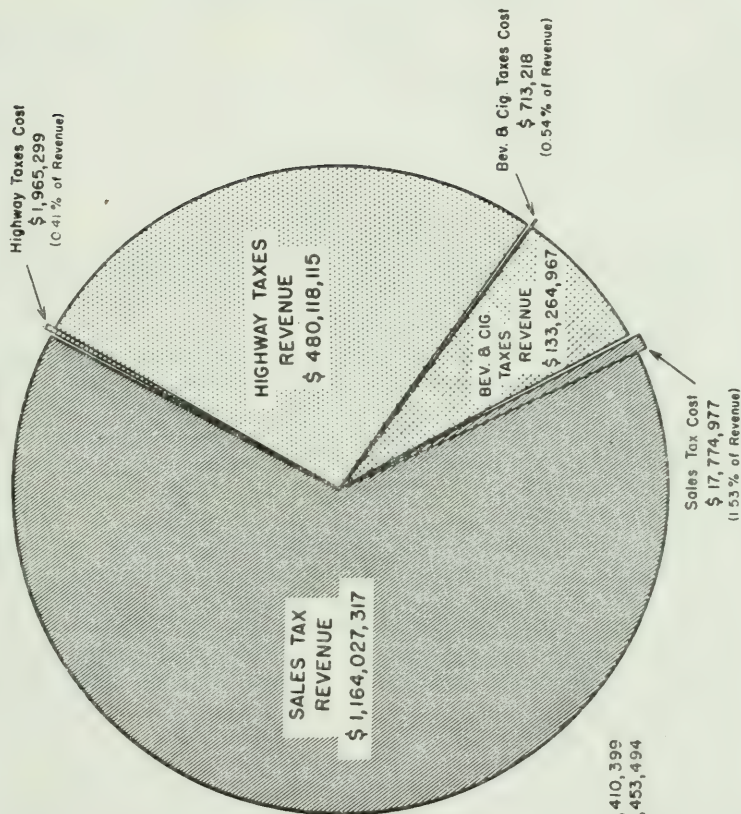
Operating Cost Ratio

The board's record of meeting increasing workloads without additional staff can be demonstrated in various ways, but one of the most significant measures is found in the 1.15 percent ratio of total operating costs to total board-administered revenues for the 1963-64 fiscal year (see chart on following page).

This enviable record has been attained even though board services to taxpayers have been expanded through an extensive network of field offices to provide as much assistance as possible to taxpayers. In planning its field organization every effort has been made to combine good service with efficient deployment of staff.

In summary, the record of the State Board of Equalization in tax administration is one of increasing service to California without corresponding increases in personnel requirements to meet its responsibilities. It is a record of continuous effort to provide competent administration at the lowest practical cost consistent with adequate service to taxpayers. The record is clear and fully substantiated; it is not only a history of past performance, but an index of the board's ability to meet any future obligations with equal competence.

State Board of Equalization
BUSINESS TAXES REVENUES & COSTS BY PROGRAM
1963-1964 YEAR



Total B.T. Revenue \$1,777,410,399
Total B.T. Cost 20,453,494
(1.15 % of Revenue)

NOTE: In addition, the Board's Department of Property Taxes administers and collects the Private Car Tax which amounted to \$1,846,205.

APPENDIX D

Controller of the State of California

Sacramento

December 4, 1964

HON. MILTON MARKS, *Chairman*

Assembly Committee on Government Organization
235 Montgomery Street
San Francisco 4, California

Dear Milt:

Thank you for your letter of December 1 regarding the hearing of your committee in Los Angeles on December 10. By this time I assume you have received the Board of Equalization's proposal regarding consolidation of tax administration.

I support the proposal for a Revenue Agency consolidating the administration of state taxes in the State Board of Equalization, although I would prefer the plan proposed by the Governor for a Revenue Agency headed by a three-member tax commission composed of two elected officials and a representative of the Governor.

My support applies to the broad, general outline of the proposal, and not to all details.

My support encompasses the inclusion of inheritance tax administration in the Revenue Agency, but under the present system of court-appointed inheritance tax appraisers rather than through a system of civil service employees of the taxing agency. The latter has not been proposed in any prior recommendation for a Department of Revenue (e.g., Weinberger Committee Report, or the 1947 Assembly Interim Committee Report cited in the board's proposal), and the Board of Equalization is split 3 to 2 on this aspect.

I fully agree with the unanimous view of the board and its staff that it would be necessary to impose a new estate tax to meet the salaries and costs of the employees expected to perform the appraisal operation. I fully disagree, however, that there is any necessity for adding this new estate tax—for the sole purpose of underwriting the cost of substituting civil service employees for the present court-appointed appraisers—on top of the many taxes that we already have and other new taxes that may be needed to meet the rising costs of state government.

I cannot concur with the purported "savings" alleged in the Board of Equalization proposal relating to the inheritance tax—because clearly there would be an expensive addition to the already overburdened state budget if employees of the taxing agency were to be substituted for the present appraisal system. Not only would a civil service system be more costly, but it would be necessary to levy a new estate tax to meet the costs. The new tax would be necessary because there no longer would be any valid or logical basis for requiring the heirs and

estates to pay the appraisal costs. At present the appraisers are constituted as referees of the court and, since their appraisals are impartial and serve primarily for probate purposes, the fees are a part of the costs of probate administration. As employees of the taxing agency on the other hand, their interests would be necessarily adverse to those of the taxpayer, and it would be manifestly unfair—and bad tax policy—to require taxpayers to pay the salaries of the tax agents in addition to the tax itself. No tax law that I know of requires the taxpayer to do this—not the sales tax, the income tax, nor the federal estate tax. It would be an added cost of taxpayer compliance. Moreover, it would not relieve heirs and estates of paying costly fees for their own appraisals.

The Board of Equalization's proposal fails to arrive at the true cost involved if civil service employees were to undertake the appraisal workload. It fails to use appraisal workloads (I am attaching a summary of the workload data), or established performance standards in the several different appraisal operations being performed by state employees—including the intercounty equalization program of the State Board of Equalization. Instead of using this readily available professional approach, the proposal backs into the problem by an indirect "guessing" manner which is without any valid basis. It camouflages rather than faces up to the appraisal workloads, or the cost of performing such workloads through the use of state employees. Even if it were a valid approach, substantial blocks of "cases" have been omitted.

In effect, the proposal suggests that state employees could make the appraisals at less than one-fourth of the performance standards presently required by the board's own civil service employees for appraisals in the intercounty equalization program. Inevitably inheritance tax appraisals made by the board would differ from its own appraisals under the other program—and would frequently differ from assessed values adjusted in accordance with the ratio which the board establishes for a given county based on the board's own appraisals under the intercounty equalization program. This would automatically place the board in an incompatible position—and one that would give rise to innumerable controversies which would be time consuming, aggravating and expensive to taxpayers, to the probate courts and to the state.

The further suggestion in the board proposal that present inheritance tax appraisals are too conservative is without basis, and is contrary to prior studies. Rather, inheritance tax appraisals are generally higher than assessed valuations adjusted in accordance with the ratio established for a given county by the Board of Equalization based on its own appraisals under the intercounty equalization program.

The unsupported statement in the proposal that the county treasurers' present inheritance tax activities could be administered by the board for \$420,000 less than the present county treasurers' commissions is not based on workloads or other meaningful data. Substantial workloads are being performed by the 58 county treasurers and would have to be analysed and costed before it could be determined whether there would be any savings—or in what amount.

While I believe that consolidation of tax administration will produce some economies, I do not necessarily agree with the estimates of purported savings in connection with the consolidation of other tax activi-

ties in the Franchise Tax Board and the Tax Collection Division. Further objective study is required here, too.

For the above reasons, I believe that the inheritance tax administration should continue on the present basis of court-appointed appraisers, and I urge more careful analysis of the proposal to transfer the county treasurers' inheritance activities to the proposed Revenue Agency.

Sincerely,

ALAN CRANSTON

INHERITANCE TAX APPRAISAL WORKLOAD

Projected to 1964-65 Volumes

	<i>Estates</i>		<i>Parcels or items</i>		<i>Appraised value ^a</i>	
	<i>Number</i>	<i>% of all</i>	<i>Number</i>	<i>% of all</i>	<i>(Mil- lions)^c</i>	<i>% of total</i>
Realty and interests in realty						
Residential and apartments	28,180	64.1	41,881	6.7	680.2	24.0
Commercial and industrial	1,548	3.5	2,866	0.5	120.4	4.2
Lots	4,393	10.0	14,216	2.3	18.6	0.7
Farms and acreages	3,819	8.7	8,194	1.3	142.7	5.0
Other (primarily notes secured by deeds of trust)	7,979	18.1	19,791	3.2	126.4	4.5
Totals	33,358	75.8	86,948	14.0	1,088.3	38.4
Tangible personal property						
Furniture, furnishings, etc.	16,358	37.2	17,655	2.8	7.9	0.3
Autos, trailers, planes, etc.	14,230	32.4	18,557	3.0	16.5	0.6
Jewelry and other personal effects	7,771	17.7	18,173	2.9	4.0	0.1
Other tangible personal property	128	0.3	129	^d	1.6	0.1
Totals	26,022	59.2	54,514	8.8	30.0	1.1
Intangible personal property						
Noncorporate business interests	4,037	9.2	5,123	0.8	87.3	3.1
Stocks	16,601	37.7	147,625 ^b	23.7	962.4	34.0
Bonds	10,463	23.8	185,248	29.8	125.6	4.4
Notes not secured by realty	3,711	8.4	6,320	1.0	18.8	0.7
Cash savings (including cash, uncashed checks, bank accounts, savings accounts, refunds, personal accounts receivable, etc.)	38,887	88.4	119,552	19.2	421.7	14.9
Taxable insurance	5,051	11.5	7,847	1.2	29.5	1.0
Other intangible property	3,670	8.3	8,237	1.3	70.7	2.5
Totals	40,340	91.7	479,952	77.2	1,716.0	60.5
Grand totals	43,986	100	621,414	100	2,834.3	100

^a Appraised value greatly understates the total value of the property appraised. For example, if a decedent owned one-fifth undivided interest in an apartment building, the appraiser would value the building, say, at \$200,000. Then he would divide by 5, arriving at \$40,000, the "appraised value" listed for the particular estate. The disparity might be much greater for some types of property, such as stock in closed corporations.

^b Separate issues (not shares) each requiring separate valuation.

^c Based on 1959-60 value levels, not increased to reflect subsequent appreciation.

^d Less than 0.05 percent.

APPENDIX E

STATEMENT BEFORE ASSEMBLY GOVERNMENT ORGANIZATION COMMITTEE

Martin Huff, *Executive Officer*
California Franchise Tax Board
Los Angeles—December 10, 1964

I must first make it clear that the Franchise Tax Board has taken no official position on any of the proposals to reorganize revenue collection functions in state government. Therefore, any statements I make here today reflect my own personal opinions and not that of the board. On September 2, the State Controller, the Chairman of the Board of Equalization, and the Director of Finance appeared personally before the Commission on California State Government Organization and Economy and stated their views. While they were speaking in their own capacity, they do constitute members of the Franchise Tax Board. They did not agree on the details and specifics of how to consolidate, but the tenor of their remarks was that they did agree on the fundamental principle that consolidation, per se, is sound.

The present structure of tax administration in California grew like Topsy. It is awkward, and in absolute terms in many ways inefficient. I stress the word absolute, because California tax administration is, and historically has been, one of the most efficient and economical in the nation. This applies both to the Board of Equalization and the Franchise Tax Board. The authority for this statement is found in the two national studies in this field; the first, entitled "State Sales Tax Administration," by John F. Due, and the second, "State Income Tax Administration," by Clara Penniman and Dr. Walter W. Heller. This economy and efficiency is measured in relative terms, however. With minor exceptions, the standards in most states are not sufficiently high to give us much of a feeling of pride in using them as yardsticks. The high standards that have been set in California are despite its organizational structure—and not because of it. They are the direct result of the general high standards of administration found throughout California state government and of the efforts of the highly competent technical staffs in the two tax administration units.

If we attempt to examine the problem of organization objectively, I think most authorities in the field will agree with John Due, who in his book on "State Sales Tax Administration" states:

"Commissions, particularly elected ones, generally are considered unsuited for administrative responsibilities, and selection of the chief administrator by anyone other than the Governor violates the principle of concentrating responsibility for successful administration in the chief executive. As students of administration have long recognized, however, the formal organizational structure can only facilitate, not insure, effective administration, and competent, dedicated

persons can bring about successful administration despite faulty structure."

In this discussion, it is important that everyone be aware of how our department is presently organized. Our structure closely parallels that of the Internal Revenue Service in California. We are organized into two regions—Los Angeles and San Francisco—that correspond to their two districts. In the Los Angeles region there are seven branches and in the San Francisco region there are five branches. In addition there are eastern offices in New York and Chicago. Over five million individual tax returns are filed with us annually. This constitutes 70 percent of the total volume of returns filed nationwide with the Internal Revenue Service just prior to World War II. In addition, some 110,000 corporations file returns annually. In the year ended June 30, 1964, our audit and enforcement program netted \$41,000,000 in additional revenue at a cost of only \$6,500,000, or net revenue per dollar cost of \$6.30. This compares to the Board of Equalization's net revenue per dollar cost of \$1.65 for the same period. With that background, let us examine the Board of Equalization proposal in so far as it affects the administration of the personal income tax and the bank and corporation tax.

In terms of consolidation, per se, I certainly concur, that the areas of electronic data processing, fiscal functions, service and supply, and cashing are ones that lend themselves to savings. My principal criticisms would be that in the specifics of their analysis, due to a total lack of understanding of our needs and problems, they have advanced the wrong reasons and in my judgment have substantially understated the potential for savings.

I would not rule out the possibility of savings in the area of collections. Because of the wide disparity in staffing patterns, workload and delinquency source, however, savings will only be realized after a thorough study and advance planning that will insure that the revenue of the state is not being placed in jeopardy. The fact that our tax representatives carry a workload in excess of 500 accounts each as compared to the Board of Equalization workload of less than 150 accounts is merely one measure of the disparity in our respective approaches to the collections problem.

In the area of electronic data processing, the Board of Equalization projects a savings of \$123,000 based on two EDP systems with identical configurations. It is obvious that there has been no real study of the total problem. We converted from punched cards to magnetic tape in January of this year. We find that our present system will be operating two full shifts before the start of the next fiscal year. Our 1401 is presently running well into the third shift meeting an extended peak-load problem. The foreseeable needs of our department are such that having two systems available to do the work of both agencies would represent costs greater than would be entailed in the use of a single larger system. To meet our own projected needs, we have at the present time on file a letter of intent to acquire a more powerful but less costly system. More than likely, far greater savings could be realized in this area than has been projected by the Board of Equalization. Here again,

intensive study would be required and some conversion costs would be entailed.

The Board of Equalization proposal projects a \$32,000 saving in the appellate procedure by proposing less formalized hearings. Attempting to achieve savings in this area, represents a direct threat to the right of a taxpayer to have an adequate administrative remedy, before requiring that he take the costly and time-consuming route of litigation in the courts. When this remedy is lacking the taxpayer is subject to blackjacking because he feels it is futile to buck the powerful administrative machinery of the tax agency in a case too small to warrant litigation. Both agencies at the present time make provision for informal hearings and protests. These are handled by the Appeals and Review Section in our department. I understand they are handled by hearing officers and/or designated members of the legal staff at Equalization. I am sure the projected savings do not contemplate the elimination of this remedy. Under the present appellate procedure for personal income tax and bank and corporation tax cases, the taxpayer may be represented by counsel—or may represent himself, as he chooses. He may file a brief, but is not required to. An important protection to the taxpayer, however, is that he is entitled to receive a brief outlining our position. It is this latter step that is apparently the "formality" that it is proposed be abandoned. It is my understanding that this procedure is not used within the Board of Equalization on appeals taken to it from the actions of its own staff.

The fact that two of the three members of the Franchise Tax Board also sit on the Board of Equalization is a major defect in the present system. In this respect I would like to quote from the 1955 Assembly Interim Committee Report entitled "The Need for a Department of Revenue in California," commonly referred to as the Weinberger Report:

"The Board of Equalization is in the questionable position of hearing appeals from its own administrative policies and actions. This practice is contrary to the usual Anglo-American philosophy of justice in which the taxpayer has the privilege of appealing to some impartial agency outside the sphere of influence of those whose decisions are being appealed."

In attacking a separate Board of Tax Appeals proposal, the Board of Equalization has, in my opinion, substantially overstated the additional cost involved, since the establishment of such an independent board would merely mean the transfer of legal staff effort that is expended exclusively in this area at the present time. A minimum amount of additional cost might be incurred in providing protection to taxpayers in appeals from administrative actions under tax laws not presently covered. There would be additional cost for these legal staff services and the salaries of appeals board members. I believe that most students of government would support additional expenditures in this area to assure the taxpaying public of receiving independent administrative decisions on their tax appeals.

So much for the specific proposal of the Board of Equalization. Consolidation of tax collection functions in a Department of Revenue can result in greater efficiency and improved tax administration. These

results would not be evident overnight. Since personnel and physical facilities are involved, many economies could only be achieved over time. The principal difficulty in measuring potential economies resulting from consolidation is that separate tax collection empires have been allowed to develop over the years. It is obvious from the comments I made on the Board of Equalization's analysis that they do not have a detailed knowledge of our operations. The converse is also true. Even control and audit agencies having responsibilities in this area find it difficult to pick their way through the varied approaches to similar problems. As long as the artificial barriers remain standing, a reliable time table and cost saving projection would be difficult to develop. Despite this type of difficulty, it is important to note that cooperation does now exist between the various departments having revenue collection responsibilities but they are arms length relationships pursuant to formal agreements for the exchange of information.

At this point I would like to quote the views of Dr. Walter W. Heller, recently retired Chairman of the President's Council of Economic Advisors, and Miss Clara Penniman, in their book "State Income Tax Administration":

"The unconsolidated tax agency which is obviously doing an effective job—e.g., the California Franchise Tax Board, administering only the individual and corporate income tax—remains a thorn in the side of students of administration. Does effectiveness here result primarily from a high-quality and relatively large staff in spite of California's organizational iconoclasm? Would joining the income tax with other taxes in one agency strengthen the administration of the other taxes? Would it at the same time perhaps weaken rather than strengthen income tax administration by impairing morale, introducing politically disturbing factors, and so on? Unfortunately, we lack the precise instruments of measurement needed to apply the generally accepted principles and judgments in this area. Apparent advantages are easy to cite. But one hesitates to jeopardize demonstrable high-quality performance by reorganization moves."

As the administrator of one of the tax agencies involved, the path of least resistance would be to fight for the maintenance of the status quo. However, we live in one of the most dynamic times in history. California is in the vortex of unparalleled change and growth. It is in this context that we must reexamine our present tax organizations and modify or reorganize these structures in order to meet the tremendous tasks that will face this state in the coming decades.

In my opinion consolidation of statutory revenue collection functions into a single department responsible to a director appointed by the Governor is the logical answer to the need to meet this challenge. It is a political reality that the people of the state hold the Governor and no one else responsible for proper tax administration whether he actually has authority over tax administration or not.

As indicated before, a necessary adjunct to good tax administration is an appeals procedure that provides an adequate administrative remedy prior to the final step of resorting to the courts. Ideally this should be an independent qualified Board of Tax Appeals appointed for staggered terms by the Governor.

Whatever course the Legislature chooses to take, the staff of the present Franchise Tax Board will continue to strive to improve the administration of the personal income tax and bank and corporation tax by developing better operating methods so that the interests of the individual taxpayer and the taxpayers as a whole will be better served. We believe we can continue to do this in any of the organizational structures proposed so far except that of integration with the Board of Equalization. We believe that adapting their organization to ours would result in exposing our present system to Board of Equalization standards and philosophy that could lead to:

1. More elaborate and topheavy administrative supervision;
2. Lower audit return per dollar cost;
3. The rigidity and added expense of providing a high level of service far out of proportion to the number of people being served throughout their vast network of branches;
4. A vacancy factor ranging from 4.7 percent to 8 percent compared to our own experience of 0.4 percent to 3.0 percent;
5. Fragmentation of our present structure into one that ignores economic areas, the worst example of which is the serving of the San Francisco Bay area by three separate equalization districts;
6. Difficulty of maintaining uniform standards of administration because of the diffusion of authority to individual board members and their deputies. A concrete example of this is the varying policy toward security deposits as between the different equalization districts;
7. Gross inequity to the individual or corporate taxpayer who must bring his protest to the same board that is the administrative head of the tax collection organization.

In essence, adopting the Board of Equalization proposal would be turning the clock back. In my opinion this must be avoided.

Consolidation of revenue collection functions in California state government has been the subject of study and recommendation over a period of several decades. It is inevitable that this will eventually take place because the case for consolidation is a valid one. From the perspective of our department's mission, we may be able to meet and solve the problems of growth more effectively as presently organized. However, in my opinion, the larger interests of the state are better served by a consolidated revenue function reporting to the Governor.

APPENDIX F

Commission on California State Government Organization and Economy

Sacramento

December 28, 1964

HON. EDMUND G. BROWN
Governor, State of California

HON. HUGH M. BURNS
President pro Tempore,
and to Members of the Senate

HON. JESSE M. UNRUH
Speaker,
and to Members of the Assembly

Gentlemen:

In recognition of the importance of tax administration to the state government and to the individual taxpayer, the Commission on California State Government Organization and Economy in the spring of this year initiated a comprehensive review of the current organizational status of the state's principal revenue collection agencies. Subsequently in a letter to the commission in June, Governor Brown stated that, although there had been several major studies of state revenue administration in the past, he believed the time appropriate to consider again the possibility of consolidating all or most revenue collection activities within a single department. Accordingly, the commission added this important organizational consideration to its study agenda. This letter summarizes the findings and recommendations of that study.

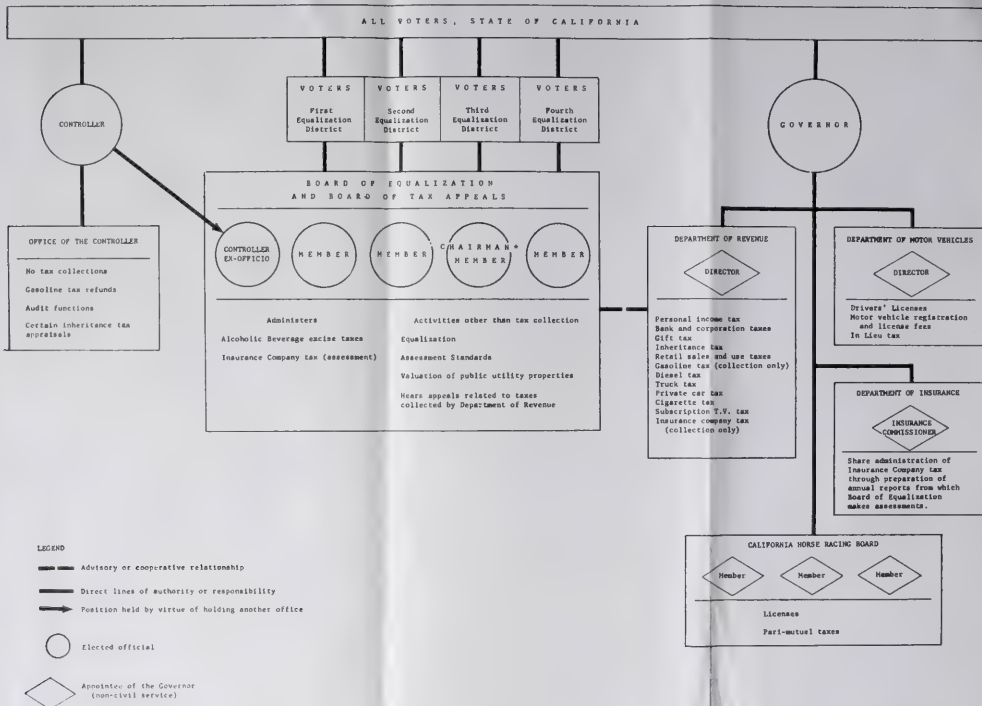
The issue of consolidation of revenue administration in the California state government is not new; the matter has a long history of continued study. These many studies have been remarkably consistent in their emphasis on the desirability of consolidating revenue administration in one organizational unit responsible to the state's Chief Executive—the Governor.

One of the first study groups to recommend a tax agency responsible to the Governor was the California Tax Commission authorized by the Legislature in 1927. Since that study, there have been at least 15 separate studies by outside agencies or legislative committees that have recommended some consolidation of the major taxing agencies as a sound organizational objective. In 1955 a subcommittee of the Assembly Interim Committee on Government Organization concluded that:

“California's revenue administration structure should be organized to provide a reasonably efficient, economical, understandable, and responsible vehicle for administering our tax laws. This can be accomplished best by placing the administration of major state taxes in a Department of Revenue headed by a director appointed by the Governor, confirmed by the State Senate, removable by the Legislature for cause, and, therefore, responsible to the Governor and the Legislature, and through them, to all of the people.”

This recommendation was repeated in substantially the same form in 1959 by the Governor's Committee on Organization of State Government and it has been reiterated by the Legislative Analyst in nearly every budget analysis report since 1943. .

ORGANIZATION FOR
REVENUE ADMINISTRATION IN CALIFORNIA
AS PROPOSED BY
COMMISSION ON CALIFORNIA STATE GOVERNMENT ORGANIZATION AND ECONOMY



* Chairman rotates annually among members.

December, 1964

Current testimony before this commission, as well as independent staff study, has substantiated the validity of the findings of those many past studies. It is clear that further documentation of the conclusive evidence on record would be repetitious—the logic of a Department of Revenue for California has been very well established. In addition, both the State Controller and the Chairman of the Board of Equalization stated their belief at the commission hearing on this subject on August 20, 1964, that the unification of revenue collection activities would result in economies and other benefits to the state government as well as to the individual taxpayer. Clearly, the time has come to set aside those considerations that have blocked constructive action in the past.

The commission now proposes the establishment of a strong Department of Revenue with a director appointed by and responsible to the Governor for state tax administration. Thus, the Legislature and in turn the people would be able to focus responsibility for the administration of the major revenue collection activities of the state government (see chart).

The August 19, 1964, proposal to the commission, prepared by the Department of Finance, has been reviewed as one alternative organizational arrangement of revenue collection activities. The members of the commission concur unanimously with the goal of consolidating most tax collection functions in one agency and for the provision of an independent tax appeals body. The suggested structural arrangement, however, does not provide an effective answer to one of the major shortcomings of the present unconsolidated revenue agency—that of diffused responsibility for revenue administration. The proposal of the Department of Finance would perpetuate the combination of boards and elective and appointive officials as responsible for the state's revenue collection program. Such a combination has been indicted as inefficient and unresponsive to taxpayers' needs by every previous study.

In the opinion of this commission, revenue *collection* is a ministerial act for which responsibility can and should be clearly and definitely established in the executive branch of the state government. Line authority and responsibility for this function, therefore, should be placed with a director appointed by the Governor who as the executive head of state government is finally responsible under the Constitution for the enforcement of all laws.

The Department of Revenue as proposed by this commission would succeed to all activities of the Franchise Tax Board and to all non-constitutionally assigned tax collection functions of the State Controller and the Board of Equalization. The revenue collection responsibility of the Department of Motor Vehicles, the Department of Employment, and the Horse Racing Board would remain unaltered. The Board of Equalization responsibility for insurance company tax assessment, alcoholic beverage tax administration, equalization determinations, public utility valuation determinations and assessment standards would also remain unchanged. The proposed organizational arrangement and functional assignment, which in basic concept is neither new nor unusual, is illustrated by the attached chart.

The commission proposal, which can be implemented without constitutional revision, also calls for the statutory assignment of the tax appeals function to the State Board of Equalization. In this way an

independent board of constitutional officers, responsible to the electorate, would serve in the important capacity of hearing appeals related to taxes collected by the proposed Department of Revenue.

We make no recommendations as to the internal structure of the new department. The director, subject to appropriate legislative approval, should be free to work out the internal details of integration of responsibility and geographic distribution to meet the requirements of effective administration. Commission recommendations relating to inheritance tax administration, however, are contained in a separate communication of this date.

The use of qualified personnel employed on a full-time basis in accordance with Article XXIV of the State Constitution in such matters as the administration of functionally integrated systems of tax appraisals, audits and collections through consolidated field offices and shared housekeeping and staff services will do much toward the effective implementation of a uniform tax collection policy. This commission is convinced that taxpayer convenience as well as economy and increased efficiency can result from the establishment of Department of Revenue as proposed when organized and operated in accordance with modern revenue management principles.

Respectfully,

HAROLD FURST, *Chairman*
 ASSEMBLYMAN MILTON MARKS, *Vice Chairman **
 ASSEMBLYMAN JOHN T. KNOX
 DON B. LEIFFER
 STATE SENATOR GEORGE MILLER, JR.
 MANNING J. POST
 RICHARD E. SHERWOOD
 ROY SORENSON
 STATE SENATOR VERNON L. STURGEON
 DAIR TANDY
 FRANK D. TELLWRIGHT

Commission on California State Government Organization and Economy
 Sacramento

December 28, 1964

STATEMENT OF ASSEMBLYMAN MILTON MARKS

I have long favored the concept of a consolidation of the revenue-collecting agencies of the State of California and have introduced legislation to carry out this purpose. This legislation and alternative proposals relating to this subject are being studied by the Assembly Interim Committee on Government Organization of which I am the chairman. While I have participated in the discussions of this commission and support its endorsement of the principle of revenue consolidation, I feel it appropriate to await the January report of our Assembly Committee which might differ in certain particulars, and I am therefore not signing this report at this time.

ASSEMBLYMAN MILTON MARKS, *Chairman*
 Interim Committee on Government
 Organization

* See statement of Assemblyman Milton Marks attached.

APPENDIX G

Legislative Analyst

December 7, 1964

COMMENTS ON THE SELF-ASSESSED METHOD OF ADMINISTERING THE CALIFORNIA INHERITANCE TAX

Under existing law the California inheritance tax is integrated with and becomes a part of the probate process. Instead of having two separate processes, the probate inventory, appraisal and other steps are used to compute and fix the inheritance tax. The probate court also has jurisdiction over and makes the final determination (subject to appeal) of the inheritance tax.

Probate appraisers' fees also constitute the main source of revenue to finance the *local* aspect of administering this tax. Inheritance tax fees and commissions, which are deducted from tax receipts, constitute a small part of the total local financing.

1963 Source of Receipts to Finance the Local Administration Costs of the California Inheritance Tax

Source	Recipients	Amount	Percent
Probate and related fees	Inheritance tax appraisers ----	\$3,035,000	78.9
Inheritance tax fees	Inheritance tax appraisers ----	142,000	3.7
Inheritance tax commissions	County treasurers -----	670,000	17.4
Total	-----	\$3,847,000	100.0

NORMAL PROBATE AND INHERITANCE TAX PROCEDURE— EXISTING LAW

1. As soon as possible after the death of the decedent, the probate court appoints the executor (or administrator) of the estate.

The inheritance tax appraiser is appointed by the probate court at about the same time.

2. One of the first acts of the executor is to see that the notice to creditors is published in the appropriate legal newspaper.

3. The attorney for the estate usually prepares the inventory of the assets, and it is common practice for him to attach a list of "suggested values" for all items on the inventory. (Valuations may have significant income tax implications.)

4. The inventory is submitted to the inheritance tax appraiser who determines the values of each item therein. On many occasions the appraiser, in practice, merely accepts the "suggested values" submitted by the attorney for the estate.

Probate Code Section 600 provides that the completed inventory, together with the values assigned by the appraiser, should be submitted to the clerk of the probate court by the executor within three months after the latter's appointment. However, time extensions are frequently granted.

5. The next step is for the estate's attorney to submit the following information to the inheritance tax appraiser so that the latter will be able to compute the tax liability:

- a. Inheritance tax affidavit (Form 22—which is the equivalent of the tax return except that no tax computations are included).
- b. Community property affidavit.
- c. The will and all codicils.
- d. Copy of any trust instrument.
- e. Any other pertinent information.

6. If the estate has a value of over \$300,000, then an informal conference among the estate's representatives, the appraiser and the Inheritance and Gift Tax Division will normally be held.

7. The appraiser then submits his proposed report, including the tax computations, to the Inheritance and Gift Tax Division for examination and audit. This is an informal arrangement not required by law.

8. After the appraiser receives information from the department approving his report, or at his own discretion, he transmits a copy of the report to the estate's attorney. Then, depending upon local practice, the appraiser files his report within the next several days with the probate court.

If no objection is filed within 10 days after filing the report, the appraiser procures an order from the court to fix the tax liability.

9. Within the 10-day period mentioned above, the executor, attorney for the estate, any beneficiary, or the Inheritance and Gift Tax Division, may file an objection to the appraiser's report. When such objection is filed, the probate court holds a hearing within a short time period and decides the issues. This court's decision is final unless overturned by a higher tribunal.

10. After the tax liability is fixed by the court, the executor has the responsibility to see that the taxes are paid to the local county treasurer. After receiving a statement from the Controller's office noting payment of the taxes, the assets are distributed to the heirs.

11. Section 14793 of the Revenue and Taxation Code provides that the county treasurer shall pay inheritance tax receipts to the State Treasurer within 90 days of their receipt. However, in practice, most of the larger counties transfer these receipts bimonthly.

A PROPOSAL: MAKE THE CALIFORNIA INHERITANCE TAX SELF-ASSESSED

Summary

The essence of this proposal is to:

- A. Eliminate the patronage inheritance tax appraisers.
- B. Abolish the probate fees for appraisers.
- C. Eliminate the county treasurers from participating in the administration of this tax.
- D. Provide that the executor (or administrator) and the attorney for the estate shall have the responsibility for preparing the estate's inventory (same as present), value the assets (instead of suggested values), compute the tax (new function), and submit the tax return to the Inheritance and Gift Tax Division for examination and audit.

- E. Retain the procedure whereby the probate courts have final jurisdiction over setting the tax, deciding questions of law and valuation, and serving as an appeal body for any disputes between the estate and the Inheritance and Gift Tax Division.
- F. Have the valuations and processes for inheritance tax purposes serve also for probate matters. This is just the reverse of existing procedure.

The self-assessment method that we are proposing can be adopted with a minimum of changes in the existing inheritance tax and probate processes. Our proposal *would not* affect the existing delinquency dates, the discount period or rate, the statutory attorney or executor fees which are based on the value of the estate, the status or jurisdiction of the probate courts, and most other features of these two processes. The main changes that would be made are that inheritance tax appraisers and the county treasurers would no longer participate in the administration of this tax.

Under the self-assessment method the Inheritance and Gift Tax Division would have to modify its operations to coincide more closely to those of the Franchise Tax Board. Its operations would have to be more centralized rather than depending upon semiautonomous regions as at present; additional auditors, examiners, and appraisers would be needed to verify returns and valuations, and the agency probably would have to adopt a limited branch office organization to carry out its duties. Since county treasurers would no longer inventory the contents of safe deposit boxes, new personnel would have to be found to perform this function, and we suggest that the task be assigned to bank officials who would receive a nominal fee of say \$3 per box, to compensate them for their effort.

The timing of the changeover to the self-assessment method is important. We suggest that the starting date be January 1, 1966, which would allow all parties concerned time to prepare for the new system while phasing out the old program on a gradual basis.

It is essential to remember that one of the basic features of this self-assessment method is that values and legal determination made by the Inheritance and Gift Tax Division, and approved by the court for inheritance tax purposes, even though no tax liability exists, would also be used for probate purposes. This single standard would avoid duplication of effort and costs to the estates.

The following material summarizes the probate and tax procedures under the self-assessment method.

NORMAL PROBATE AND INHERITANCE TAX PROCEDURE—SELF-ASSESSMENT PROPOSAL

1. The probate court would continue to appoint the executor or administrator.
2. The executor would still have the responsibility of notifying creditors.
3. The attorney for the estate would prepare the inventory of assets and also estimate the value of all items therein.
4. The attorney would also prepare the tax return, compute the tax liability and attach all pertinent documents such as the community property affidavit, trust agreements, the will, etc. The

- return and accompanying documents would be sent to the Inheritance and Gift Tax Division for examination and audit.
5. A reasonable time period should be allowed for completing this return, say within one year after the death of the decedent with extensions allowed for cause.
 6. A time limit probably should be placed upon the Inheritance and Gift Tax Division to either accept the valuations, etc., in the return or to indicate areas of disagreement. Three months after the return is filed might be an acceptable period. Imposing such a limitation would prevent undue delays in settling estates.
 7. Any disagreement between the estate, its beneficiaries and the Inheritance and Gift Tax Division would be settled by the probate courts. No change is made in this feature.
 8. After the court establishes the tax liability, the executor would pay the taxes directly to the Inheritance and Gift Tax Division instead of the county treasurer.
 9. The estate would be distributed to the heirs after the court receives official notice from the Controller (Department of Revenue) that all taxes have been paid.

Financial Aspect of Self-Assessment

- A. The estates would save over \$3 million a year if probate fees for inheritance tax appraisers were abolished. In 1963, these probate and related fees amounted to \$3,035,000. The estates would have to pay for the inventorying of safe deposit boxes, which would be a new expense, but at a \$3 per box rate this would amount to about \$100,000 at present. Therefore, the net savings to estates would be \$2,935,000 at the 1963 level of activity, and over \$3 million by 1966.
- B. The State of California would experience gross savings of over \$1,160,000 per year by abolishing commissions paid to county treasurers, gift and inheritance tax fees paid to appraisers, and by receiving inheritance tax receipts at an earlier date. The components of these savings are as follows:

<i>Source</i>	<i>Amount</i>
County treasurer commissions.....	\$ 670,000
Gift tax appraisal fees.....	20,000
Inheritance tax appraisal fees.....	170,000
Interest value of earlier receipt of taxes.....	300,000
Total	\$1,160,000

From these gross savings, the state would have to deduct the cost of additional personnel and equipment to police the self-assessed return, and to give clearances or release of liens now handled by county treasurers. No reliable estimate of this extra cost is available at this time, but it probably would range between \$500,000 and \$75,000 per year. Therefore, the net savings to the state from a self-assessed method would probably range from about \$400,000 to \$650,000 per year.

Note that these calculations do not estimate the additional revenues the state probably would receive from better tax administration.

APPENDIX H

Commission on California State Government Organization and Economy Sacramento

December 28, 1964

HON. EDMUND G. BROWN
Governor, State of California

HON. HUGH M. BURNS
President pro Tempore,
and to Members of the Senate

HON. JESSE M. UNRUH
Speaker,
and to Members of the Assembly

Gentlemen :

In a separate recommendation of this date, this commission proposed the establishment of a strong Department of Revenue with a director appointed by and responsible to the Governor to administer most of the state taxes, including inheritance and gift taxes. In this plan we do not propose, however, that the inheritance tax appraisers become employees of the department. We believe that they should continue to be appointed independently by the State Controller from lists of appraisers meeting established qualifications and that their appraisals, as outlined below, be used by the department for inheritance tax application as well as by the courts for probate purposes.

We recommend that a modified self-assessed method of administering the inheritance and gift tax be placed into effect for certain assets. Such a system would provide that the executor (or administrator) or the attorney for the estate continue to have responsibility for preparing the inventory of an estate's assets. Instead of providing a list of "suggested values," however, as is present practice, we recommended that the executor or attorney actually value for tax and probate purposes *the assets which have a comparatively exact and ascertainable market value*. These include such assets as cash, stocks, bonds, mortgages, securities, insured personal property and some chattels. In addition, the attorney or executor would also be responsible for establishing the value of all *real property that has a current assessed value of \$6,250 or less*. The appraised value for this purpose would be deemed to be four times the amount of the current assessed valuation. In these instances estate-assessed values for tax purposes would also be used by the court for probate purposes.

The commission suggests that the determination of the market value of real property with an assessed valuation of over \$6,250 continue to be the responsibility of the appointed inheritance tax appraisers. These appraisers, as they are now, would also be responsible for establishing the value of such specialized personal property as jewelry, antique furniture, paintings and closely held businesses and certain other chattels for which the determination of market value requires specialized knowledge.

The adoption of an inheritance tax appraisal system involving both self-appraised and appraiser valuations will, of course, require a modification of the statutes establishing probate and inheritance tax procedures and appraisal fees. The system proposed contemplates that fees paid appraisers will be based only on the appraiser valued portion of the estate. Fees for the portion that would be self-appraised would be paid into the general fund thus allowing for more thorough audits and supervision without a net increase in the cost of administration.

According to data supplied by the State Controller the total value of the 44,150 decedents estates in 1963 was 3.15 billion dollars. Inheritance tax appraisers received \$3,197,000 in fees for establishment of estate valuations and for related services for these estates. We estimate that as a result of our recommendations, \$750,000 of the amount retained annually by appointed appraisers for the appraisal of assets whose market value is readily ascertainable would be directed instead to the state's general fund. Similarly, based upon data supplied by the State Controller, we estimate that application of the formula proposed above for the self-appraisal of certain real property would result in about a 75-percent reduction in the number and 40-percent decrease in dollar volume of individual real property appraisals required of inheritance tax appraisers. The fees for the appraisal of these smaller properties would also be paid into the state's general fund rather than to the individual inheritance tax appraisers. In 1963 such fees totaled about \$400,000.

Under our proposal fees would continue to be paid to inheritance tax appraisers for their appraisal of real property with value of over \$25,000, and for the specialized appraisals referred to above. A conservative application of the commission proposal in 1963 would thus have provided approximately \$1,150,000 in probate and inheritance appraisal and related fees to the state and \$2,000,000 in such fees to the inheritance tax appraisers.

We also suggest that established tax liability be paid directly to the state rather than to the local county treasurer as at present. This procedure will permit the saving of \$670,000 in inheritance tax commissions (1963) as well as provide an additional \$300,000 in interest value through earlier receipt of taxes. Alternative arrangements, of course, will have to be made for the administrative and collection services now provided by the county treasurer.

In summary, based upon 1963 data the proposed system of inheritance tax administration would provide the following amounts to the State of California:

<i>Source</i>	<i>Amount</i>
County treasurer commissions -----	\$ 670,000
Probate, Inheritance tax and related fees -----	1,150,000
Interest value of earlier receipt of taxes -----	300,000
Total -----	<u>\$2,120,000</u>

From these amounts, the state would have to deduct the cost of additional legal and other professional personnel needed to audit the self-assessed returns, resolve conflicts, inventory the contents of safety deposit boxes, give clearance or release of liens now handled by county treasurers, and generally to increase the effectiveness of the inheritance

tax administration program. We estimate that the net income to the state from the system as proposed herein would be in excess of \$1,500,000 per year in addition to providing additional revenue from improved tax administration which would result from the attendant strengthening of the Inheritance and Gift Tax Division.

This proposal, in the judgment of the commission, effectively meets past criticisms and deficiencies in the administration of the inheritance tax program and at the same time satisfies the requirements of the estate, the probate court and the state government in an efficient and equitable manner.

Respectfully,

HAROLD FURST, *Chairman*
ASSEMBLYMAN MILTON MARKS, *Vice Chairman* *
ASSEMBLYMAN JOHN T. KNOX
DON B. LEIFFER
STATE SENATOR GEORGE MILLER, JR.
MANNING J. POST
RICHARD E. SHERWOOD
ROY SORENSON
STATE SENATOR VERNON L. STURGEON
DAIR TANDY
FRANK D. TELLWRIGHT

Commission on California State Government Organization and Economy
Sacramento

STATEMENT OF ASSEMBLYMAN MILTON MARKS

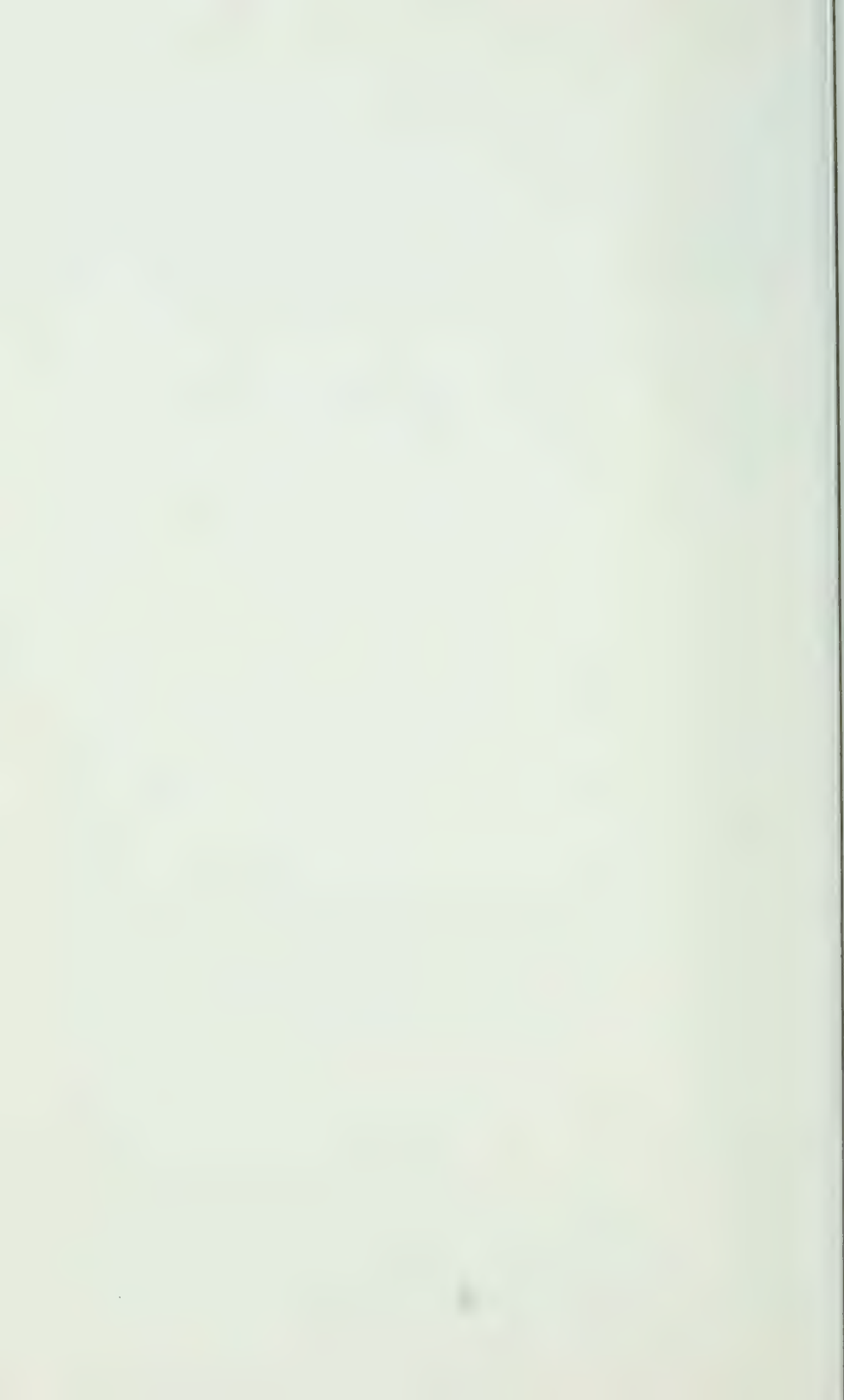
I have long favored the concept of a consolidation of the revenue collecting agencies of the State of California and have introduced legislation to carry out this purpose. This legislation and alternative proposals relating to this subject are being studied by the Assembly Interim Committee on Government Organization of which I am the chairman. While I have participated in the discussions of this commission and support its endorsement of the principle of revenue consolidation, I feel it appropriate to await the January report of our Assembly committee which might differ in certain particulars, and I am therefore not signing this report at this time.

ASSEMBLYMAN MILTON MARKS, *Chairman*
Interim Committee on Government
Organization

* See statement of Assemblyman Milton Marks attached.

O





ASSEMBLY INTERIM COMMITTEE
ON GOVERNMENT ORGANIZATION

THE RIGHT TO KNOW

THE PUBLIC'S ACCESS TO MEETINGS AND RECORDS OF GOVERNMENT AGENCIES

MEMBERS

MILTON MARKS, *Chairman*

HALE ASHCRAFT

WILLIAM T. BAGLEY

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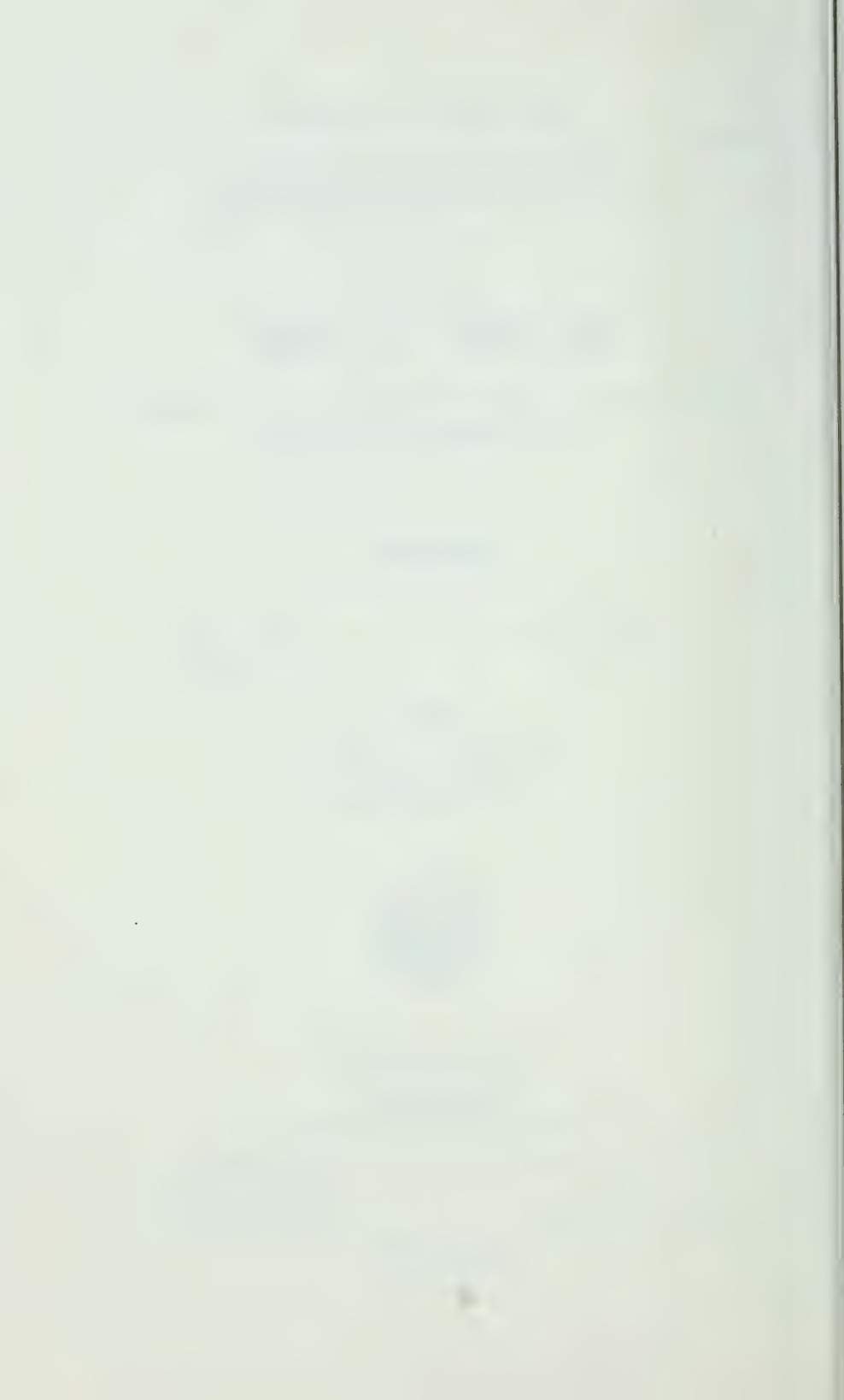
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Minority Floor Leader

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Chief Clerk



LETTER OF TRANSMITTAL

Sacramento
January 11, 1965

To the Speaker and Members of the Assembly

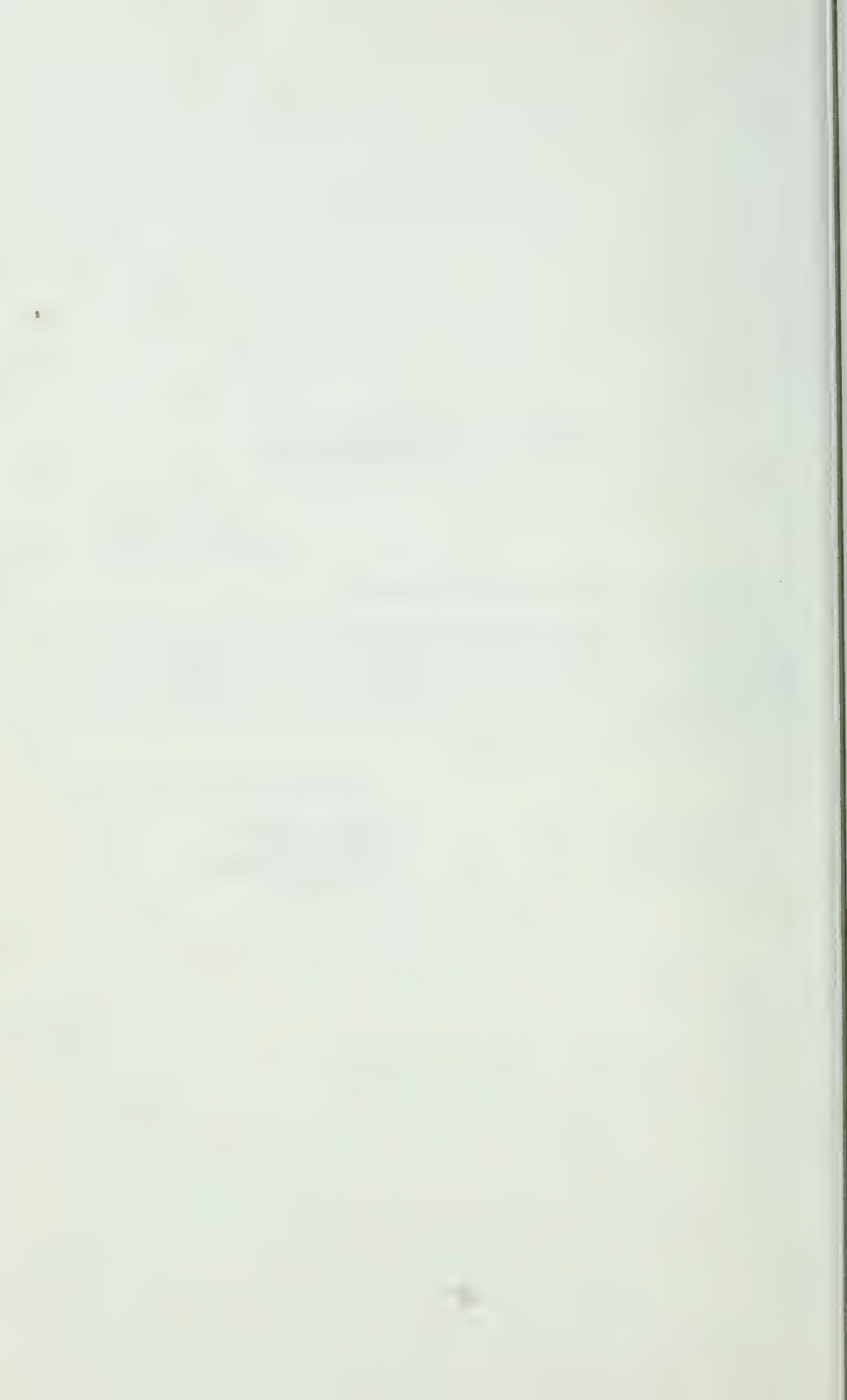
Your Interim Committee on Government Organization in accordance with your instructions, herewith respectfully submits a report on the accessibility to the public of meetings and records of public agencies, pursuant to House Resolution No. 500 of the 1963 Regular Session of the Legislature.

Respectfully submitted,

MILTON MARKS, *Chairman*

HALE ASHCRAFT
WILLIAM T. BAGLEY
TOM CARRELL
JACK T. CASEY

F. DOUGLAS FERRELL
HARVEY JOHNSON
LESTER A. McMILLAN
DON MULFORD



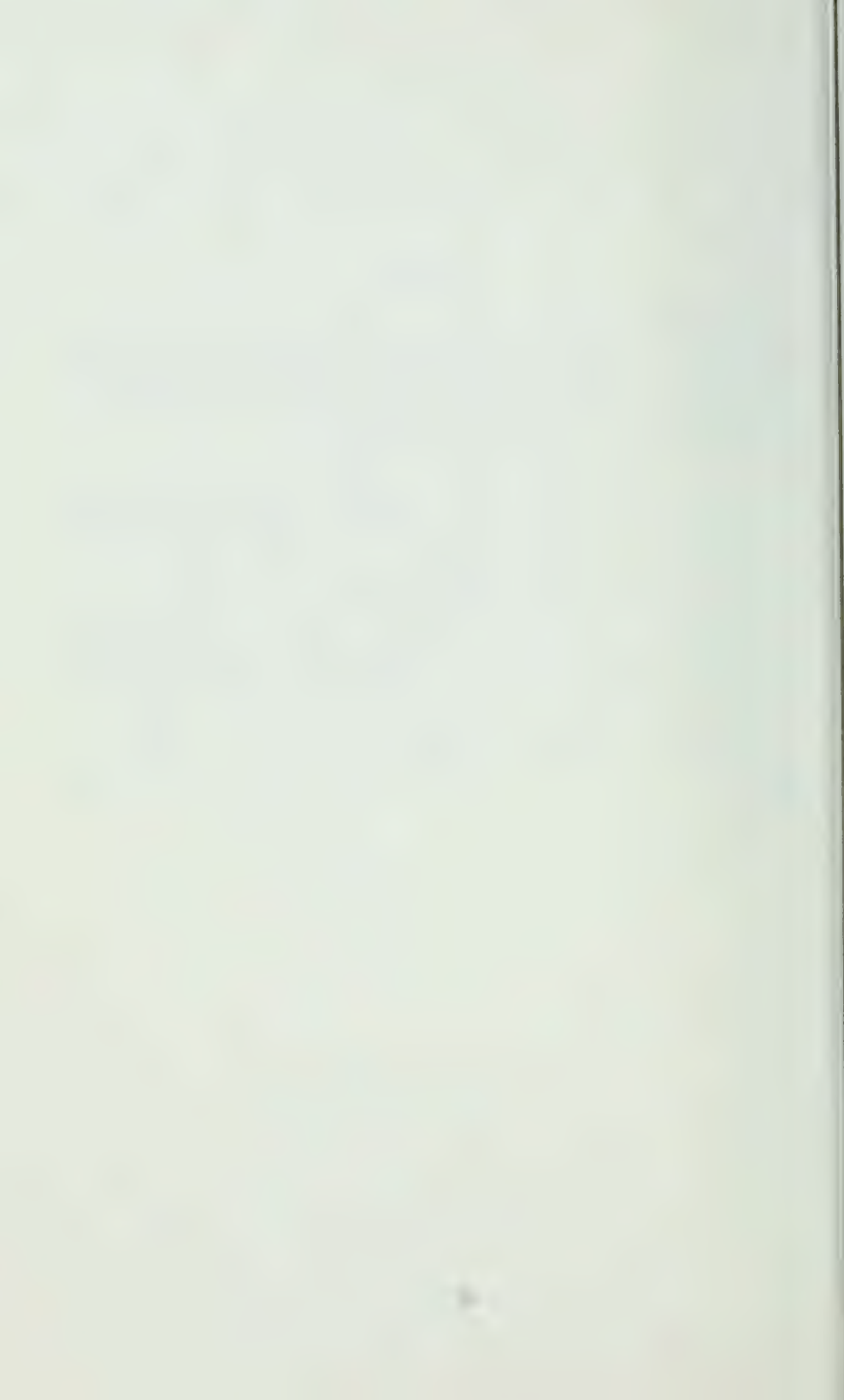
PREFACE

“The right to know” is a phrase commonly used in support of the premise that the public’s business should be conducted openly. Publicity of government actions has historically been a central concept of democracy. Without publicity the individual is incapable of rendering informed decisions. The preamble to the Ralph M. Brown Act is a rather remarkable legal statement of this philosophy:

“In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

“The people of this State do not yield their sovereignty to agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.” (Gov. Code, Sec. 54950)

This report is an attempt to evaluate as objectively as possible the accessibility to the public of meetings and records of government agencies.



INTRODUCTION

The Assembly Interim Committee on Government Organization was constituted on September 3, 1964, to study several important measures which had been assigned for interim study pursuant to House Resolution No. 500 of the 1963 Regular Session. This, the second interim report of this committee, reviews the accessibility to the public of meetings and records of public agencies—the right of the people to be informed about the activities of the public agencies which serve them. Assembly Bill No. 2334, introduced by Assemblyman Milton Marks, requiring all state boards and commissions and local legislative bodies whose meetings are required by law to be open to the public to also conduct open meetings of committees and subcommittees; House Resolution No. 564, offered by Assemblyman William T. Bagley, directing a study of the accessibility of public records to the public; and Assembly Bill No. 1716, introduced by Assemblyman Tom Carrell, authorizing radio and television coverage of meetings of government agencies were the specific measures referred to the committee for interim study.

The findings, conclusions and recommendations contained in this report are presented in four sections—The Ralph M. Brown Act: Open Meetings of Local Legislative Bodies (Chapter I); Open Meetings and State Agencies (Chapter II); Public Records and the Right of Inspection (Chapter III); The News Media (Chapter IV).

Public hearings were held in San Diego on December 3, 1964, in Los Angeles on December 11, 1964, and in San Francisco on December 14, 1964. The committee wishes to acknowledge the contribution of the many competent witnesses who appeared before it and to those who submitted correspondence. Their testimony contributed to a better understanding of this important subject and assisted the committee in reaching the conclusions and recommendations contained in this report.

The committee also wishes to acknowledge and express its appreciation for the excellent work done by the committee staff in the conduct of the study and the preparation of this report in the limited time available. These members include: Judson Clark, committee consultant; Alma Ricker, committee secretary; Doris Barnby, secretary; and Ed Crane of the Assembly Legislative Reference Service, who served as research assistant to the committee through the cooperation of the Reference Service's director, E. Lester Levine.

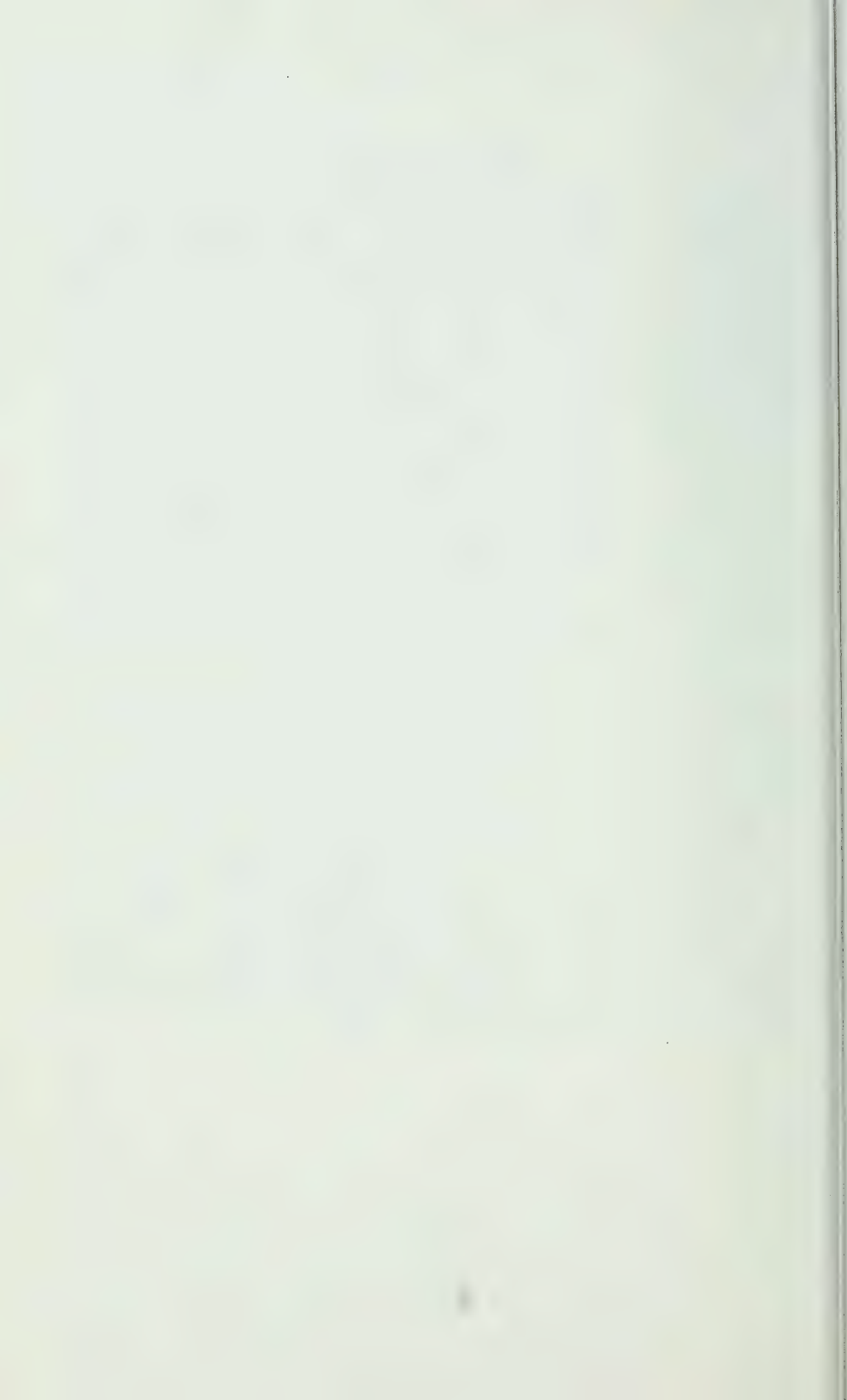


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I. THE RALPH M. BROWN ACT

Open Meetings of Local Legislative Bodies



FINDINGS

1. The enactment of California's Open Meeting Law in 1953 has had a beneficial effect in promoting public knowledge of the deliberations and actions taken by local legislative bodies. Local public officials, almost without exception, have indicated support for the Ralph M. Brown Act and expressed the belief that it has served the public interest.

2. Interpretations of the intent of the law have varied considerably on fundamental questions, however, and as a result the effectiveness of the Brown Act has been hampered. In the absence of judicial consideration, interpretation has been rendered, for the most part, by city attorneys, county counsels, the Legislative Counsel and the Attorney General. As a result, the Legislature has assumed a significant role in reconciling differences in interpretation through the process of amendment.

3. The principle difficulty in interpreting the Brown Act involves the definition of "meeting." It is clear that the Legislature intended a broader interpretation of meeting than had existed in earlier case law so that actions and deliberations of local public agencies would be open to the public.

4. Certain interpretations of the law offer "loopholes" which can be used by public officials who wish to circumvent the spirit of the law and take action on controversial issues out of public view. As a result of conflicting interpretations it is difficult for those who are seriously attempting to comply with the Brown Act to understand its provisions.

RECOMMENDATIONS

1. It is strongly recommended that the Brown Act be amended to indicate as clearly as possible that it is the intent of the law that all discussion, deliberation and action taken by the members of a local legislative body are required to be open to the public unless for specific reasons public policy requires confidentiality.

2. It is recommended that the Brown Act also be amended to provide that committee meetings of a local agency are to be open to the public whether or not the committee consists of a quorum of the members of the legislative body. If an interested citizen is not allowed to be present at a committee meeting he is denied the opportunity of becoming informed.

3. It is further recommended that the right of a public officer or employee to request a public hearing rather than an executive session on complaints or charges be clarified to require 24-hour advance notice in writing to such officer or employee of his right. If this procedure is not followed any action taken should be void.

4. It is recommended that the Brown Act be amended to permit the legislative body of a local agency to hold an executive session with its counsel if such consultation relates to litigation in which the agency is a party. This would provide protection of the public interest in litigation without providing a means to evade the open meeting principle.

5. Finally, it is recommended that the Attorney General prepare an analysis of the provisions of the Brown Act for distribution to the public.

THE PRINCIPLE OF OPEN MEETINGS

A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or Tragedy; or, perhaps both—James Madison ¹

Public knowledge of the deliberations and actions taken by government agencies is essential to the democratic process. The people must remain informed "so that they may retain control over the instruments they have created."² This theory of public knowledge and public responsibility is the basis of the principle of open meetings.

It is clear that this principle was not recognized in English common law. As a result, the general rule of law applicable is that in the absence of any provision of law requiring public meetings, the public does not have a right of access to legislative and administrative proceedings of public bodies. In his authoritative report to the American Society of Newspaper Editors, Harold L. Cross observed on this point:

The right of access to legislative and administrative proceedings, to the extent to which it exists, is of strikingly modern origin, was denied and was of dubious legal validity in England and in the United States throughout the 18th century, has had an essentially political-legislative journey through life, and still depends in substantial respect on custom and public opinion rather than legislative or judicial declaration.³

Some authorities have maintained that there is a foundation for the right of access in the federal and state constitutions. United States District Court Justice Leon R. Yankwich has commented on this point:

The adoption in the federal and state constitutions of the guarantee of freedom of speech and press and of the other democratic rights led to the recognition of the right of access and publication of the activities of public men and public bodies. At the present time, the right of the people to have information as to the activities of persons chosen in a democratic way is thoroughly established and cannot be challenged.⁴

Proponents of the theory of a constitutional right of access generally recognize that this right, like the more traditional right of free speech, is not absolute and is subject to the limitations that might be necessary in the public interest.

¹ Gaillard Hunt, ed., *Writings of Madison* (1910), Vol. 9, p. 103.

² Gov. Code Sec. 54950.

³ Harold L. Cross *The People's Right to Know* (Morningside Heights, New York: Columbia University Press, 1953), p. 179.

⁴ Leon R. Yankwich, "Legal Implications of, and Barriers to the Right to Know," *Problems of Communication in a Pluralistic Society* (Milwaukee, Wisconsin: Marquette University Press, 1956), pp. 71-72.

CALIFORNIA'S OPEN MEETING LAW

The Assembly Interim Committee on Judiciary undertook a study in September 1952, initiated by its chairman, Assemblyman Ralph M. Brown, to "study and investigate 'loopholes' in the laws of this state, through which public boards, commissions, agencies and officials have suppressed information, the property of the public."⁵ The hearings held by the committee were primarily concerned with the practices of local governments in conducting closed meetings. "Your Secret Government," a series of articles by Michael Harris, was published in the *San Francisco Chronicle* at about this time focusing public attention on abuses at the local level.⁶ As a result of this and other testimony the committee concluded that:

There is a genuine and compelling need for legislative action of a nature designed to curb this misuse of democratic process by public bodies who would legislate in secret. Unless for proper security reasons, the public has the right to be present and to be heard during all phases of legislative enactment by any governmental agency. This right is a source of strength to our country and must be protected at all costs.⁷

Assembly Bill No. 339 introduced by Assemblyman Brown was supported by the California Newspaper Publishers Association and the League of California Cities. The bill was adopted by the Legislature and signed into law by Governor Earl Warren on July 2, 1953.⁸

As enacted, the Brown Act required that "*all meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency . . .*" (Section 54953, Government Code). Legislative body was defined as "the governing board, commission, directors or body of a local agency, or any board or commission thereof" (Section 54952), and local agency was defined as "a county, city, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency" (Section 54951).

This was not a completely new statement of law as it applied to most legislative bodies. It has been pointed out that the principle of open meetings had been recognized in the earliest law of the state. Richard Carpenter, General Counsel for the League of California Cities has observed:

The Brown Act was primarily a restatement of the law as it existed prior to 1953 and in fact from the formation of the first cities under the Constitution of 1849. Every charter we have examined requires council meetings to be public and the statutes under which general law cities operated also required meetings to be public. . . .⁹

⁵ Assembly Interim Committee on Judiciary, *Progress Report to the Legislature*, January 1953, p. 13.

⁶ This series of articles was reprinted in full in the committee report, pp. 27-48.

⁷ Assembly Interim Committee on Judiciary, *Progress Report*, p. 61.

⁸ *Statutes of 1953*, Chapter 1588.

⁹ Opinion issued September 19, 1961.

A similar observation has been made with reference to counties. Stanford D. Herlick, County Counsel of San Bernardino County, has noted that county boards of supervisors have been governed by open meeting requirements "since shortly after the entrance of this state into the Union in 1850."¹⁰ To state, however, that the Brown Act was "but a reiteration of extant principles"¹¹ is contrary to both the intent and the application of the law.

In Section 54950 it is declared to be the intent of the law that "actions be taken openly" and "deliberations be conducted openly." It is clear, both from the language of this section and from the report of the Assembly Interim Committee on Judiciary, that the Legislature intended a broader interpretation of the public meeting principle than had existed in the practices of local agencies and in prior case law.

In the committee's *Progress Report to the Legislature* certain practices used by legislative bodies to evade the requirements of a public meeting were cited, including the following:

There is another "loophole" in the existing law through which governmental bodies have been secretly meeting and transacting business. They are meetings generally held before the official public meeting, under the guise of a variety of names, such as executive sessions, meetings of the committee of the whole, work sessions, and others.¹²

The committee report cited specific instances of the use of these caucuses or prepublic meetings and observed: "At gatherings such as these, deliberations and determinations regarding matters affecting the public were made. The subsequent public meetings were mockery, a mere formality and a repetition of matters already decided at the prepublic meetings."¹³

The Judiciary Committee also expressed dissatisfaction with the interpretations of the courts in upholding the legality of meetings which are theoretically open to the public because the door to the room in which the meeting is held is unlocked.¹⁴

In order to discourage the practice of conducting closed meetings, a provision was included in the Brown Act requiring notice to the public of any meeting not held at the regularly scheduled time and place (Gov. Code, Section 54956). An open meeting is open only in theory if the public has no knowledge of the time and place at which it is to be held. Existing law at the time of passage of the Brown Act only required that notice be sent to members of the legislative body in order to prevent secret action by a majority. The new notice provision clearly recognized the public's right of access to all meetings of the governing body of the local agency.

Another purpose of the new law was to provide uniform coverage for all local legislative bodies. Prior to its enactment many local legislative bodies were not covered by open meeting legislation. For example, elementary school boards were not required to hold public meetings, whereas they were mandatory for high school boards.

¹⁰ Opinion issued February 9, 1962.

¹¹ 37 *State Bar Journal* (1962), 540.

¹² Assembly Interim Committee on Judiciary, *Progress Report*, p. 22.

¹³ *Ibid.*, pp. 22-23.

¹⁴ *Alva v. Sequoia Union High School District* (1950) 98 Ca. App. 2d 656.

THE BROWN ACT AND GOOD GOVERNMENT

The contention has not infrequently been made that the Brown Act has hampered effective local government. One such indictment was levelled by Santa Monica City Attorney Robert G. Cockins. In an address delivered before the City Attorney's Department of the League of California Cities, he contended that following the Brown Act to the conclusion suggested by some interpretations "means that the councilmen must appear and deliberate on matters concerning which they have no more knowledge than what is revealed by the sketchy statement appearing on the agenda. When it comes time for a debate they know nothing of the factual situation behind the matter and they appear stupid."¹⁵ City Attorney Cockins maintained that "men of good conscience and substance" will not run for office under these circumstances and as a result cities will have as councilmen "incompetents, professional politicians, and retired persons, and good government will have suffered a severe blow."¹⁶

The fact that the Brown Act is popularly called "the secret meeting law" has such "odious implications," City Attorney Cockins told his colleagues, that "anyone who has the temerity to criticize it is branded in the public eyes as a crook and one who believes that the people are so stupid that they should be presented with nothing but the accomplished fact."¹⁷ Fortunately this attitude is not shared by the vast majority of local officials. As Richard Carpenter, executive director of the League of California Cities, has stated "The Brown Act has had tremendous educational value, both in respect to the public and to public officials. There have been some who try to avoid its provisions but they are rare exceptions."¹⁸

Dr. Albert G. Pickerell, University of California Professor of Journalism and a recognized authority on California's Brown Act, informed the committee of a study he is conducting:

DR. PICKERELL: . . . I undertook a survey to try to begin to get some assessment or some evaluation of the effect of the Brown Act, some analysis of just how it has worked.

We have had it in California for a decade now and it seemed to be, perhaps, time to sample various levels of public officials, newspaper editors and others to get some impression of where the problems are and how, in general, the act has worked.¹⁹

To carry out this objective Dr. Pickerell drew 100 communities to get a statewide sample both as to size of community and geographic distribution and then sent questionnaires in each of these communities to

¹⁵ Robert G. Cockins, City Attorney, City of Santa Monica, "The Brown Act vs. Good Government"; address before the City Attorney's Department, League of California Cities, October 1956.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ San Francisco *Chronicle*, July 1, 1963, quoted in article by Michael Harris titled "10 years of the State Secrecy Ban."

¹⁹ Unless specifically cited by footnote, statements quoted herein were presented to this committee at public hearings held in San Diego on December 3, 1964, in Los Angeles on December 11, 1965 and in San Francisco on December 14, 1964.

city councilmen, boards of supervisors and city attorneys. Questionnaires were also sent to the district attorney and county counsel in each of the 58 counties. Based on the responses to this questionnaire, Dr. Pickerell stated:

DR. PICKERELL: The interesting thing that I get from this survey is that apparently we have done a fairly good job of educating public officials on the acceptance of the basic philosophy of the Brown Act.

Dr. Pickerell indicated that he asked city councilmen and school board members to comment on the following statement: "On occasion, the Brown Act may hinder 'efficient' conduct of the city's (or district's) affairs. However, on balance, the act serves the public interest since a democratic form of government can operate effectively only if there is opportunity for the public to be informed fully on the conduct of public business." Only five school board members and four city councilmen indicated that they disagreed with the statement. The great majority indicated that they are in support of the purpose of the Brown Act. A similar question was asked of city attorneys, county counsels and district attorneys to get some evaluation of whether the Brown Act has interfered with local legislative functions and hindered efficient administration of the city's affairs. Only seven out of 54 indicated agreement with the statement that it had interfered with administration.

The questionnaire sent to newspaper editors asked: "As a general rule do local legislative bodies in your area observe the Brown Act?" Only one editor indicated "seldom," 51 editors indicated that they usually do and 13 indicated that they always do.

Despite the objections which have been raised by a vocal few, no evidence was presented to the committee that the Brown Act has obstructed local government. Local public officials, almost without exception, indicated their support for the Brown Act and expressed the belief that it has served the public interest.

OPEN MEETINGS IN THEORY AND PRACTICE

More than 10 years have passed since the enactment of the Brown Act. The consensus in support of the open meeting principle would suggest that there have been few problems of application of the law. However, from the time of enactment the Brown Act has been a source of controversy.

Since passage in 1953, the courts have been called upon to decide very few cases on the application of the Brown Act. Interpretation of the provisions of the law have been rendered, for the most part, by various city attorneys and county counsels, the Legislative Counsel and the Attorney General. These interpretations have varied considerably on fundamental questions concerning the application of the law. As a result, the Legislature has assumed a significant role in clarifying the intent of the Brown Act through the process of amendment. The act has been amended by the Legislature in nearly every session since it was adopted.

CONFLICTING INTERPRETATION

One of the first issues raised upon passage of the Brown Act illustrates the problems of conflicting interpretations of the meaning of the law and the process of legislative review. The question at issue was whether the act applied to charter cities and counties. Under California law, cities which are chartered pursuant to Article XI, Sections 6 and 8 of the California Constitution are granted plenary powers over "municipal affairs." Section 6 specifically provides that cities and towns organized under charters framed and adopted by authority of the Constitution are empowered to make and enforce all laws and regulations with respect to municipal affairs "subject only to the restrictions and limitations provided in their several charters." The provisions of Article XI, Section 7½, authorizes any county to frame a charter for its own government and these provisions have been held to confer upon counties similar authority as to the local and county affairs as is conferred upon cities.²⁰

At the time the Brown Act was before the Legislature the Legislative Counsel advised Assemblyman Ralph Brown that Assembly Bill No. 339 would not apply to meetings of charter cities and counties:

"While there is no precise meaning to 'municipal affair,' it has frequently been held to embrace all the internal affairs of a city, . . . we have been able to find no cases which indicate that any matter as closely related to the administration of a city or county as the conduct of the meetings of its legislative body has ever been considered other than a municipal affair."²¹

Associate Counsel for the League of California Cities, Lewis Keller agreed with this opinion:

²⁰ *Reuter v. Board of Supervisors*, 220 Cal. 314.

²¹ Legislative Counsel, Opinion No. 11251, to Assemblyman Ralph M. Brown, May 29, 1953.

"If the open character of council meetings is not a 'municipal affair' there is very little left of the home rule principle in California."²²

The Attorney General reached the contrary conclusion that the Brown Act was applicable to chartered cities:

"We recognize that the structure and method of operation of local governments have long been considered to be a matter of primary concern to the local level. There are, however, certain aspects to the meetings of city council which are of statewide concern.

The Secret Meeting Law was adopted by the 1953 Legislature after an investigation of practices of local agencies throughout the state. The incidents reported to the committee, and the abuses which this legislation was designed to prevent, took place in all kinds of public agencies—school boards, county boards of supervisors, housing authorities, sanitation district boards, all provided examples of secret meetings of public bodies. The evil was not confined to nonchartered cities. The abuses were shown to have existed on a statewide scale. They were and are a matter of statewide concern."²³

In June 1956, the Legislative Counsel reversed the earlier opinion of that office and concluded "that the real objective of the bill was the preservation of the right of citizens of the State to have the public's business conducted openly, and that the subject was not a purely municipal affair, but would be considered by the courts to be a matter of statewide concern. On this basis we have concluded that the Government Code sections added by the enactment of the 1953 legislation are applicable to chartered cities."²⁴

In 1959, the Legislature approved Senate Bill No. 115, by Senator John W. Holmdahl, which clarified the definition of "local agency" by indicating that it was applicable to counties or cities "whether general law or chartered." While there still have not been any final interpretation by the courts on the question of whether or not the Legislature can constitutionally require the legislative bodies of chartered cities to hold public meetings, the intent of the Legislature has been clearly expressed and it is probable that a court would hold that "the exercise of the sovereign power of the state in a matter of statewide interest may override any charter provisions to the contrary."²⁵

ADLER v. CULVER CITY

The only appellate court decision and the most significant judicial interpretation of the Brown Act was rendered by the District Court of Appeals in *Adler v. Culver City* (1960).²⁶

²² Letter from Mr. Lewis Keller, Associate Counsel, League of California Cities, to John W. Collier, City Attorney, City of Oakland, dated January 15, 1954, quoted in Albert G. Fickerell and Edward L. Feder, *Open Public Meetings of Legislative Bodies—California's Brown Act*. (Bureau of Public Administration, University of California: 1957 Legislative Problems, No. 7), p. 12.

²³ 27 Ops. Atty. Gen. 123.

²⁴ Letter from Mr. Ralph N. Kleps, Legislative Counsel to Assemblyman Ralph M. Brown, August 4, 1956, (in the files of the Assembly Legislative Reference Service).

²⁵ Stanford D. Herlick, County Counsel, County of San Bernardino, Opinion issued February 9, 1962.

²⁶ 184 Cal. App. 2d 763.

In that decision the court ruled that the provisions of the law did not apply to a dinner meeting held by the Culver City Planning Commission. The central question decided by the courts was that the definition of "legislative body" (Government Code Sec. 54952) does not apply to a subordinate agency, such as a zoning commission, created by charter. Noting that the Culver City Planning Commission was not a legislative body, but an advisory one, the court concluded that the Brown Act did not apply.

The court stated that the language of the Brown Act "was not directed at anything less than a formal meeting of a city council or one of its subordinate agencies."

The court added:

If it were, no practical line could be drawn. The members of the planning commission and the city council (whether the full number or only two or three members) would be impeded in conducting informal discussions among themselves, thus exchanging information, would be handicapped in viewing property upon which they are about to legislate, would be unable to confer with real estate experts or with their planning director or with informed individuals having qualifications to speak upon municipal problems.

According to *Adler*, "meeting" in a statute requiring meetings to be held open to the public refers only to those formal meetings of the legislative body which are required by law to be held for the transaction of official business.²⁷

The court also concluded that violation of the Brown Act was a misdemeanor and that it was necessary to give strict construction to its provisions in determining possible violation of the law. The court indicated that this was a case where only one penalty was applicable and therefore violation of the Brown Act would not invalidate the actions of the legislative body. The court further indicated that civil action could not be taken to enforce the provisions of the law.

THE 1961 LEGISLATION

The 1961 Legislature approved two bills in response to the court's decision in the *Culver City* case. Assembly Bill No. 127, introduced by Assemblyman Frank Luckel, was approved by both houses of the Legislature and vetoed by Governor Edmund G. Brown.

The bill specified that "planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency" were covered by the Brown Act.

The bill also included a provision making any member of the legislative body who attended a meeting in violation of the provisions of the Brown Act guilty of a misdemeanor and specified that any interested person could commence an action by mandamus or injunction for the purpose of stopping or preventing violations or threatened violations of the Brown Act. A new section was added making void all actions taken at any illegal meeting. "Action taken" was defined as a "collective decision made by a majority of the members of a legislative

²⁷ The court held that *Turk v. Richard*, 47 So. 2d 543, which gives such an interpretation of the word "meeting," correctly reflects the spirit of the Brown Act.

body, a collective commitment or promise by a majority of the members of legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance."

Governor Brown, in vetoing Assembly Bill No. 127, expressed his concern with the provisions making void actions taken in violation of the act:

I believe that this bill would seriously imperil the finality of all local legislative decisions. The bill provides that any action taken in a nonpublic meeting, defined in the bill as a "collective decision . . . or a collective commitment or promise . . . is void." Presumably this would also mean that any such decision merely ratified at a public meeting would also be void. As a result disgruntled persons unhappy with the decision of the local legislative body would attack it, whether with merit or not, in court, thereby delaying and obstructing all action. The consequences for bond resolutions, for example, could be paralyzing.²⁸

A second bill amending the Brown Act was introduced by Assemblyman John A. Busterud. Assembly Bill No. 363 extended the definition of legislative body to include "any board, commission, committee or other body on which officers of the local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency."

On May 9, 1961, Assembly Bill No. 363 was amended in the Senate to include those provisions of Assembly Bill No. 127 to which the Governor had not expressed any objection. The bill in this form was adopted by the Legislature and signed into law by the Governor.

Following passage of this legislation, the Attorney General commented:

We believe that there is little, if any, strength left to *Adler v. Culver City*. Contrary to *Adler*, the law now specifically applies to advisory boards such as planning commissions. Contrary to *Adler*, the law now prohibits secret gatherings at which a majority of the members of the legislative body agree, or agree to agree. In the light of these 1961 amendments to the Brown Act, we have substantial doubt whether a California court would maintain that a majority of the members of a local legislative body, without complying with the statutes, could nevertheless meet together in a so-called "informal," "study," "discussion," "informational," "factfinding" or "pre-council" gathering for the avowed purpose of discussing items of general importance irrespective of whether the individual members of the legislative body intend or do not intend "action" at such a gathering.²⁹

DEFINITION OF MEETING

The principle source of contention in interpreting the Brown Act involves the definition of "meeting." While the Brown Act specifically provides that all meetings of the legislative body of a local agency shall

²⁸ Assembly Journal, May 5, 1961, p. 3430.

²⁹ 42 Ops. Atty. Gen. 62.

be open and public. Assembly Bill No. 339 as finally adopted by the Legislature did not contain a definition of "meeting." However, the bill as amended in the Senate on May 27, 1953, attempted to define a meeting as:

. . . any called or arranged-for meeting of the governing body of any local agency at which matters for it or any pending meeting of such are discussed or at which time any test or other vote is taken whether by voice vote or rollcall at such meeting.

These lines were deleted from the bill in the version finally approved by the Legislature.

The difficulty of defining the phrase "all meetings . . . shall be open and public" can best be demonstrated by reference to the conflicting interpretations rendered by the courts and various attorneys since passage of the Brown Act. One of the first opinions to discuss this question was issued by the Attorney General. In that opinion the Attorney General cited the Utah Supreme Court decision in *Acord v. Booth* (1908) 93 Pac. 734, in which the court considered the practice of conducting meetings of city bodies as a committee of the whole where there is a statutory requirement that meetings be public:

The statute would be robbed of nearly all of its force if it were construed to mean that the sessions of the city council would be open only so long as it transacted its business under the strict rules applicable to legislative bodies, but when it relaxes those rules so as to make debate and discussion freer it could close the doors against the public.³⁰

The Utah Supreme Court responded to the argument that no public business could be conducted in such a committee: "To this the contention that no public business could actually be completed and no ordinances adopted or passed in the committee of the whole, and that the yeas and nays must be recorded so that anyone may know just how each councilman casts his vote is no answer. No one need to be present to ascertain the councilman's vote. These are matters of record, and may be ascertained at any time." The court contended that the purpose of the Utah statute was "not that the public might know how the vote stood, but the purpose evidently was that the public might know what the councilman thought about the matters in case they expressed an opinion upon them. Moreover the public [has] the right to know just what public business is being considered, and by whom and to what extent it is discussed."

In concluding that the so-called "council conferences" should be open to the public the Attorney General of California indicated:

To bar or restrict . . . the public from free access to those meetings of the city council in which deliberations or determinations affecting the public are made is to bar them from the very core of the council meetings.

In support of this conclusion the Attorney General cited the findings of the Assembly Interim Committee on Judiciary which led them to recommend passage of Assembly Bill 339.

³⁰ 27 Ops. Atty. Gen. 123.

The Legislative Counsel in an opinion to Assemblyman Sheridan Hegland indicated that the Brown Act clearly and unambiguously requires legislative bodies of local agencies to conduct their business in open and public meetings. He further stated:

"... the only escape from the statutory requirement would be to construe the word 'meeting' in such a manner as to embrace only meetings where formal action on public business is taken, and to exclude 'informal meetings' at which public business is discussed but not acted upon. We do not believe such a narrow construction of the word 'meeting' as used in the statute under discussion is justified... Moreover, the Legislature had specifically declared that it is the legislative intent not only to require that the 'actions' of legislative bodies, but also the 'deliberations' of such bodies be conducted openly."³¹

In a later opinion the Legislative Counsel was asked whether a conference between members of a city council and various city officials concerning a proposed city budget was required to be open to the public. Their opinion also takes into consideration the report and recommendations of the Assembly Interim Committee on Judiciary and indicates: "... the practice of holding secret deliberations, opening the doors to the public upon conclusion of the deliberations and permitting the public to witness only the final voting, is precisely the procedure... constituting an abuse to be corrected by the legislation... ." The Legislative Counsel further states: "We do not believe that the fact that no official action was taken by city council as such should be construed as excusing such conferences."³²

In the first judicial interpretation, Superior Court Judge Leon T. David upheld this broad definition of "meeting." In a specific case involving nonpublic meetings held by the Santa Monica City Council, Judge David ruled:

I am of the opinion that all meetings of the Council or of the boards of the city at which public business is transacted or considered or deliberated are public meetings at which all members of the public are entitled to hear and to be heard...³³

A later decision provided a contrary ruling however. In *Gray v. City of Rialto*, San Bernardino County Superior Court Judge Jesse W. Curtis, Jr., interpreted Section 54950 of the Government Code as:

"... a declaration of policy which I think means that no formal action can be taken with respect to any city matters except at a public meeting held as required by the provisions of the Government Code and before any such formal action be taken, a reasonable amount of deliberation and discussion should be had with respect thereto at a public meeting so that the public may be informed of what is proposed and the reasons for it. I think further

³¹ Ops. Legislative Counsel, Opinion to Assemblyman Sheridan Hegland, as published in *La Mesa Scout*, Issued May 17, 1956, Cited in Albert G. Pickerel and Edward L. Feder, *Open Public Meetings of Legislative Bodies—California's Brown Act*. (Bureau of Public Administration, University of California: 1957 Legislative Problems.)

³² Ops. Legislative Counsel No. 2599, June 22, 1956, to Assemblyman Harold K. Levering, and Opinion No. 2923, August 4, 1956, to Assemblyman Brown.

³³ *Minter v. San Monica*, Los Angeles County Superior Court, Opinion No. 663, 318, September 6, 1956.

that this section anticipates public argument and debate, but certainly . . . was never intended to make illegal any and all discussions and deliberations by members of the city council except that carried on in a duly called or regularly held public meeting."

In support of this decision Judge Curtis stated that it is the duty of a city councilman to "discuss and deliberate freely concerning city problems with his constituents, and other city officials, other city councilmen, and in fact any other person who can be of help; and such discussions and deliberations should take place whenever and wherever expedient." He then went on to indicate that when and where these deliberations and discussions should take place was a matter of discretion of the city official and cited prior case law to the effect that courts will not intervene in the exercise of such discretion unless it is fraudulent or so palpably unreasonable and arbitrary as to indicate an absence of discretion as a matter of law.³⁴

The difficulty of defining "meeting" is central to the disagreement over the application of the Brown Act. Those who support a strict definition of the term "meeting" maintain that it only applies to formal meetings where action is taken. This is the definition which existed in case law prior to passage of the Brown Act and has not been modified by court decision. The Legislature has on several occasions attempted to clearly indicate that a broader definition of meeting is intended than had existed in prior case law. The addition in 1961 of Section 54952.5 to the Government Code defining "action taken" as a "collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance" has broadened the definition of meeting.

The committee concludes that it is highly unlikely that "meeting" can be defined precisely enough to include all occasions when members of a legislative body, whether meeting formally or informally, are discussing public business which will result in official action, and at the same time not apply to casual gatherings involving members of the legislative body.

DISCUSSION SESSIONS

One of the areas of confusion as to the application of the Brown Act has been whether the Legislature intended "all meetings" to apply to discussion sessions. Most city attorneys and county counsels have concluded that the legislative body may meet in closed session so long as "a collective commitment or promise" is not made by a majority of the members. Stanford D. Herbick, County Counsel of San Bernardino County, has so concluded and further noted that no notice is required of these meetings. By this interpretation the legislative body may meet in closed session to discuss a subject so long as no decision is reached. The difficulty of merely "discussing" subjects in closed sessions was illustrated by a Central Valley publisher, in a letter to the members of his city council, discussing the Brown Act and the difficulty in trans-

³⁴ *Gray v. City of Rialto*, San Bernardino County Superior Court, Memorandum Order No. 87481, March 14, 1957.

acting public business outside of a regular meeting at "precouncil" sessions. He noted that in a recent session "downstairs" the city council considered the following topics:

1. Discussed replacement of two planning commissioners.
2. Discussed the golf course site in relation to the fact that the owner wanted to sell 20 acres gross, including a road of about 0.7 of an acre which you didn't want to buy. It was pointed out that condemnation would take at least a year and that it was easier to go along with him in order to save time. You did agree, however, that you would probably go through condemnation if it involved a park site acquisition which would be developed at some future date.
3. Discussed how much money should be allowed for your expenses to attend the league meeting in Los Angeles and agreed on \$150.
4. Talked over the water line to Grant Subdivision and also reviewed the sewer line to Thompson and the water line to Trade-way.
5. Looked at a petition to the council on opposition by local merchants to the planning commission's sign policy. It was pointed out that it wasn't even a law as yet, and you also discussed the legality of the ICD ordinance in relation to signs being an "addition to structure" and admitted that it might be shaky from a legal standpoint.³⁵

The publisher further commented that "despite the mayor's claim that 'his hands are clean,' it is our contention that there are some clear violations of the Brown Act in the above. Some of the discussion was not repeated in the regular meeting and one item did not, we believe, come up at all at your upstairs meeting." He informed the council that he hoped the letter would be understood in the spirit in which it was intended and concluded:

The tendency to conduct negotiations away from the public view—the golf course is a good example—is, I think, a very disturbing trend and one that is not conducive to good government.

It is not enough to say that we have a city government composed of well-intentioned men who would do nothing to harm the public welfare. It is important to recognize that such practices tend to become built-in and we can have no assurance that subsequent city councils are as well-intentioned and as devoted to the public good as you might be.³⁶

Some city councils have publicly disagreed on the advisability of conducting closed study sessions. One of the members of the Palm Springs City Council reported that the press is frequently excluded from study sessions. Councilwoman Mary Carlin argued that "action taken in council meeting on major issues often is cut and dried . . . with the real discussion on the topic taking place in study or work sessions."³⁷

³⁵ Letter dated November 11, 1964, in the files of the California Newspaper Publishers Association.

³⁶ *Ibid.*

³⁷ *Riverside Press Enterprise*, January 26, 1965.

A member of the City Council of El Cajon, Councilman Hal Whelphy, charged that members of the council meet at lunch each Thursday at the Elks Lodge with the city manager. Councilman Robert Cornett, who attended the meetings argued that many city councils hold premeeting conferences; "I enjoy spending a few extra hours a week getting myself informed. Also, I feel that we are fortunate if a department head happens to be there."³⁸

Jack Craemer, Managing Editor of the *Independent Journal* of San Rafael cited another case where secret "discussion" meetings were brought to the attention of the public.

MR. CRAEMER: . . . for some time up until a year ago it was the unadvertised and actually unknown practice of the Mill Valley City Council . . . to have quite frequent meetings in the office of one of the members in San Francisco. . . . These were in fact . . . deliberations of the business that related and affected the people of Mill Valley and these deliberations were absolutely unknown to the people of Mill Valley and it was always a cause of wonder to the reporters of our newspapers covering the Mill Valley City Council how they could make these decisions with so little discussion and subsequently we found out there was discussion, there was deliberation, but it was not so the public could see it.

City Attorney, Leland H. Jordan, of the City of Mill Valley was asked to render a formal opinion on these meetings of the Mill Valley Council. In an opinion issued October 18, 1963, he stated:

It is my understanding that subcommittees consisting of two or three councilmen have, on occasion, met during the day at the office of one of the councilmen in San Francisco. It has been charged that such meetings are illegal because held outside the Mill Valley City limits and because advance public announcement has not always been given.³⁹

City Attorney Jordan indicated agreement with the decision of the District Court of Appeal in *Adler v. Culver City* that the Brown Act does not apply to a gathering held solely for the purpose of investigation or information gathering. He further indicates disagreement with the opinion of the Attorney General that the effect of the 1961 amendments was to overcome the *Adler* decision. Referring to the addition of the misdemeanor penalty for taking action in violation of the act (Government Code Section 54959) and the definition of "action taken" (Section 54952.6) City Attorney Jordan states:

It would appear patently foolish for the Legislature to provide a penalty for attendance at a gathering of a majority of the members of the legislative body at which action is taken and to provide no penalty for attendance at gatherings which are solely of an informative nature if such attendance is, in both instances, a violation of the Secret Meeting Law. I conclude that the Secret Meeting Law only applies to those meetings at which action (as defined in the law) is taken, and not to informal gatherings at which no action is taken but which are only informative or investigative in nature.⁴⁰

³⁸ San Diego *Evening Tribune*, December 8, 1964.

³⁹ Leland H. Jordan, City Attorney, City of Mill Valley, issued October 18, 1963.

⁴⁰ *Ibid.*

Interpreting the Brown Act in the manner suggested by Mill Valley City Attorney Jordan to condone secret precouncil meetings clearly violates the principle of open meetings embodied in the law. To ignore the stated intent of the law that "deliberations be conducted openly" on the subterfuge that the criminal penalty only applies to council members who take action at secret meetings, serves to excuse the specific conduct by local officials which prompted the Legislature to enact the law.

Another form of meeting which has resulted in controversy is the "luncheon" meeting. The Attorney General has issued an opinion that regularly held luncheon meetings by the members of one or more city councils with representatives of certain civic associations where the avowed purpose of such meetings is to "discuss items of area importance such as location of school facilities, water supply, sewage disposal and beach erosion" are subject to the Brown Act (see Appendix C), but the Attorney General further specified that this conclusion should not be construed as holding that mere attendance by a majority of members of a city council or other local agency governing bodies at luncheon meetings or dinners such as are frequently given by civic or fraternal organizations would constitute a meeting of the local agency subject to the Ralph M. Brown Act.⁴¹

COMMITTEE RECOMMENDATION

1. It is strongly recommended that the Brown Act be amended to indicate as clearly as possible that it is the intent of the law that all discussion, deliberation and action taken by the members of a local legislative body are required to be open to the public unless for specific reasons public policy requires confidentiality.

While the committee recognizes that the vast majority of local public officials are seriously trying to uphold the principle of the Brown Act, it is apparent that the abuses revealed by the 1953 report of the Assembly Interim Committee on Judiciary still exist. The committee further recognizes that there is no sure way of enforcing the principle of open meetings. Certain interpretations of the law, however, offer "loopholes" which can be used by public officials who wish to circumvent the spirit of the law and take action on controversial issues out of public view. At the same time the conflicting interpretations which result make it difficult, if not impossible, for those who are seriously attempting to comply with the Brown Act to understand its provisions.

It is the conclusion of this committee that the Legislature in adopting the Brown Act did not intend to limit the law's application to those meeting at which official action is taken. Regardless of the form these meetings may take, the "briefing sessions," "work session," "luncheon meeting," or "executive meeting" these discussion meetings should be open to the public unless for specific reasons the law requires confidentiality.

Most local legislative bodies have adopted the practice of holding these meetings as public sessions. They are usually conducted in an informal manner with the appropriate administrative officials present to supply necessary information to the elected officials. The committee

⁴¹ Ops. Atty. Gen. No. 63/82.

recognizes the value of these sessions, not only to the members of the legislative body, but also to the public by providing access to the information upon which decisions are based. Most local governments schedule these meetings on a regular basis so that there is no problem as to notice to the public.

MEETINGS OF COMMITTEES

The application of the Brown Act to committees of the local agency presents another area of disagreement. The Attorney General reviewed this question (see Appendix D) and concluded:

Local agencies may and do perform much of their work through committees. Public agencies usually have a number of standing committees and frequently appoint special committees to investigate and report concerning specific matters. Such committees are mere instrumentalities of the governing agency and their determinations are *not* the determinations of the agency. The agency may not delegate its powers to a committee. Only when and if the agency ratifies and approves the act of one of its committees does it become the act of the agency.

* * * * *

In interpreting the extent to which the secret meeting law applies to committees and subcommittees of local public agencies we are, of course, guided by Section 54950. That section is designed to insure the people's right to attend meetings of local legislative bodies, not only at the time those bodies take "action" but also, and perhaps more importantly, at the time those bodies conduct their deliberations. The section is designed to insure full public deliberation before action.

* * * * *

Ordinarily, a committee is composed of less than a quorum of the legislative body that has created it. In those cases the findings of such a committee have not been deliberated upon by a quorum of the legislative body and the necessity as well as opportunity, for full public deliberation by the legislative body still remains. Thus the public's rights under the secret meeting law are protected. Therefore, meetings of committees of local agencies *where such committees consist of less than a quorum of the members of the legislative body are not covered by the act.* (Emphasis added.)⁴²

The Attorney General indicated that there is a serious question as to the application of the law to committees composed of a quorum or more of the legislative body. The device commonly known as a committee of the whole may not be used to avoid the open meeting requirement (27 Ops. Atty. Gen. 123). The Attorney General further noted that a committee meeting composed of more than a quorum of the creating agency may be a subterfuge designed to evade the requirement of the law and the extent to which full public deliberation before action will "probably be greatly lessened in view of the fact that a quorum of the agency will already have deliberated upon the matter."⁴³ The Attorney General therefore concluded:

If a committee composed of the majority or more of the members of a legislative body of a public agency gather together and de-

⁴³ *Ibid.*

⁴² Ops. Atty. Gen. No. 58/168, December 21, 1958.

liberate for the purpose of determining an action to be taken at a subsequent meeting of the agency such a meeting would be held to be violative of the Secret Meeting Law.⁴⁴

Assembly Bill No. 2334 (Marks—1963 Regular Session), which was referred to this committee for interim study, makes it clear that the Brown Act applies to committees and subcommittees of the local legislative body by adding Section 54953.1 to the Government Code to read:

54953.1. All meetings of any committee or subcommittee of a legislative body, whether or not composed of a quorum of the members of the legislative body, shall be open and public, and all persons shall be permitted to attend any meeting of such committee or subcommittee, except during consideration of the matters set forth in Section 54957.

The committee has received numerous statements of opposition to this addition to the Government Code on the basis that it would seriously hamper effective local government. Mr. Richard Carpenter, General Counsel of the League of California Cities, in a communication to various cities informing them of the interim committee hearings on this subject, stated:

It is our view that the Brown Act should not be made applicable to committees of less than a quorum of the council inasmuch as these committees cannot take any action and, in addition, the practical problems involved in giving notice of such meetings prior to being able to hold such a committee meeting would seriously hamper both the public business and the work of committees. We hope that a strong protest will be made against the enactment of any such measure.⁴⁵

The objection of cities to the proposed addition to the Brown Act was expanded upon by Mayor Burton E. Jones of the City of South Pasadena who appeared before the committee in Los Angeles on December 11, 1964, representing the 76 municipalities of the Los Angeles County Division of the League of California Cities:

MAYOR JONES: Under the provisions of AB 2334, a subcommittee of a city council which can make no decision for the city would be subject to provisions of the Brown Act and would in effect be hampered to such an extent in the giving of notices prior to such meetings that the good work of individual members of the Legislature in gathering background information for council discussion would be lost.

The fact that the provisions of the proposed legislation would be applicable to cities of all sizes poses particular problems Mayor Jones told the committee:

MAYOR JONES: For example, one city in Los Angeles County has developed numerous committees that meet continually during the week to review matters that will be presented to the council during their regular meetings. This is essential to this community

⁴⁴ *Ibid.*

⁴⁵ Richard Carpenter, General Counsel, League of California Cities, letter issued November 24, 1964.

because they do not have a city manager or chief administrative officer who can do this type of research or investigation.

The fact that notice is not required of meetings when held at regularly scheduled times and places was noted by Chairman Marks, who asked Mayor Jones why these meetings could not be held on a regularly scheduled basis.

MAYOR JONES: My answer, I think, would have to be that as a businessman myself, it was not always possible for me in the pursuit of my municipal activities to schedule part of my business day at a set time every week for minor subcommittee meetings.

CHAIRMAN MARKS: I can see, Mayor, but you are talking to legislators who also have other occupations. . . . I think your primary responsibility is to your public duties.

Resolutions from various cities were received by the committee outlining objections to extending application of the Brown Act to committees of the local legislative body as proposed by AB 2334. A typical objection was that the Brown Act should not be made applicable to such committees of less than a quorum "inasmuch as these committees act only in an advisory capacity only and cannot take any official action."⁴⁶ A resolution adopted by the City of Oceanside noted that "Committees are many times called upon to meet in less than 24 hours which would not be possible if notice had to be given as required by the Brown Act. . . ."⁴⁷

The City of Azusa noted that the proposed legislation would be "seriously detrimental" and "impede much of the important work of a municipality which can properly be delegated to a committee. Also, if enacted, its application would add to the ever-increasing costs of government, while seemingly serving no useful purpose."⁴⁸

The City of West Covina also indicated that there were problems in providing notice in sufficient time. "As the mayor constantly assigns projects for research and analysis to one or two councilmen, this would seriously hamper public business. The law, as it now exists, prohibits one or two councilmen to make or express an opinion that would be binding to the whole council. We urge you therefore to recommend against this proposed addition in order to protect home rule and enable us to make an honest effort to obtain answers to our many problems."⁴⁹

The City Council of the City of Santa Cruz informed the committee the proposed measure would "seriously impair the proper operation of local governments. A city council cannot possibly undertake all of the necessary discussion and investigation of matters which come before it in public session. Councilmen almost invariably are employed in other time consuming activities, by which they earn their livelihood. When they are appointed to committees they must frequently arrange for committee meetings on the spur of the moment, or whenever opportunity arises. Since they cannot possibly take any action at such meetings, and certainly would be no more prone to arrive at a personal decision than if they were individually investigating a matter, it seems

⁴⁶ City of Vernon, Resolution No. 2751.

⁴⁷ City of Oceanside, Resolution No. 64-141.

⁴⁸ City of Azusa, letter from Louis G. Memmishiemer, Mayor, December 11, 1954.

⁴⁹ City of West Covina, letter from Dr. Norman G. Snyder, Mayor, December 11, 1964.

that this would be an unduly restrictive provision with little or no corresponding benefit to the public. In addition, such a regulation would create an opportunity for unfounded harassment of members of legislative bodies. Even a casual meeting of two members of such a body for lunch would provide an opportunity for a crank to make an unfounded claim of unlawful meeting, which claim might be very difficult to disprove."⁵⁰

This problem of two members of a legislative body becoming involved in a casual meeting was illustrated by Mr. Jack Merlman of the County Supervisors Association, who presented the following illustration to the committee:

MR. MERLMAN: . . . say on five-man boards you have a subcommittee of two supervisors, for example, who would be—say a subcommittee to explore the need for a new county hospital or wing—and supposing one of the rural counties' two supervisors are out hunting, they are friends or something, and then one of them says when we get back we can sit on the porch and talk about this county hospital matter, we are both on the subcommittee. Query—they might say that, in the purest of intent, their meeting was open and if any citizen would have come up he would have been enjoined to sit there, but couldn't the press say that by its very remoteness it, in effect, was not a public meeting?

Robert Formhals representing the School Boards Association stated that this is already a problem.

MR. FORMHALS: Sometime ago I was in Los Angeles in the City Administration Building conferring with two members of the Los Angeles Board of Education about California School Board Association business. We went to lunch. There is a cafeteria that seats probably five or six hundred individuals. We sat down at the table and across from us was another of the Los Angeles Board of Education, . . . A fourth member approached the table and all three said no, no, no, because for four members to be seated at this same table might have laid them open to all sorts of harassment—legal and political—on the part of various people who were disgruntled with various activities.

Ben Martin, representing the California Newspaper Publishers Association, referred to the situations described by Mr. Merlman and Mr. Formhals and told the committee:

MR. MARTIN: We would never propose that you pass a law that said members of the city council could never have lunch together, I think that is stretching the law a little bit too far.

With specific reference to the case cited by Mr. Merlman involving two supervisors discussing county business on a hunting trip, he indicated:

MR. MARTIN: Now I did not think that would be a violation of the Brown Act unless they were going into great detail in discussing that hospital, and who should build it and how much it should cost and where it should be located and if they do that, they are

⁵⁰ City of Santa Cruz, letter from Norman S. LeZim, Mayor, December 10, 1964.

guilty of a gross injustice, both morally and legally for sitting on somebody's front porch discussing that without having the facts and figures at their disposal, without having engineers and architects and land surveyors and hospital planners, people get too concerned about how this Brown Act applies to every little thing they do and it was never intended to prevent them from having lunch with friends.

The City Attorney of the City of Beverly Hills, Allen Grimes, commented on the reason for the opposition of cities to the extension of the Brown Act:

MR. GRIMES: . . . I don't think these cities are hiding anything in their opposition to committees being public. I think they have a fear that this may get more cumbersome, more difficult to operate.

CHAIRMAN MARKS: I am sure that they are not trying to hide anything but I . . . think government is . . . cumbersome and it probably would be, in many respects, simpler if people could meet privately and discuss everything. But I think that would be contrary to our whole system that the public is entitled to know what goes on by public officials on public business.

Opposition to making committees public was not unanimous. The City of Long Beach indicated support for the provisions of AB 2334.⁵¹ Supervisor Kenneth Hahn of the Los Angeles County Board of Supervisors appeared before the committee hearing in Los Angeles on December 11, 1964:

SUPERVISOR HAHN: I served in the City Council of Los Angeles for three terms. I have conducted committee hearings as a member of the city council as well as a member of the board of supervisors. I feel that coverage of committees of a legislative body is essential as well as the body itself because . . . many times the bills are decided or the law is decided in the committee and the body itself ratifies the committee report. . . .

Councilman Robert Debs of the City of Palo Alto appeared before the committee in support of the Brown Act and the inclusion of committees as proposed by AB 2334:

COUNCILMAN DEBS: It is my opinion that the Brown Act is the major protection the California voter has. If it were not for the Brown Act . . . the voter . . . and the press would probably know very little of what is going on because it is a more efficient way to operate, a closed hearing is much more efficient if one wants to operate in a very efficient manner.

COMMITTEE RECOMMENDATION

2. The committee recommends that the Brown Act be amended to specify that committee meetings of a local agency are to be open to the public whether or not the committee consists of a quorum of the members of the legislative body. If an interested

⁵¹ City of Long Beach, letter from Margaret L. Heartwell, City Clerk, January 29, 1965.

citizen is not allowed to be present at a committee meeting he is denied the opportunity of becoming informed.

It is important for the public to have access to the deliberations of its city councils, boards of supervisors and other local legislative bodies. In many cases important discussion takes place in committee meetings even though final action is not taken and the public's right to know about these deliberations should be clearly stated.

It has been contended that requiring committee meetings be open to the public *would hamper local government because it would require notice every time two or more members are assigned responsibilities to investigate a subject and report back to the full membership.* In response to this contention the committee notes that there is no disagreement that the Brown Act presently applies to committees consisting of a quorum. Since the great majority of local legislative bodies consist of five members, *a committee of three or more members are required under the present law to give the notice required under the Brown Act.* The practical effect of requiring open committee meetings would be to make public committee meetings consisting, in most cases, of two members. In addition, notice is only required if the meetings are not regularly scheduled and the notice provision of the Brown Act only requires notice be given to those newspapers, radio and television stations which have requested notice. *If these meetings are regularly scheduled and so provided for by the full body notice is not required.*

The extension of the provisions of the Brown Act to committees would not change the law in any way with respect to casual meetings, such as luncheons or other social gatherings. No one contends that the Brown Act now applies to such gatherings of a quorum of the legislative body and it is not suggested that there be any change in this respect.

It has also been argued that *city councilmen or supervisors cannot make the advance arrangements necessary to give notice when they are carrying out some minor administrative or factfinding duty.* It should be noted that these duties do not require a meeting since they are primarily individual responsibilities. It is far easier for a councilman to carry out a responsibility, such as site inspection, individually when his schedule permits and notice would not be required. Furthermore, a quorum of the members of a legislative body are often assigned to look into the same subject (site inspection) under the present law, and as a practice many local officials undertake this on an individual basis as their own personal schedule permits.

To the contention that *it is not necessary that meetings of committees and subcommittees of less than a quorum be open to the public because they cannot take action,* the committee concludes that this is no answer because the Brown Act directs that the "deliberations" leading to decisions by the local legislative body be "taken openly" so the people may remain informed. With the increasing demands on local government there is a greater reliance on committees. If an interested citizen is unable to be present at these committee meetings he is denied the opportunity of understanding the committee recommendation and the subsequent decision of the full body.

PERSONNEL SESSIONS

The sole exception to the open meeting requirement provided in the Brown Act is Section 54957 of the Government Code permitting the legislative body to hold an executive session "to consider the appointment, employment, or dismissal of a public officer or employee or to hear complaints or charges brought against such officer or employee by another public officer, person or employee . . ." The provision also provided that the officer or employee may request a public hearing.

In *Cozzolino v. City of Fontana* (1955) 136 Cal. App. 2d. 608, the court upheld the action of a city council in dismissing a police officer at an executive session as provided in Section 54957 of the Government Code. The appellant in this case made the contention that the action of the city council was not sufficient since it was not taken at an open and public meeting as required by Section 36808 of the Government Code. This section was the open meeting provision which had existed prior to the enactment of the Brown Act providing that "meetings shall be public." This provision, however, was superseded by the Brown Act which permits a closed session to consider the dismissal of an officer or employee "unless such officer or employee requests a public hearing." The appellant did not contend in this action that he had requested or was denied a public hearing.

In 1959 then Attorney General Stanley Mosk called the attention of Assemblyman Ralph Brown, to the fact that "under the law where an employee is entitled to private inquiry, notice of the time need not be given to the public and press." The Attorney General further stated "It is my personal view that this conclusion may well lead to evasion of the Secret Meeting Law by local agencies using 'personnel matters' as a vehicle for dealing with other problems." The Attorney General concluded:

I do feel that legislation is necessary to clear up the possibility of evasions that are inherent in Government Code Section 54957 as presently constituted. Either the permission for private sessions for employment and personnel problems should be eliminated entirely, or an addition to this section should require public notice of the meeting, together with a specific agenda, in order to assure that no problems other than personnel matters are to be considered.⁵²

During the 1959 session Assemblyman Brown amended Assembly Bill No. 1287 by Assemblyman Luckel to provide that the local agency could hold executive sessions "during a regular or special meeting." In support of this provision Assemblyman Brown indicated:

This is necessary in order to insure that there is no confusion as to the time a legislative body can hold an executive session. It has

⁵² Letter from Hon. Stanley Mosk, Attorney General, to Hon. Ralph Brown, Speaker of the Assembly, March 31, 1959, (in the files of the Assembly Legislative Reference Service).

been claimed by some that an executive session was neither a special nor regular meeting and therefore did not require notice.

Years ago when this act was passed, it was my intention that an executive session could only be held during either a special or regular meeting. There was no doubt about it at that time and there is no doubt about it now. The recent activities of some local governmental agencies prompted the Attorney General to suggest that possibly some clarifying additional language was needed. My amendments should take care of this situation whenever any doubt arises in the future as to the meaning of the Brown Act.⁵³

Another question raised concerning executive sessions was whether the governing board of a local legislative body could meet in closed session to consider potential candidates for appointment to a vacancy on the board. Legislative Counsel ruled that such an executive session would not be in violation of the Brown Act:

There is nothing in the provision authorizing executive sessions which makes any distinction between officers appointed by a legislative body over whom the body will have control and supervision, and officers appointed by a legislative body to fill vacancies in its own membership. The obvious purpose underlying the authority to hold such executive sessions is to permit complete freedom of discussion with the minimum of embarrassment both to the members of the legislative body and to the person being discussed by them, and this can best be achieved by excluding the public from the meeting. We have no doubt that the Legislature in authorizing executive sessions for consideration of personnel matters intended it to apply in cases of all officers or employees by legislative bodies.⁵⁴

Meetings may be closed to the public, however, only while the legislative body is considering the appointment, employment or dismissal of particular individuals, or is hearing complaints or charges brought against particular officers or employees. This opinion by the Legislative Counsel was issued in response to a question by Assemblyman Brown which stated that a county board of supervisors had instituted a "personnel meeting" held at a regular time each month with the heads of all county departments present. In noting that exceptions to the general rule of a statute are strictly construed (*National City v. Fritz* (1949), 33 Cal. 2d. 635), Legislative Counsel indicated:

We do not believe that provisions of Section 54957 permitting executive sessions can be construed to authorize closed meetings of the board of supervisors with the department head for either a general discussion of personnel matters or a discussion of any other problems or policies relating to county business.⁵⁵

The Attorney General has reached a similar conclusion that under the Brown Act private sessions are permissible only in matters "dealing with particular individuals and that meetings where *general* personnel

⁵³ Letter from Hon. Ralph M. Brown, Speaker of the Assembly, to Hon. Edmund G. Brown, Governor, May 15, 1959 (in the files of the Assembly Legislative Reference Service).

⁵⁴ Ops. Legislative Counsel No. 3782, to Hon. Ralph M. Brown, May 5, 1960.

⁵⁵ Ops. Legislative Counsel No. 7103 to Hon. Ralph M. Brown, January 19, 1961.

problems are considered" must be open to the public. The Attorney General does indicate however that it is not necessary to vote in an open meeting on matters discussed in executive sessions held pursuant to Section 54957 of the Government Code. The authority for this conclusion is based on *Cozzolino v. City of Fontana*, 1956 Cal. App. 2d. 608.⁵⁶

At a hearing of this committee in Los Angeles on December 11, 1964, Mr. Donald W. Odell, an attorney, indicated that there was some further problems in interpretation of the Brown Act. He presented the following situation to the committee:

MR. ODELL: In 1960 . . . I represented a client in San Diego in a matter where the governing board of the school district had decided to dismiss him and met at noon in the superintendent's office at a meeting called 24 hours in advance so that they complied with both the Government Code sections and the Education Code, but the agenda item which was published for the meeting and was particularly on the call of the meeting provided "discuss and act on personnel." My client and I had no knowledge whatsoever that the meeting was to take place. A decision was made at the time to dismiss him. He did not have the opportunity to appear before the board.

At that time, I became aware of a problem that I believe still exists in the code and that is that although a special meeting is called and the law does provide that there shall be specified in the call of the meeting what business is to be transacted at the meeting, it is quite indefinite, in my opinion, as to what specification is necessary to advise a person or the public in the call of a meeting on the agenda, . . . And I believe that the law should be amended in some way in which the employee involved would be apprised that his individual case is to be considered at this special meeting.

CHAIRMAN MARKS: Do you think that the board should be required to indicate to the employee involved prior to having the closed hearing on personnel that he has a right to a public hearing?

MR. ODELL: Yes, I definitely do. . . . I know that the purpose of executive session is to handle the personnel matter quietly and out of the public view and there are good public reasons for this. Perhaps . . . giving the notice could be met by merely giving the notice to the employee personally. . . .

A related problem is the fact that the legislative body may take action in an executive session. As a result there is no record available to the public of any action which may have been taken to discharge an employee.

The question of notice of executive personnel sessions has been a subject of contention. Allen P. McCombs, Publisher of the *Chino Champion* questioned the action of the San Bernardino County Board of Supervisors in not giving notice as required for an executive session to appoint a member of the planning commission.⁵⁷ San Bernardino County Counsel, Stanford Herlick responded that "in the absence of

⁵⁶ Ops. Attorney General Opinion No. I.L. 61-93, August 23, 1961.

⁵⁷ Letter from Allen P. McCombs, Publisher, *Chino Champion* to Stanford D. Herlick, County Counsel, County of San Bernardino, September 27, 1964, in files of the California Newspaper Publishers Association.

a regular meeting of the board of supervisors, the chairman could appoint the planning commissioner so long as the board of supervisors approved the appointment. At the time of the actual appointment, however, there were two members of the board of supervisors at the courthouse in addition to the chairman. They met in chambers at a meeting which was open to the public and consummated the appointment. It is clear that this action merely constituted the appointment by the chairman. Our advice was that the approval of the board would have to be consummated at a regular meeting in open session."⁵⁸

Although there have been some problems relating to executive personnel sessions, they have resulted for the most part from a misunderstanding of the provisions of the law. For example, Richard Carpenter, General Counsel for the League of California Cities, has noted that some city officials have been confused in thinking that closed sessions for personnel purposes included general discussion of salary.⁵⁹

The San Diego City Council held such a closed meeting at a breakfast session with the Civil Service Commission to discuss executive salaries.⁶⁰

Deputy Mayor Ivor de Kirby reported that the council "erred" in not announcing the meeting called at the request of the commission for a progress report on a study of salaries in the unclassified branch of civil service.

The law specifically states that executive sessions shall be held "during a regular or special meeting" (Section 54957, Government Code). This requirement should be strictly observed.

COMMITTEE RECOMMENDATION

3. The committee recommends clarifying changes in the Brown Act to specify that the officer or employee be given 24-hour written notice of his right to have a public hearing, rather than an executive session, to discuss personnel matters affecting him. In addition, the committee recommends that when this procedure is not followed, any action taken is void.

Presently the Brown Act provides that an employee who is the subject of a closed personnel hearing may request a public hearing if he so desires. The purpose of this section is to protect an individual from unjust charges which if aired in public could seriously injure his reputation. The right to a public hearing is designed to protect the employee from unjust action by the legislative body in a closed meeting without allowing the individual in question to be present. The whole purpose of the section is to protect the individual. The committee concludes that the further protection afforded to an officer or employee by requiring 24-hour written notice of an executive session is consistent with this purpose.

⁵⁸ Letter from Stanford D. Herlick, County Counsel of San Bernardino County, to Dr. Albert Pickeral, Professor of Journalism, University of California (letter in committee files).

⁵⁹ San Francisco Chronicle, July 1, 1963, quoted in article by Michael Harris titled "10 years of the State Secrecy Ban."

⁶⁰ San Diego Union, April 9, 1964.

PENDING LITIGATION

Although the Brown Act only provides for executive sessions to discuss personnel matters relating to a specific individual, some interpretations of the law have indicated that other matters may be discussed in executive sessions. One such exception is a meeting of the legislative body to discuss matters with its attorney. In an opinion issued October 4, 1960, the Attorney General ruled that the Brown Act "does not require conferences between a city council and a city attorney held solely to discuss litigation pending, proposed or anticipated, to be open to the public where a public discussion of such matters would redound to the benefit of the city's adversary and to the detriment of the public."⁶¹

In support of this position the Attorney General indicated:

City councils are engaged regularly in deliberating or acting upon ordinances, resolutions, etc., where the legal implications of the subject matter are as important for a proper decision as factual or other information in order to form an intelligent and proper decision. Thus, the city attorney may be called upon to explain the legality or legal implication of a proposal before the council. In such instances the public has a right to know all of the factors considered by the council, including the legal advice, if any, received. The public is entitled to know all of this in order to insure that representatives are in what it considers to be the public good. It is the sense of the Brown Act that such types of meetings be open to the public.

However, there is no indication in the language used in the Brown Act that its purpose is to grant in any fashion an advantage to an adversary of the people. It is one thing to require public meetings so that the public be informed about the deliberations as well as the actions of its representatives and quite another to deliberately give an advantage to an adversary of the people by extending the word "meeting" used in the act to include every conference between a city council and its city attorney which, if open, would not be to the people's interest but to the interest of the people's adversary. It would seem that before interpreting the sections to include such a conference the Legislature should clearly say so in unequivocal language.

An example of the kind of situation that the Attorney General had in mind was an action involving condemnation of property, when a city attorney finds it necessary to discuss with the city council the maximum amount the council is willing to pay for property and litigation. Other examples include discussion concerning settlement of litigation against the city for court claims which might entail the discussion of trial strategy and the strength and weakness of the case.

⁶¹ Ops. Atty. Gen. No. 59/180, issued October 4, 1960.

The Attorney General concluded that "In the normal relation between a city council and a city attorney where the city council seeks the legal advice of the city attorney as to the legal effect of matters pending before the city council, such meetings must be open to the public. However, in those unusual limited situations in the nature of consultation over litigation between the city council and the city attorney, as exemplified above, where obviously the public interest would suffer should an open meeting be held, the Brown Act does not require the conference to be open to the public. It must be emphasized, however, that the exception drawn here is a narrow one and that any subterfuge or evasion of the purpose of the act should not be tolerated."⁶²

Most city attorneys and county counsels have similarly concluded that the governing board may meet in closed session with its attorney to discuss matters involving litigation. These opinions, however, have not always imposed the limitations expressed by the Attorney General. Legislative Counsel, on the other hand, has ruled: "If a quorum of the council is present and the public is excluded the meeting will be in violation of the Brown Act."⁶³

Legislative Counsel noted that a discussion between the city attorney and less than a quorum of the members of the legislative body is probably not a "meeting" within the meaning of the law in accord with the opinion of the Attorney General (32 Ops. Atty. Gen. 240). Legislative Counsel further stated:

It might be contended that the attorney-client relationship exempts the meeting of the councilmen with the city attorney from the requirement that council meetings be open to the public. While it is the duty of an attorney "to maintain inviolate the confidence, and at every peril to himself to preserve the secrets, of his client" (B. & P.C. Sec. 6068) the fallacy in the reasoning that the attorney-client relationship justifies a secret city council meeting between the councilmen and the city attorney lies in the assumption that the city councilmen and the city attorney, who are public servants, shall have an attorney-client relationship exactly like that of a private citizen and his attorney.

A private citizen is free to discuss confidential matters at any time with his attorney, and when he does the attorney has a duty under the law to keep secret the communications between them. In contrast to the citizens right of action, however, the Brown Act clearly states the intent of the law that the action and deliberations of legislative bodies of local agencies must be conducted openly, and that the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know (Government Code, Section 54950). To this end it is provided that *all* meetings of such bodies shall be open to the public (Government Code, Section 54953) with a single exception being made in personnel matters (Government Code, Section 54957). Neither in the Brown Act or the sections dealing with a city attorney (Government Code, Sections 41801-41803) is there any exception authorized for meetings

⁶² *Ibid.*

⁶³ Ops. Legislative Counsel No. 1126 to Hon. Ralph M. Brown, December 15, 1959.

of the city council and the city attorney to discuss legal matters relating to the city.⁶⁴

The existence of the attorney-client relationship as it applies to city attorneys and other city officers has been referred to in the court's decision in *Holm v. Superior Court* (1954), 42 Cal. 2d. 500, and again in *Jessup v. Superior Court* (1957), 152 Cal. App. 2d. 102. In these decisions the court held that reports and photographs prepared by city agents relating to personal injuries or deaths occurring with a city-operated facility were held to be confidential communications to the city attorney and certain other city officers and thus it was not required that they be disclosed to persons preparing litigation against the city. In referring to these decisions the Legislative Counsel indicated: "We do not believe that the limited decisions of these cases can be said to impliedly authorize secret meetings between the legislative body of a city and the city attorney. Any action of a city council is a potential source of litigation, since someone adversely affected or even merely disgruntled may contest it in the court." ⁶⁵

During the course of the interim study a number of instances came to the attention of the committee whereby local legislative bodies held closed meetings because the subject matter involved might lead to litigation.

For example, on the day of the committee meeting in San Diego, on December 3, 1964, the members of the committee were informed, by an article in the *San Diego Union* titled "More Secret Tax Talks Set," that the San Diego City Council had scheduled a closed door meeting for the following Tuesday to discuss a phase of their hotel room tax. The article indicated that City Attorney Edward Butler believed that the proposed discussion could involve litigation. Gene Williams, editor of the *San Diego Evening Tribune* and representative of the Copley Press, testified before the committee on this point:

MR. GENE WILLIAMS: I didn't come here to criticize or to try to suggest that the committee do any specific thing in relation to the law. I think, in general, all of us in the press and radio have felt that the Brown Act has been a great step forward in making it possible for the public to get the information that they are entitled to from these public boards. However, there is one point in the Brown Act that isn't specifically covered at the present time, although the Attorney General has made a ruling in respect to it, and that relates to litigation, as to when it is proper for a council or board to hold a secret session to discuss litigation. . . . You have referred to one of them this morning that is highly questionable, I believe.

CHAIRMAN MARKS: Did you or any other representative of the press request access to the meetings of the city council on this particular subject?

MR. GENE WILLIAMS: Yes. I reported it.

CHAIRMAN MARKS: And you were refused admittance? And you believe that their meetings are, as you say, highly questionable under the present conditions?

⁶⁴ *Ibid.*
⁶⁵ *Ibid.*

MR. GENE WILLIAMS: Well, I think there is question because the law is not specific to what they can or cannot do.

The San Diego City Council is reported to have conducted other closed meetings because "possible litigation" was involved. On September 24, 1964, the city council held an unannounced secret meeting to discuss purchase of the San Diego Transit System. The *Evening Tribune* reported that the meeting was so closely guarded that even Councilman Allen Hitch wasn't notified. When he arrived and found the meeting underway he declined to enter until it was over. City Attorney Ed Butler said he interpreted the nature of the meeting to be justified because it "touched upon possible studies looking toward negotiations or possible acquisition of the existing transit system and because the details involve possible ultimate condemnation."

COMMITTEE RECOMMENDATION

4. The committee recommends that the legislative body of a local agency be permitted to hold an executive session to consult with its counsel only if such consultation relates to litigation in which the agency is a party when public disclosure of the matters considered would be detrimental to the public's interest.

The Brown Act does not provide for such consultation and the courts have not been requested to rule on this point. It has been determined by the courts that there is an attorney-client relationship between the legislative body of a local agency and its counsel. The courts have not held that the local legislative body may hold a closed session in order to consult with its counsel on "possible future litigation." Such an interpretation would permit an executive session on almost any subject because virtually every action a local agency takes could lead to litigation.

However, the local agency should not be required to reveal facts and strategy concerning litigation in which the agency is a party in an open and public meeting. Such a procedure would benefit a particular individual who is adversary of the local agency and the public interest would not be served. The amendment recommended by the committee provides protection of the public interest in litigation without providing a loophole through which the law may be circumvented.

LAND ACQUISITION

Another subject which has sometimes been referred to as a reason for holding executive sessions is discussion relating to land acquisition. The reason for closed meetings on site acquisition is frequently that legal matters are involved which the legislative body must discuss with counsel in executive session. In addition, the point is often made that public discussion of the price which the agency is willing to pay for a parcel of land gives an unfair advantage to a private party.

Mr. Alexander Bodi, editor of the *Palo Alto Times* and president of the Northern California Professional Chapter of Sigma Delta Xi, discussed with the committee the reason the permissible executive sessions under the Brown Act had not been extended to cover acquisition of land.

MR. BODI: This came up fairly recently at a meeting I attended at which the speaker was Ralph Brown, who drafted the original Brown Act. . . . I asked Justice Brown, at that time, . . . whether the land acquisition was left accidentally from the original Brown Act, or whether it had been done deliberately, and if it had been done deliberately what the thinking was. He said it had been deliberately done, if I quote him correctly, that it had not been an oversight, but the feeling at the time was that there was a little bit of difference two private parties negotiating for the purchase of land and a public agency negotiating for land with a private party. And the difference in this is that the public agency has the right to condemnation which a private person would not have.

Mrs. Agnes Robinson and Mr. Horace Anderson, members of the Board of Trustees of the Palo Alto Unified School District, presented a resolution to the committee on behalf of the Palo Alto Unified School District Board of Education favoring an amendment to the Brown Act to allow preliminary discussion of land acquisition and sale of properties in executive session. Mrs. Robinson told the committee:

MRS. ROBINSON: I believe . . . that consultation with county counsel on litigation of land acquisition, demands privacy in order to protect the public's interest against such persons as the Attorney General terms "the adversary of the people." But in all conscience, I cannot see how the Brown Act, as it now stands, permits such closed discussion . . . when it indicates . . . that it shall only be construed not to deny closed session in a case of national emergency or personnel matters. . . .

* * * * *

I want to make it clear that the more I read the Brown Act, the more I believe in what it says it wants to do, any exemption should be very narrow and very specifically worded, I think.

Assemblyman Harvey Johnson recited his experience as a board member and addressed a question to Mrs. Robinson:

ASSEMBLYMAN JOHNSON: I have had considerable experience in this field as a board member, in fact, about 16 years' experience. We never had a closed meeting. We didn't find it in our area that it was bad to have open meetings. Actually if anything happened the values went down as far as the district was concerned. Now my question, have you had actual experience or is this a fear that you are expressing?

MRS. ROBINSON: Well, this was an experience . . . which directly involved how much money to pay for the land. It was not a question of where to buy the land or what land to buy. It was the bargaining . . . I guess it is the bargaining point that we are talking about in this kind of thing.

Board member Anderson recited the specific circumstances in the condemnation under discussion:

MR. ANDERSON: In this particular case, the transaction has been completed. . . . This was a negotiation with Stanford University. The particular piece of property needed was for an addition to a school site that had been originally purchased through friendly condemnation from Stanford University.

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Stanford University had its appraisal which came in . . . appreciably higher than the appraisal that we had. We started negotiating at the original purchase price for the additional land and found out that that was not going to be acceptable, but finally did negotiate a price that was less than our appraisal, so that this tract that we bought, we saved approximately \$10,000 per acre. Had our appraisal been discussed in open meeting and the original appraisal been brought into open meeting, we would have then started our negotiation with Stanford at our appraisal price which then would have had a closing cost probably of \$5,000 to \$10,000 difference in what we paid. So there was a substantial saving to the district. . . .

ASSEMBLYMAN JOHNSON: . . . I still feel that even in this situation, I don't see that you would have to reveal your appraisal. You could make an offer which is what you did in preliminary negotiations. I don't see what difference there is in that, privately or in an open meeting.

The fact that problems have resulted from executive sessions on land acquisition was pointed out by Mr. Bodi:

MR. BODI: Suppose that public mention of the site under consideration is made. I think political history unfortunately is filled with instances where private parties have gained from the information leaked out deliberately or accidentally on preliminary land planning. So what is the public interest to allow: to perhaps throw the whole thing in the open with the realization that you can always go to condemnation; or hold sessions with the realization that there are five members of the school board, plus several staff members who have access to it who could be a little bit uncautious at times, perhaps, in mentioning the site they are considering. . . .

The committee recommends no change in the law with respect to land acquisition. It has been argued that information as to the location of future acquisition by the public agency, if made available in a public meeting, will raise the purchase price. This is balanced by leaks of information from closed meetings as to future site acquisition to the advantage of particular individuals. Attempts have repeatedly been made since 1953 to amend the Brown Act to allow discussion of land acquisition in closed meetings and they have always been rejected by the Legislature.

PENALTY PROVISIONS

In *Adler v. Culver City* the court pointed out that although there were no specific enforcement provisions in the Brown Act that general provisions provided for enforcement. In that decision the court ruled that a violation of the Brown Act would not invalidate action taken and that the proper penalty for violation of the act was a misdemeanor. The court also held that private persons, though taxpayers, had no right to declaratory relief or injunction to enforce the provisions of the Brown Act. As a direct result of this decision AB 363 of the 1961 session added Section 54959: "Each member of the legislative body who attends a meeting of such legislative body where action is taken in violation of any provision of this chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor." Section 54960 was also added to the Government Code: "Any interested person may commence an action either by mandamus or injunction for the purpose of stopping and preventing violations or threatened violations of this chapter by members of the legislative body of the local agency."

The addition of these provisions have largely been ineffective in insuring compliance with the Brown Act. The criminal penalties imposed for attending a meeting in violation of any provision of the act require a presumption of innocence by the courts and therefore lead to a strict construction of the provisions of the law.⁶⁶ In addition, the courts are required to follow the presumption that official duty has been regularly performed⁶⁷ (*Walker v. City of San Gabriel*, 20 Cal. 2d 879).

The courts have been reluctant to find a violation on the part of a public official if the action taken can be found to be within his discretion unless it is so "palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law" (*City and County of San Francisco v. Boyd*, 22 Cal. 2d 685).

The difficulty of establishing a violation of the Brown Act is further complicated by the fact that the misdemeanor section requires that the public official have "knowledge" of the fact that the meeting is in violation of the law. This fact led the Los Angeles County Grand Jury to report that it is "almost impossible from a legal point of view to develop facts upon which an accusation could be returned, with any honest expectation that it could be sustained in court."⁶⁸ The grand jury urged the Legislature to amend the Brown Act by "removing the language requiring the prosecution to show that accused knew he was violating the law and so intended when he committed the alleged violation."⁶⁹

Alternatives to the present criminal penalties have been considered by the Legislature. In 1961, the Legislature approved and the Governor vetoed legislation making null and void actions taken in viola-

⁶⁶ Code of Civil Procedure, Section 1963.

⁶⁷ *Ibid.*

⁶⁸ "Statement by the 1963 Los Angeles County Grand Jury on the Brown Act," printed in the Assembly Journal, June 20, 1963, p. 5917.

⁶⁹ *Ibid.*

tion of the act. In his veto message Governor Brown indicated that such a provision could "imperil the finality" of decisions of local agencies. Earlier case law had held that actions taken contrary to open meeting laws were void. In *County of El Dorado v. Reed*, 11 Cal. 130, the court held that failure of a board of supervisors to notify the district attorney and the public of a meeting to take action was in violation of the open meeting law governing boards of supervisors and the act was void (see also *County of San Luis Obispo v. Hendricks*, 71 Cal. 242; *People v. Dunn*, 89 Cal. 228; *Baumgartner v. City of Hawthorne*, 104 Cal. App. 2d 512).

The mandamus proceedings have also failed to provide meaningful relief for the public to prevent violation of the open meeting principle embodied in the Brown Act. In the more-than-ten-year period since passage of the law there have only been a few cases where the courts have granted declaratory relief.

SUMMARY

Based on a review of the provision of the Ralph M. Brown Act the committee has recommended several amendments which serve to clarify the confusion which presently exists as a result of contradictory interpretations of the intent of the law. These recommendations are consistent with the purpose of the Brown Act and limit closed sessions only to those cases where it is justified in the public's interest.

The committee further suggests that the Attorney General prepare an analysis of the Brown Act to be made available to the public so that each citizen may have a better understanding of California's open meeting law.

However, there is no sure way of enforcing the principle of open meetings. In the final analysis it depends on the good faith of public officials to conduct the people's business openly. As Los Angeles County Counsel Harold Kennedy has pointed out "... a meeting or gathering may be open to the public whether or not it is required by the Brown Act. Unless there is a compelling reason for a closed meeting, the spirit of the act, if not its letter, requires that all deliberations, discussions and actions be taken in public."⁷⁰

⁷⁰ Harold W. Kennedy, County Counsel, County of Los Angeles, "The Effect of the Brown Act on the Operation of Boards of Supervisors, Planning Commissions and Similar Public Bodies" an address delivered to the Southern California Planning Congress, May 10, 1962.



APPENDIX A

THE RALPH M. BROWN ACT

Sec. 54950. Declaration, intent: sovereignty

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. (Added Stats. 1953.)

Sec. 54950.5. Short title

This chapter shall be known as the Ralph M. Brown Act. (Added Stats. 1961.)

Sec. 54951. Local agency, definition

As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency. (As amended Stats. 1959, c. 1417.)

As used in this chapter, "legislative body" means the governing board, commission, directors or body of a local agency, or any board or commission thereof, and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other body is organized and operated by such local agency or by a private corporation. (As amended Stats. 1961, c. 1671.)

Sec. 54952.5. Legislative body as including permanent boards or commissions of local agencies

As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance. (Added Stats. 1961, c. 1671.)

Sec. 54953. Meetings to be open and public; attendance

All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting

of the legislative body of a local agency, except as otherwise provided in this chapter. (Added Stats. 1953, c. 1588.)

Sec. 54953.3. Conditions to attendance

A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his name and other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his attendance. (Added Stats. 1957, c. 85.)

Sec. 54954. Time and place of regular meetings; holidays, emergencies

The legislative body of a local agency shall provide, by ordinance, resolution, by-laws, or by whatever other rule is required for the conduct of business by that body, the time for holding regular meetings. Unless otherwise provided in the act under which the local agency was formed, meetings of the legislative body need not be held within the boundaries of the territory over which the local agency exercises jurisdiction. If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day. If by reason of fire, flood, earthquake or other emergency, it shall be unsafe to meet in the place designated, the meetings may be held for the duration of the emergency at such place as is designated by the presiding officer of the legislative body. (Added Stats. 1953, c. 1588.)

Sec. 54955. Adjournment; adjourned meetings

The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours of the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, by-law, or other rule. (As amended Stats. 1955, c. 760; Stats. 1959, c. 647.)

Sec. 54956. Special meetings; call; notice

A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering personally or by mail written notice to each member of the legislative body and to each local news-

paper of general circulation, radio or television station requesting notice in writing. Such notice must be delivered personally or by mail at least 24 hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by the legislative body. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. (As amended Stats. 1955.)

Sec. 54957. Executive sessions; exclusion of witnesses

Nothing in this chapter shall be construed to prevent the legislative body of a local agency from holding executive sessions during a regular or special meeting to consider the appointment, employment, or dismissal of a public officer or employee or to hear complaints or charges brought against such officer or employee by another public officer, person or employee unless such officer or employee requests a public hearing. The legislative body also may exclude from any such public or private meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

Nothing in this chapter shall be construed to prevent any board, commission, committee, or other body organized and operated by any private organization as defined in Section 54952 from holding executive sessions to consider (a) matters affecting the national security or (b) the appointment, employment or dismissal of an officer or employee or to hear complaints or charges brought against such officer or employee by another officer, person, or employee unless such officer or employee requests a public hearing. Said body also may exclude from any such public or private meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body. (As amended Stats. 1957; Stats. 1959; Stats. 1961.)

Sec. 54958. Application of chapter

The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law. (Added Stats. 1953.)

Sec. 54959. Penalty for unlawful meeting

Each member of a legislative body who attends a meeting of such legislative body where action is taken in violation of any provision of this chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor. (Added Stats. 1961.)

Sec. 54969. Mandamus or injunction

Any interested person may commence an action either by mandamus or injunction for the purpose of stopping and preventing violations or threatened violations of this chapter by members of the legislative body of a local agency. (Added Stats. 1961.)

APPENDIX B**OFFICE OF THE ATTORNEY GENERAL**

State of California

STANLEY MOSK

Attorney General

OPINION

of

STANLEY MOSK
Attorney General

No. 63/79

RICHARD L. MAYERS,
Deputy Attorney General

The Honorable ALAN SHORT, *Senator from the Twentieth District*, has requested an opinion on the application of the Ralph M. Brown Act (otherwise known as the Secret Meeting Law, Gov. Code §§ 54950 et seq.) to "briefing sessions" held prior or subsequent to regular, special or adjourned public meetings of a city council.

The conclusions are:

With exceptions noted in the opinion, the meetings of a city council with the city manager, assistant city manager, city attorney and planning director are subject to the open meeting requirements of the Ralph M. Brown Act. The public has a right to notice of and attendance at such meetings irrespective of whether the individual members of the council intend or do not intend to take "action" at such gatherings.

ANALYSIS

Our opinion has been requested concerning the application of the Ralph M. Brown Act (otherwise known as the Secret Meeting Law, Gov. Code §§ 54950 et seq., and hereinafter referred to as the Act or the Brown Act) to the following situation:

"For at least the past 12 years, it has been the practice of the Lodi City Council, together with the City Manager, Assistant City Manager, City Attorney and Planning Director to gather 30 minutes prior to the scheduled and announced public meeting in the City Manager's conference chambers (a small room adjoining the City Council Chambers). This gathering has been for the purpose of discussing (1) personnel problems, (2) current litigation, (3) placement of items on the agenda which came to the attention of the City Manager after the formal agenda had been mailed, (4) matters of real property negotiation in which the City of Lodi currently was involved, and (5) a general review of the formal agenda for the purpose of providing information to the City Council members.

"The regular meetings of the City Council are provided by ordinance. The so-called 'briefing sessions' also are held prior to spe-

cial and adjourned public meetings of the City Council. At no time has any formal notice of the 'briefing sessions' been made to the public nor members of the City Council. The press (two newspapers of general distribution) has been invited to attend the 'briefing sessions' but seldom does. The door to the conference room, although not locked, is always closed during the 'briefing sessions'.

"Items No. 3 and No. 5, above, usually are repeated during the public meetings. Items No. 1, No. 2, and No. 4 usually are discussed sufficiently so that City Manager is able to reach an understanding of the viewpoint of the City Council regarding the involved issues. I do not recall that any formal action has been taken during these 'briefing sessions'. It is a fact, however, and an admission of the City Manager, that the City Council often has bordered on the reaching of a decision during these 'briefing sessions'. It is impossible to say whether or not any individual City Council members has ever reached a decision in his own mind on the basis of these meetings."

Government Code Section 54950 states as follows:

"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies of this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

Government Code Section 54953 provides as follows:

"All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter."

(All section references are to the Government Code.)

In 1958 this office in 32 Ops.Cal.Atty.Gen. 240 held that the provisions of Section 54953 apply to all meetings of the legislative body of a local agency and that this requirement could not be avoided by the use of devices such as a committee of the whole or "nonmeetings" held under the guise of a variety of names such as executive sessions, work sessions, study sessions, briefing sessions, or the increasingly popular breakfast, luncheon or dinner sessions. The opinion quoted from the report of the Assembly Interim Committee on Judiciary whose study led to the passage of the Secret Meeting Law. This study indicated that the holding of such "nonmeetings" constituted a loophole in the existing law through which governmental bodies have been secretly meeting and transacting business. The report pointed out that "[a]t gatherings such as these, deliberations and determinations regarding matters

affecting the public [are] made. The subsequent public meetings [are a] mockery, a mere formality and a repetition of matters already decided in the pre-public meetings." Quoted from 32 Ops.Cal.Atty.Gen. at 243. As a result of this report, Section 54950 states, "It is the intent of the law that their actions be taken openly *and that their deliberations be conducted openly.*" (Emphasis added.)

ADLER V. CITY COUNCIL

In 1960, in the only appellate case dealing with the Brown Act, the District Court of Appeal in *Adler v. City Council*, 184 Cal.App.2d 763, held that the statute did not apply to anything less than a formal meeting of a city council or one of a city's subordinate agencies.

The court put forth three reasons in support of this conclusion:

A. The meetings involved were those of a planning commission. A planning commission, said the court, was not a legislative body but was purely advisory and thus it was not covered by the provisions of the statute. The court noted that previously a measure designed to extend the definition to include advisory committees had been introduced in the Legislature (A.B. 2181) and had failed passage. The court indicated that it approved the exclusion of planning commissions by stating "Counsel for respondents observed that 'the sound reason for not including such Commissions is that they are only advisory, have no legislative powers and whatever they do may be completely disregarded or overruled by the governing body' ". 184 Cal.App.2d at 772.

B. The court pointed out that after the informal dinner meetings of the planning commission, avowedly public meetings were held by the City Council which "full complied with the terms of the (Brown) act". Thus, said the court, no harm was done by the informal meetings of a planning commission which was a purely advisory body in any event. 184 Cal.App.2d at 775.

C. The court asserted that government could not operate if the statute were interpreted so as to apply to informal meetings. The court stated that "[t]he members of the planning commission and the city council (whether the full number or only two or three members) would be impeded in conducting informal discussions among themselves, thus exchanging information, would be handicapped in viewing property upon which they were about to legislate, would be unable to confer with real estate experts or with their planning director or with informed individuals having special qualifications to speak upon municipal problems." 184 Cal.App.2d at 770-771. The court rested much of its analysis on the decision of the Florida Supreme Court in *Turk v. Richard*, 47 So.2d 543 (1950), wherein the Florida court held that there could be no "meeting" unless the members of the council "formally come together, in the manner required by law, for the purpose of joint discussion, decision and action with respect to municipal affairs" For, said the Florida court, "the unofficial agreements of all or a part of the members of the council are ineffectual and without binding force". 47 So.2d at 544. Adopting this narrow interpretation of the word "meeting", the District Court of Appeals in *Adler* said that the only meetings referred to in the Brown Act are " 'formal assemblages

of the council sitting as a joint deliberative body as were required or authorized by law to be held for the transaction of official municipal business.' " 184 Cal.App.2d at 773.

THE ADLER DECISION AND THE 1961 LEGISLATURE

At the legislative sessions immediately following the *Adler* case, the Legislature enacted many amendments to the Brown Act plainly designed to counteract and overcome this and other aspects of the decision in *Adler v. City Council*. The 1961 Legislature (by Chapter 1671) broadened the scope and application of the act in the following ways:

1. It specifically disapproved *Adler's* restrictive interpretation of the word "meeting" as confined only to formal meetings by recognizing that criminally prohibited legislative action may be taken at gatherings that fall far short of the "'formal assemblages of the council sitting as a joint deliberative body' ". This was made clear when the Legislature enacted section 54952.6, which provides as follows:

"As used in this chapter, 'action taken' means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance."

and the adoption of section 54959 which provides as follows:

"Each member of a legislative body who attends a meeting of such legislative body where action is taken in violation of any provision of this chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor."

2. It specifically repudiated that portion of the *Adler* decision which held that the act was not meant to apply to planning commissions or other bodies of an "advisory" nature. The Legislature specifically brought within the definition of the term "legislative body", and thus within the application of the Brown Act, "planning commissions, library boards, recreation commissions and other permanent boards or commissions of a local agency". Sec. 54952.5, as added by Stats. 1961, ch. 1671, p. 3637. In addition, the Legislature added to the definition of "legislative body"—"any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other body is organized and operated by such local agency or by a private corporation". Sec. 54952, as amended by Stats. 1961, ch. 1671, p. 3637.

3. It made mandamus and injunction available to all interested persons for the purpose of enabling them to stop or prevent violations or threatened violations of the act. Sec. 54960, as added by Stats. 1961, ch. 1671, p. 3638.

4. It defined the term "action taken" and provided a criminal penalty for knowing conduct in violation thereof by members of a legislative body. Secs. 54952.6 and 54959.

5. It made clear that the law was intended to apply to chartered cities, as well as general law cities, by amending section 54951.

THE EFFECT OF NOT AMENDING SECTION 54953

In the measure which initially embodied most of the suggested changes (A.B. 127) was a proposed amendment to section 54953 which then provided as follows:

"All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meetings of the legislative body of a local agency, except as otherwise provided in this chapter."

The proposed amendment would have added the following language:

"Meetings shall be open even if held solely for the purposes of discussion, and no action is to be taken or no decision is to be made on the subject under consideration."

The then existing language of section 54953 had previously been interpreted as including discussion sessions within the term "meetings" See 27 Ops.Cal.Att'y.Gen. 123 (1956); see also 32 Ops.Cal.Att'y.Gen. 240 (1958); 33 Ops.Cal.Att'y.Gen. 32 (1959); 36 Ops.Cal.Att'y.Gen. 175 (1960); *Minter v. Santa Monica*, Los Angeles Superior Court No. 663318. But see, *Gray v. City of Rialto*, San Bernardino Superior Court No. 87481; see also Opinion of Legislative Counsel to Honorable Frank Luckel, No. 811, January 6, 1956. These interpretations had been placed in doubt by the decision in the *Adler* case. The proposed amendment to section 54953 was dropped from the bill at the first of several committee hearings held on the measure. There is no legislative record indicating the reason for this deletion. (Although the language was formally deleted by action of the Assembly, the passage of such suggested committee amendments pursuant to a committee recommendation to "amend and re-refer to the Committee" (Assembly Journal, 1961, Vol. 1, p. 1109) is recognized to be a perfunctory act that cannot properly be interpreted as evidencing any intent on the part of the Assembly as a whole in the absence of subsequent legislative action on the particular provision.) After several amendments in both the Assembly and the Senate the bill, although passed by both houses, was vetoed by the Governor. See the Governor's Veto Message concerning A.B. 127, Assembly Daily Journal, May 8, 1961, p. 3430.

After the veto of A.B. 127 all of the provisions of that bill, except for that portion objected to by Governor Brown—namely, the provision making void any action taken at non-public meetings—were inserted by amendment into A.B. 363 and were then passed by the Legislature and signed by the Governor. Stats. 1961, ch. 1671.

It has been contended that the failure of the 1961 Legislature to include discussion sessions within the definition of the word "meetings" constitutes, in effect, an affirmative authorization for cities' and counties' agencies to bar the press and public from meetings held for discussion and information purposes.

Interpreting statutes on the basis of what the Legislature did not do is a hazardous venture at best. See generally "The Effect on Unsuccessful Attempt to Amend a Statute", 44 Cornell L.Q. 336 (1958). It is a method of statutory construction resorted to only when statutory language is ambiguous. See, e.g., *People v. Knowles*, 35 Cal. 2d 175, cert. den. 340 U.S. 879 (1950); *In Re Ryan's Estate*, 21 Cal. 2d 498 (1943); *County of Los Angeles v. Frisbie*, 19 Cal. 2d 634 (1942). As previously indicated, section 54953 provided that all meetings of the legislative body of a local agency shall be open and public except as otherwise provided in this chapter (namely, in section 54957 relating to executive sessions for personnel matters). The term "all meetings" was previously interpreted as encompassing more than just meetings at which formal action was taken. There is no need to refer to legislative history where the statutory language is clear. "The plain words and meaning of a statute cannot be overcome by a legislative history, which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction." *Ex Parte Collett*, 337 U.S. 55, 61 (1949), and numerous cases therein cited adhering to this canon of construction. This is particularly true when it is recognized that all of the amendments to the Brown Act and particularly those adopted in 1961 immediately following the *Adler* case consistently and regularly strengthened and enlarged the application of the act.

It seems improbable that a Legislature which adopted such amendments also managed, by *not* enacting a proposed amendment, to authorize the holding of secret meetings for "discussion and information".

We believe that there is little, if any, strength left to *Adler v. Culver City*. Contrary to *Adler*, the law now specifically applies to charter cities. Contrary to *Adler*, the law now specifically applies to advisory boards such as planning commissions. Contrary to *Adler*, the law now prohibits secret gatherings at which a majority of the members of the legislative body agree or agree to agree. In the light of these 1961 amendments to the Brown Act, we have substantial doubts whether a California court would persist in maintaining that a majority of the members of a local legislative body, without complying with the statute (and, specifically, sections 54953, 54953.3, 54954, 54955 and 54956), could nevertheless meet together in a so-called "informal", "study", "discussion", "informational", "fact finding" or "pre-council" gathering for the avowed purpose of discussing items of general importance irrespective of whether the individual members of the legislative body intend or do not intend to take "action" at such a gathering. We suggest that the adoption of sections 54952.6 and 54959 suffices to negate any such holding.

THE RIGHT TO NOTICE AND ATTENDANCE AT MEETINGS IS NOT DEPENDENT ON WHETHER "ACTION" IS TAKEN

The phrase "action taken" is defined for purposes of the act in section 54952.6 (quoted above). The only other reference to the phrase "action taken" occurs in section 54959 which provides as follows:

"Each member of a legislative body who attends a meeting of such legislative body where action is taken in violation of any pro-

vision of this chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor." Added Stats. 1961, ch. 1671, p. 3638.

These provisions with respect to "action taken" relate only to the imposition of criminal penalties on members of legislative bodies. They are separate and distinct from those provisions of the Secret Meeting Law that give to the people the right to notice of and attendance at all meetings of the legislative body of every local agency. They are distinct from section 54960 which gives to any interested person the legal authority to stop or prevent violations or threatened violations of the statute. These rights are not dependent upon those statutes imposing criminal liability on agency members. They rest on the provisions of section 54953 and may be protected and enforced through mandamus and injunction as set forth in section 54960 which provides:

"Any interested person may commence an action either by mandamus or injunction for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency."

A comment in a Harvard Law Review article entitled "Open Meeting Legislation: The Press Fights for the 'Right to Know'," (1962), plainly outlines the problems involved should such legislation be interpreted so as to permit secret meetings provided only that no action is taken.

"On their face these statutes seem to present public officials with an invitation to frustrate the purpose underlying open meeting laws; the body can give full consideration to possible courses of action behind closed doors and then convene in public simply to take formal action on decisions already made. And it is difficult to see how the courts could prevent such evasion without resorting to arbitrary distinctions between those executive sessions contemplated by the legislature and those which contravene the statute's policy if not its literal terms. In leaving public officials with broad discretion to decide when their deliberations shall be kept secret, these statutes give salutary recognition to the undesirability of precluding officials from ever meeting privately to gather information or carry on preliminary consultations. But they fail to ensure the public an open meeting in which the officials conduct full discussions of the issues, resolve any differences, and come to a conclusion". 75 Harv. L. Rev. at 1210

We find no statutory authority for excepting "informal" sessions from the application of the Secret Meeting Law. Section 54950 provides now, as it did prior to *Adler*, that "the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know". The statute still provides that "it is the intent of the law that their actions be taken openly and that their deliberations be conducted openly".

The right of the people to have notice of and to attend all meetings of a local agency and thus keep informed as to the conduct of the members of the legislative body of a local agency is not dependent

upon the fact that the members of that body do or do not intend to take "action" as that word is defined in section 54952.6.

Meetings of a city council with the city manager, assistant city manager, city attorney and planning director for pre-meeting briefing sessions are subject to the open meeting requirements of the Brown Act unless the subjects under discussion involve matters coming within the provisions of section 54957 or are the subject of then current or pending litigation within the narrow limits carefully outlined in 36 Ops.Cal.Atty.Gen. 175 (1960). Thus discussions of the City Council involving the placement of items on the agenda, real property negotiation, in the absence of actual litigation or presently threatened litigation, as well as the review of the formal agenda for the purpose of providing information to the City Council members should be held in open and public meetings subject to the formal requirements of the Brown Act.

APPENDIX C

OFFICE OF THE ATTORNEY GENERAL

State of California

STANLEY MOSK

Attorney General

OPINION

of

STANLEY MOSK
Attorney General

RICHARD L. MAYERS
Deputy Attorney General

No. 63/82

The Honorable JOHN A. MURDY, JR., *Senator, Thirty-fifth District*, has requested our opinion concerning the application of the Ralph M. Brown Act.

The conclusions are:

The Ralph M. Brown Act otherwise known as the Secret Meeting Law, Government Code secs. 54950 et seq.) governs regularly held luncheon meetings by the members of one or more city councils with representatives of certain civil associations where the avowed purpose of such meetings is to discuss items of area importance such as location of school facilities, airport facilities, water supply, sewage disposal and beach erosion. This conclusion should not be construed as holding that mere attendance by a majority of the members of a city council or other local agency governing body at luncheons or dinners such as are frequently given by civic or fraternal organizations would constitute a meeting of the local agency subject to the Ralph M. Brown Act.

ANALYSIS

In 42 Ops.Cal.Atty.Gen. 61 (1963), we held that the Ralph M. Brown Act applied to meetings of a public agency even though the individual members of the agency attending the meeting did not take or even intend to take "action" at such gatherings. This opinion dealt specifically with meetings of a city council with its city manager, city attorney and planning director.

In the instant case, we are presented with questions relating to the application of the Ralph M. Brown Act to meetings of a somewhat different character, namely, regularly scheduled meetings by the members of the city councils of two incorporated cities with representatives of "certain civil associations" of unincorporated communities nearby. The meetings are held alternatively in San Juan Capistrano and San Clemente at a restaurant. A majority of the members of the city councils of both cities generally attend these luncheon sessions. You have stated that "the purpose of these meetings has been to achieve better relations between the communities and, while largely social, those attending the sessions have discussed items of area importance such as location of school facilities, airport facilities, water supply, sewage disposal and beach erosion." You state that the discussions of these matters "are completely informal, no decisions are made, nor are there any agreements to make any decisions."

Although the question as presented states as a fact that no decisions or agreement to make any decisions are made at these informal luncheon sessions, we cannot assume that this is the general rule with respect to meetings of a similar nature held by other public agencies under similar circumstances. We believe that the very nature of such meetings, indeed, perhaps their true purpose and design, is to provide a forum for the free exchange of information and ideas on items of area importance with a view towards obtaining a general consensus which in turn will provide the bases for fruitful "action" by the legislative bodies. Such a luncheon meeting with representatives of a local chamber of commerce, for example, is just as conducive to the forming of decisions (informal and perhaps even unexpressed) as the dinner meeting between the planning commission and the shopping center builder that was the subject of *Adler v. City Council*, 184 Cal.App.2d 763 (1960). As pointed out in the aforementioned opinion 42 Ops.Cal.Atty.Gen. 61 (1963), such meetings were brought within the ambit of the Ralph M. Brown Act by the 1961 session of the Legislature.

Because of the admitted importance to the people in the area of the matters discussed at such meetings by a majority of the members of the legislative body (when meeting at a regularly established time and place), we believe that the provisions of the Ralph M. Brown Act apply to such meetings and that the public is entitled to notice of and the right to attend such meetings.

This opinion should not be construed as holding that the mere social attendance by a majority of the members of a city council or other local agency governing body at a luncheon or dinner, such as are frequently given by the Rotary, Kiwanis, Lions, Optimists, Elks, Moose, or other fraternal organizations, would constitute a meeting of such city council subject to the Ralph M. Brown Act. However, where, as in this case, the city council regularly schedules attendance as a group

at a luncheon wherein the specific purpose is to discuss items of importance to the governmental entity such as location of school facilities, airport facilities, water supply, sewage disposal, and beach erosion, such gatherings constitute meetings within the meaning of the Ralph M. Brown Act.

APPENDIX D

OFFICE OF THE ATTORNEY GENERAL

State of California

EDMUND G. BROWN

Attorney General

OPINION
of
EDMUND G. BROWN
Attorney General
RICHARD L. MAYERS
Deputy Attorney General

No. 58/168

The Honorable J. WILLIAM BEARD, *Senator, 39th District*, and the Honorable ARTHUR L. LOCKIE, *District Attorney of Imperial County* have requested our opinion as to the application of the secret meeting law (Gov. Code secs. 54950-54958), to committees of local agencies.

The conclusions may be summarized as follows:

1. The secret meeting law does not apply to special committees or subcommittees of local agencies where such committees consist of less than a quorum of the members of the legislative body that has created it.
2. The press may require 24 hours advance notification of any special meeting of a whole public agency. Such notice is not required as to any regular or adjourned regular meeting.
3. The minutes of regular or special meetings of a public agency are public records.

ANALYSIS

The first question presented is:

"1. Are meetings of the committees, commissions and boards or city councils and the county board of supervisors open to the public?"

Government Code section 54951 (all section references hereinafter are to the Government Code unless otherwise stated) provides as follows:

"As used in this chapter, 'local agency' means a county, city, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency."

Section 54950 provides as follows:

"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

Section 54952 provides as follows:

"As used in this chapter, 'legislative body' means the governing board, commission, directors or body of a local agency, or any board or commission thereof."

Under the above cited sections it is clear that meetings of local public agencies, such as county boards of trade (sec. 26104) or area, county, or city planning commissions (secs. 65090 et seq. 65300 et seq.) are subject to the provisions of the statute.

We are asked if meetings of committees of a local agency are covered by the statute. Local agencies may and do perform much of their work through committees. Public agencies usually have a number of standing committees and frequently appoint special committees to investigate and report concerning specific matters. Such committees are mere instrumentalities of the governing agency and their determinations are *not* the determinations of the agency. The agency may not delegate its powers to a committee. Only when and if the agency ratifies and approves the act of one of its committees does it become the act of the agency (See McQuillin, *Municipal Corporations*, sec. 13.51). A good general discussion of this subject is contained in 37 *American Jurisprudence* section 53, pages 667-668, wherein the text writer states:

"A municipal council cannot delegate to one of its own committees or to any other municipal officer the power to decide upon legislative matters properly resting in the judgment and discretion of the council, or, as held by some authorities, to one member of such governing body. . . . The members of the council are chosen by the people to represent the municipality and they are charged with a public trust and the faithful performance of their duties; and the public is entitled to the judgment and discretion, in all matters where such elements enter into transactions in behalf of the municipality, of each member of the body upon which authority to act is conferred. But unless the council is restricted by its charter or some statute from so doing, it has been held that it may refer matters coming before it to a committee in order that they may examine the subject matter and collect the facts pertaining thereto and make report thereon for the fuller information of the entire council."

Section 54953 provides that:

"All meetings of the *legislative body* of a local agency shall be open and public, and all persons shall be permitted to attend any meeting

of the legislative body of a local agency, except as otherwise provided in this chapter." (Emphasis added.) Thus, only meetings of the legislative body of a local agency are required to be open and public.

Section 54957 provides for executive sessions to consider the appointment, employment or dismissal of a public officer or employee or to hear complaints or charges brought against such officer, or employee by another public officer, person or employee unless such officer or employee requests a hearing. Unless otherwise specifically noted the subsequent discussion will not apply to the exceptions contained in section 54957.

In interpreting the extent to which the secret meeting law applies to committees and sub-committees of local public agencies we are, of course, guided by section 54950. That section is designed to insure the people's right to attend meetings of local legislative bodies, not only at the time those bodies take "action" but also, and perhaps more importantly, at the time those bodies conduct their deliberations. The section is designed to insure full public deliberation before action. The value of a full deliberation by the members of the legislative body was well set forth in *School-Dist. No. 42 v. Bennett*, (Ark. 1890) 13 S. W. 132 at page 133:

"... Duties are cast upon boards composed of a number of persons, in order that they may be discharged with efficiency and wisdom arising from a multitude of counsel. This purpose cannot be realized without conference between the members of the board, with reference to the matters intrusted to them, before they take action thereon. After conference the board will often escape unwise measures to which each of the members, acting separately, would have committed themselves, either from haste, immature consideration, the demands of private engagement, or an unwillingness to shorten the allotted span of life under the entreaties of an importunate agent. The public select each member of the board of directors, and is entitled to his services. This it cannot enjoy if two members can bind it without receiving, or even suffering, the counsel of the other. Two could, if they differed with the third, overrule his judgment, and act without regarding it; but he might, by his knowledge and reason, change the bent of their minds, and the opportunity must be given him."

Ordinarily, a committee is composed of less than a quorum of the legislative body that has created it. In those cases the findings of such a committee have not been deliberated upon by a quorum of the legislative body and the necessity, as well as opportunity, for full public deliberation by the legislative body still remains. Thus the public's rights under the secret meeting law are protected. Therefore, meetings of committees of local agencies where such committees consist of less than a quorum of the members of the legislative body are not covered by the act.

Where, however, the committee is composed of a quorum or more of the legislative body of a local public agency there is a serious question as to the application of the secret meeting law. Normally a quorum is a majority of the entire body. (Black's Law Dictionary, 4th Ed; See for example secs. 25005, 36810, Ed. Code sec. 312, *Nesbitt v. Bolz*, 13 Cal. 2d 677; *Porter v. Lassen County etc. Co.* 127 Cal. 261; 23 Ops. Cal.

Atty. Gen. 99; 28 Ops. Cal. Atty. Gen. 259; and 28 Ops. Cal. Atty. Gen. 365.) Code of Civil Procedure, section 15 provides that: "Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority." Similar provisions are found in Civil Code section 12 and Education Code section 4.

It is clear that the open meeting requirements may not be avoided by the use of the device commonly known as a committee of the whole (see 27 Ops. Cal. Atty. Gen. 123). The reason why the courts have not countenanced the use of the committee of the whole device is because the committee of the whole is composed of a quorum or more of the members of the legislative body of the agency, and the difference between sitting in committee of the whole and in regular session is one rather in name rather than nature (*State v. Common Council of City of Milwaukee*, (Wis.) 144 N. W. 1107, 1108). In fact such meetings may frequently be designed to evade the provisions of the secret meeting law. As we noted in our earlier opinion, the Assembly Interim Committee on Judiciary, whose studies led to the passage of this law, found that:

"Legislative bodies are evading the requirements of a public meeting by the following and commonly used subterfuges

"There is another 'loophole' in the existing law through which governmental bodies have been secretly meeting and transacting business. They are meetings generally held before the official public meeting, under the guise of a variety of names, such as executive session, meetings of the committee of the whole, work sessions, and others.

"At gatherings such as these, deliberations and determinations regarding matters affecting the public [are] made. The subsequent public meetings [are a] mockery, a mere formality and a repetition of matters already decided at the prepublic meetings.'" (Progress Report to the Legislature, 1953 Reg. Sess., by the Assembly Interim Committee on Judiciary, pp. 21-23).

Not only is there a possibility that a "committee" meeting composed of more than a quorum of the creating agency is only a subterfuge designed to evade the requirements of the law, but even where the local agency has created such a committee in utmost good faith the extent to which full public deliberation before action will be afforded by the agency will probably be greatly lessened in view of the fact that a quorum of the agency will already have deliberated upon the matter. As was pointed out by the Utah Supreme Court in *Acord v. Booth*, (Utah, 1908) 93 Pac. 734, 735-736 which was cited at length in 27 Ops. Cal. Atty. Gen. 123, "... It is quite true that, since a majority of the committee is also generally a majority of the whole body, any matter agreed to in committee of the whole will likely be agreed to when it comes before the main body. ..." Hence, if a committee composed of a majority or more of the members of the legislative body of a local public agency gather together and deliberate for the purpose of determining an action to be taken at a subsequent meeting of the agency such a meeting would be held to be violative of the secret meeting law.

No attempt is here made to pass upon or list all those public bodies which must comply with the secret meeting law. The word "committee" in the title of a public body does not automatically exclude it from the application of the law. In determining whether the law applies to a local agency it is necessary in each case to consider the manner in which the public body is created, whether by statute, charter, or ordinance and also the particular duties imposed upon and the functions performed by the particular body. The legal counsel for each agency in question should be consulted to determine the application of the secret meeting law to the particular agency.

The second question presented is:

"2. If the above are open meetings, may the press require 24-hour advance notification of the meetings under provisions of section 54946 of the Anti-Secrecy Bill?"

Section 54955 provides:

"The legislative body of a local agency may adjourn any regular, adjourned, regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, by-law, or other rule."

Section 54956 provides as follows:

"A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering personally or by mail written notice to each member of the legislative body and to each local newspaper of general circulation, radio or television station requesting notice in writing. Such notice must be delivered personally or by mail at least 24 hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings by the legislative body. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes."

Under the above sections the legislative body of a local agency, as defined and discussed above, is required by section 54956 to provide personal or written notice to each of its members, "... and to each local newspaper of general circulation, radio or television station requesting notice in writing. . . ." upon the calling of a special meeting. Such notice is not required as to any regular or adjourned regular meeting.

The third question presented is as follows:

"3. Are the minutes reflecting action taken at any legal meeting from which the public may be legally excluded open to inspection?"

Generally speaking the minutes of regular or special meetings of the legislative body of a local public agency are public records open to inspection of any citizen of the state (see Code Civ. Proc. secs. 1888, 1892, 1893 and Gov. Code sec. 1227). However, there are circumstances in which by statute and judicial decision it is recognized that disclosure of certain matters may be harmful to the public interest. (See 11 Ops. Cal. Atty. Gen. 41). Thus, Code of Civil Procedure section 1881 provides in part:

"There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

"5. A public officer can not be examined as to communications made to him in official confidence, when the public interest would suffer by the disclosure."

In the course of their fact-finding activities committees of a public agency may obtain information which would come within the privilege of subdivision 5 of section 1881. If the public interest would suffer by the disclosure the agency should invoke the privilege provided for by section 1881, subdivision 5 (*City and County of San Francisco v. Superior Court*, 38 Cal.2d 156, 161-164; 18 Ops. Cal. Atty. Gen. 231, 234).

Discussion of the particular documents falling into the category of public records is beyond the scope of this opinion. See *Coldwell v. Board of Public Works*, 187 Cal. 510, 519; 18 Ops. Cal. Atty. Gen. 231; 27 Ops. Cal. Atty. Gen. 194.

APPENDIX E

OFFICE OF THE ATTORNEY GENERAL
State of California
STANLEY MOSK
Attorney General

OPINION

of

STANLEY MOSK
Attorney General

T. A. WESTPHAL, JR.
Chief Assistant Attorney General

No. 59/180

The Honorable ERNEST R. GEDDES, *Assemblyman, Forty-ninth Assembly District*, has requested the opinion of this office on the following question:

Are all discussions between a city council and its city attorney required by the Brown Act to be open to the public?

The conclusions may be summarized as follows:

Meetings of a city council with its city attorney for the purpose of general discussion and consideration of problems confronting such body, including legal problems, fall within the purview of and are subject to the Brown Act. However, the public interest with which the Brown Act is concerned does not require conferences between a city council and its city attorney held solely to discuss litigation pending, proposed or anticipated, to be open to the public where a public discussion of such matters would redound to the benefit of the city's adversary and to the detriment of the public.

ANALYSIS

The question presented is of great importance and of widespread concern. Difficulties are encountered principally because the subject word of the Brown Act, the word "meeting", is not defined in the act. Therefore, in order to ascertain the legislative intent it is necessary to carefully examine the entire act, its history, and apparent purpose, in order to arrive at a conclusion.

The Brown Act is contained in Government Code sections 54950-54958, inclusive.

Section 54950 declares the policy of the act in the following language:

"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

Section 54953 reads: "All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter."

The only exception to the last quoted section is found in section 54957. That section, as amended in 1959 (Calif. Stats. 1959, ch. 647, sec. 2, p. 2626) reads:

"Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding executive sessions during a regular or special meeting to consider the appointment, employment or dismissal of a public officer or employee or to hear complaints or charges brought against such officer or employee by another public officer, person or employee unless such officer or employee requests a public hearing. The legislative body also may exclude from any such public or private meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

Section 54958 states that: "The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law."

From the above quoted sections, and particularly section 54950, it follows that the paramount purpose or the public policy decreed by the act is to protect the public interest where public agencies are engaged in "the conduct of the people's business." The idea is expressed that the people should know the processes by which their representatives arrive at decisions resulting in action and that this requires not only that the actions be taken in meetings open to the public but also that the deliberations of their representatives should be conducted in meetings open to the public.

City councils are engaged regularly in deliberating or acting upon ordinances, regulations, etc., where the legal implications of the subject matter are as important for a proper decision as factual or any other information in order to form an intelligent and proper decision. Thus, the city attorney may be called upon to explain the legality or legal implications of a proposal before the council. In such instances the public has a right to know all of the factors considered by the council, including the legal advice, if any, received. The public is entitled to know all of this in order to assure that the representatives are acting in what it considers to be the public good. It is the sense of the Brown Act that such types of meetings be open to the public.

However, there is no indication in the language used in the Brown Act that its purpose is to grant in any fashion an advantage to an adversary of the people. It is one thing to require public meetings so that the public be informed about the deliberations as well as the actions of its representatives and quite another to deliberately give an advantage to an adversary of the people by extending the word "meeting" used in the act to include every conference between a city council and its city attorney which, if open, would not be to the people's interest but to the interest of the people's adversary. It would seem that before interpreting the sections to include such a conference the Legislature should clearly say so in unequivocal language.

Clearly, certain types of consultations or conferences, if open to all, would adversely affect the public interest. A good example is where the city is involved in litigation such as in an action involving the condemnation of property. It is common knowledge that expert appraisers seldom agree on the value of property. This is because to a large extent the opinions of humans are involved and man is influenced by many and different factors. It is also common knowledge that in such lawsuits settlements are made between cities and landowners as a result of simple bargaining. When a city attorney finds it necessary to discuss with the city council the maximum amount the council is willing to pay for property in litigation, must all such discussions and determinations be made in a meeting open to the public which would certainly be attended by the condemnee? The city has no corresponding right to sit in on a similar discussion between a landowner and his counsel, and indeed is prohibited from doing so by the attorney-client privilege. Another example is a discussion concerning possible settlement of litigation against the city for tort claims, which might entail discussion of trial

strategy, the strength and weakness of the case and witnesses to be relied upon.

It seems obvious that the public would suffer from granting such an advantage to the city's adversary. In fact, it would clearly appear to be contrary to the public interest for such conferences to be open to the public and therefore it is concluded that the Brown Act does not require such discussions over pending or prospective litigation between a city council and its city attorney to be open to the public.

Research reveals little by way of decisions of the court shedding light on the proper conclusion to the question presented. The appellate courts have not considered the question. Two superior judges have considered certain broad aspects of the problem. In *Minter v. Santa Monica* (Los Angeles Superior Court No. 663318), the presiding judge in a memorandum opinion dated September 6, 1956, expressed the view that all meetings of a city council or of the boards of a city at which public business is transacted, considered or deliberated are public meetings which all members of the public are entitled to attend and to be heard. However, in *Gray v. City of Rialto* (Superior Court, San Bernardino County No. 87481), the presiding judge in a memorandum dated March 14, 1957, concluded that section 54950 was never intended to make illegal any and all discussions and deliberations by members of a city council, except those carried on in a duly called and regularly held public meeting.

A study of the legislative history of the act is not helpful. As noted, the term "meeting" is not defined in the act. One version of the bill when the act was before the Legislature in 1953 included a definition of the term "meeting." However, the definition was subsequently stricken and did not become a part of the act as finally adopted (Pick-erell and Feder, *Open Public Meetings of Legislative Bodies—California's Brown Act*, 1957 Legislative Problems, No. 7, Bureau of Public Administration, University of California, Berkeley 49).

It is significant, however, that the rejected definition of "meeting" was extremely inclusive in that it included meetings "at which matters [before] it or any pending meeting of such agency are discussed. . . ." (3 S.J. 3217, 3559 [1953]; see also A.B. 339, 1953 Reg. Sess.). This rejection suggests a purpose to give a more moderate interpretation to the word "meeting."

In the 1957 Regular Session of the Legislature, A.B. 3518 was introduced to provide for executive sessions to consider ". . . the settlement of any claim, the appraisal or acquisition of property, preliminary reports from chief executive or administrative officers. . . ." However, this proposal was never acted upon even by the committee to which it had been referred (4 A.J. 6984 [1957]) so that the significance of the proposal is not apparent.

In the 1959 Regular Session the only proposal remotely affecting the problem was contained in Assembly Bill 2245. This bill contained a provision to amend the Education Code to permit a school board to hold executive sessions to consider the selection and purchase of school sites, provided that the final action must be taken in an open public meeting. This bill finally died in committee and therefore throws little light on the problem. The Legislature did, however, have the statute under consideration in other respects, but did not see fit to

resolve the problem or attempt to define "meeting" but contented itself with only a few minor amendments to sections 54955 and 54957 (Calif. Stats. 1959, ch. 647, p. 2626).

This office has consistently sought to uphold the purpose and spirit of the Brown Act. Thus, in 27 Ops. Cal. Atty. Gen. 123, it was held that so-called "council conferences" proposed to be held prior to council meetings could not be closed to all except those who sought permission to attend, gave their names, address, occupation, age and representative capacity and interest in the agenda (see also 32 Ops. Cal. Atty. Gen. 240; 33 Ops. Cal. Atty. Gen. 32).

In summary, it is our view that in the normal relation between a city council and its city attorney where the city council seeks the legal advice of the city attorney as to the legal effect of matters pending before the city council, such meetings must be open to the public. However, in those unusual limited situations in the nature of a consultation over litigation between the city council and its city attorney, as exemplified above, where obviously the public interest would suffer should an open meeting be held, the Brown Act does not require the conference to be open to the public. It must be emphasized, however, that the exception drawn here is a narrow one and that any subterfuge of evasion of the purpose of the act should not be tolerated (Gov. Code sec. 3060; *People v. Tice*, 144 Cal.App.2d 750 [willful misconduct of office]).

APPENDIX F

STATE OF CALIFORNIA OFFICE LEGISLATIVE COUNSEL

Ralph N. Kleps, Legislative Counsel

Sacramento, December 15, 1959

HON. RALPH M. BROWN
P.O. Box 1292
Modesto, California

BROWN ACT—No. 1126

Dear Mr. Brown:

QUESTION

You have asked whether there would be a violation of the Brown Act if a city council meets with the city attorney to discuss city business not involving personnel matters, and the public is excluded from the meeting.

OPINION

In our opinion, if a *quorum of the council is present* and the public is excluded the meeting will be in violation of the Brown Act.

ANALYSIS

Preliminarily, we should note that in speaking of meetings of the city council we are referring to meetings in which a quorum of the council is present. A discussion between the city attorney and less

than a quorum of councilmen is probably not a "meeting" within the meaning of the secret meeting law (see 32 Ops. Cal. Atty. Gen. 240). Our opinion, therefore, is limited to consideration of occasions at which a majority of the councilmen meet with the city attorney, and on those occasions we believe the meeting must be open to the public unless it is to consider the appointment or dismissal of, or possible punitive action against, a public officer or employee, which is the only exception allowed.

It might be contended that the attorney-client relationship exempts a meeting of the councilmen with the city attorney from the requirement that council meetings be open to the public. While it is the duty of an attorney "to maintain inviolate the confidence, and at every peril to himself to preserve the secrets, of his client" (B. & P.C. Sec. 6068) the fallacy in the reasoning that the attorney-client relationship justifies a secret city council meeting between the councilmen and the city attorney lies in the assumption that the city councilmen and the city attorney, who are public servants, share an attorney-client relationship exactly like that of a private citizen and his attorney.

A private citizen is free to discuss confidential matters at any time with his attorney, and when he does the attorney has a duty under the law to keep secret the communications between them. In contrast to the citizen's right of action, however, the Brown Act clearly states the intent of the law that the action and deliberations of legislative bodies of local agencies must be conducted openly, and that the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know (Gov.C., Sec. 54950). To this end it is provided that *all* meetings of such bodies shall be open to the public (Gov.C., Sec. 54953) with a single exception being made in respect to personnel matters (Gov.C., Sec. 54957). Neither in the Brown Act nor the sections dealing with the duties of a city attorney (Gov.C., Secs. 41801-41803) is there any exception authorized for meetings of the city council and the city attorney to discuss legal matters relating to the city.

The only other statute bearing on this subject is Section 1881 of the Code of Civil Procedure. Subdivision 2 of that section provides that an attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment, and subdivision 5 provides that a public officer cannot be examined as to communications made to him in official confidence, when the public interest would suffer by the disclosure. These provisions allowing privileged communications, of course, apply only to the testimony of witnesses during trials or other legal proceedings, and in no way authorize a city attorney and the members of a city council to confer in secret on a city problem. In *Holm v. Superior Court* (1954), 42 Cal. 2d 500, and against in *Jessup v. Superior Court* (1957), 151 Cal. App. 2d 102, reports and photographs prepared by city agents relating to personal injuries or deaths occurring in connection with a city-operated facility were held to be confidential communications to the city attorney and certain other city officers, and were not required to be disclosed to persons preparing for litigation against the city in respect to the injuries or deaths. However, we do not believe the limited decisions of these cases can be said to

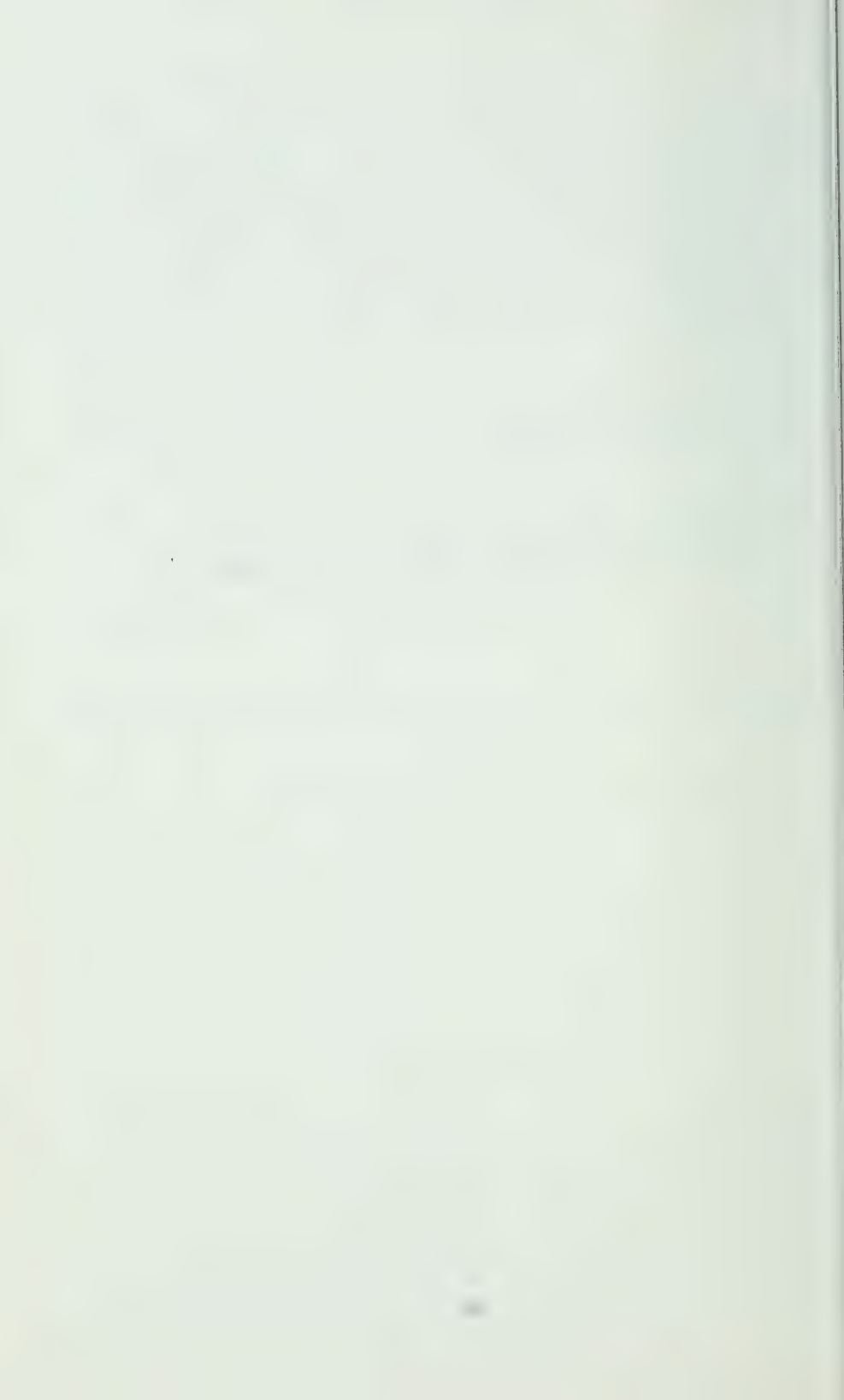
impliedly authorize secret meetings between the legislative body of a city and the city attorney. Any action of a city council is a potential source of litigation, since someone adversely affected or even merely disgruntled may contest it in the courts. To find in Section 1881 of the Code of Civil Procedure an implied authorization to exclude the public from a council meeting whenever the city attorney meets with it, we believe, is untenable and would not be accepted by a court in view of the clear language of the Brown Act with its express limited exception. We conclude, therefore, that since no exception is made for meetings of a city council with the city attorney, such meetings must be open to the public.

Very truly yours,

RALPH N. KLEPS
Legislative Counsel

By
(Mrs.) ROSE WOODS
Deputy Legislative Counsel

II. OPEN MEETINGS AND STATE AGENCIES



OPEN MEETINGS AND STATE AGENCIES

The Ralph M. Brown Act applies only to local legislative bodies. At the time Governor Earl Warren signed Assembly Bill No. 339, he indicated that he felt the bill should also apply to state agencies:

There isn't any reason at all why we should have a law for local government and then refuse to have the same thing for state government. I personally believe it would be a good thing to have a law for all branches of government, including the Legislature. Some of the worst things that have happened in government have stemmed from secrecy. It should be avoided.¹

During the 1955 Regular Session of the Legislature, Assemblyman Ralph Brown was the author of Assembly Bill No. 2034 which would have made the same open meeting requirements embodied in the Brown Act applicable to "every board, commission, agency, or authority of the state authorized to adopt any resolution, rule, regulation, or directive governing its conduct or for the enforcement of the powers and duties conferred upon it by law." Numerous amendments were proposed by various state agencies seeking exemption from the open meeting requirement and Assemblyman Brown announced he would drop the bill.

Following the 1955 session a subcommittee of the Assembly Interim Committee on Government Efficiency and Economy conducted a survey of the attitudes of officials representing state agencies regarding the extension of the open meeting requirement to their particular agency. Of the agencies responding to the questionnaire distributed by the committee, most indicated agreement with the principle of open meetings; however, the majority cited circumstances which made it necessary for their particular agency to hold meetings closed to the public.²

During the 1957 Regular Session Assemblyman Brown did not attempt to gain passage of an omnibus bill applicable to all state agencies. Instead, he introduced a series of bills amending the statutes governing various boards and commissions by requiring that they hold "all meetings open to the public." This general approach has been followed at each subsequent session of the Legislature by other legislators. Assemblyman Milton Marks, for example, has authored legislation requiring many additional state agencies to hold their meetings open to the public.

As a result of this method of applying the principle of open meetings to state agencies, legislative counsel indicates that a substantial majority of boards and commissions are now required by law to conduct their meetings open to the public. However, legislative counsel further indicates that there are some 61 state agencies which are not required to conduct public meetings. (See Appendix A.)

¹ Cited in Albert G. Pickerell and Edward L. Feder, *Open Public Meetings of Legislative Bodies—California's Brown Act* (Bureau of Public Administration, University of California: 1957, Legislative Problems No. 7), p. 23.

² For a complete listing of responses see Assembly Interim Committee Reports 1955-1957, Vol. 8, No. 5, *Report of the Assembly Interim Committee on Governmental Efficiency and Economy*.

THE CURRENT STUDY

The specific bill before the committee for study, Assembly Bill No. 2334 (introduced by Assemblyman Marks during the 1963 Regular Session), would require those agencies which conduct their meetings open to the public as a matter of law to hold committee meetings open to the public. In conducting this study the committee has not confined itself to the question of open meetings of committees, rather the present provisions of the laws governing the meetings of all state agencies have been reviewed to determine whether the existing law is adequate.

Initially, the committee surveyed the practices of state agencies through the distribution of a questionnaire. Those agencies not presently covered by open meeting legislation were asked the following questions:

- (a) Is it the practice of your agency to hold open meetings in the absence of specific statutory requirements?
- (b) Are there any compelling reasons for *not* requiring by statute that your agency hold open meetings?

To those agencies presently required by statute to conduct public meetings the following questions were asked:

- (a) Does your agency schedule open meetings for committees, subcommittees, and other groups smaller than a quorum?
- (b) Are there any compelling reasons for *not* requiring by statute that your agency follow such practices?
- (c) Considering your agency alone, do you perceive any *differences* between the meeting of the whole and meetings of committees, subcommittees, and other groups smaller than a quorum, which would serve as compelling reasons for limiting or qualifying the extension of the open meeting principle to the latter?

More than 200 state agencies responded to the questionnaire. Generally the responses revealed a marked change in attitude from the period when state agencies voiced such strong opposition to Assemblyman Brown's bill during the 1955 session. (See Appendix B.)

There were a few cases where agencies were confused as to whether or not they were required to hold open meetings as a matter of law. For example, the Board of Architectural Examiners indicates that it is their practice to "hold open meetings in the absence of statutory requirements." Section 5524.5 of the Business and Professions Code requires the board to conduct open meetings.

LICENSING AGENCIES

One of the areas where the need to retain confidentiality is presently recognized is in the statutes governing the meetings of the various licensing agencies. As a general rule, these boards which administer the licensing of persons engaging in certain businesses are permitted by law to hold executive sessions to deliberate on the decision

to be reached upon the evidence introduced in a proceeding conducted in accordance with the Administrative Procedure Act or to prepare, approve, grade or administer examinations.

One exception to this limited view was expressed in the response received from the Contractors' State License Board that meetings of committees should be closed in almost all cases because they "would be of little interest to the general public and would tend to invite participation in matters that could well result in unnecessary misunderstanding and confusion."

DELIBERATIVE CONFERENCES

Certain agencies are permitted by law to hold closed sessions to deliberate on the decision to be reached based upon the evidence introduced in formal proceedings, such as those proceedings conducted pursuant to the Administrative Procedure Act. One such agency is the Public Utilities Commission. Public Utilities Code Section 306 provides in part as follows:

" . . . Except for the commission's deliberative conferences, the sessions and meetings of the commission shall be open to the public and all persons shall be permitted to attend. . . ."

In the response by the commission to the committee questionnaire it was stated that at these conferences the commission "considers and issues decisions and orders." The commission response further stated that "such conferences are comparable to the conferences of the Justices of the Supreme Court in considering matters pending before the Court." The discretion given to the Public Utilities Commission to conduct closed sessions is rather broad because "deliberative conference" is not defined in that statute and the general order issued by the commission specifying the business which may be conducted in a deliberative conference could be applied to most business before the commission.

The Alcoholic Beverage Control Appeals Board and the Industrial Accident Commission indicated that their deliberative conferences following a public hearing should continue to be closed to the public. The Fair Employment Practice Commission also suggested that they be permitted to continue to deliberate in closed session following a public hearing and also keep confidential conciliation conferences conducted under the Fair Employment Practice Act and the Fair Housing Act.

SECURITY PROBLEMS

The Adult Authority, the Board of Trustees of the California Institution for Women, and the Youth Authority Board explained that many of their meetings are held within correctional institutions and that the security of the inmates requires restrictions on public attendance.

BOARD OF REGENTS

The Board of Regents of the University of California is not required by law to conduct public meetings. A constitutional amendment is necessary to require the board to conduct open meetings. During the 1959 Regular Session Assemblyman Ralph Brown introduced a con-

stitutional amendment to accomplish this purpose. However, when the Regents adopted bylaws requiring open meetings, Speaker Brown, an ex officio member of the Board of Regents, dropped the proposed amendment.

The bylaws governing the meetings of the board are as follows:

All meetings of the board shall be open and public and all persons shall be permitted to attend any meetings of the board except during executive sessions. The board may meet in executive session to consider and act upon only:

- (a) Matters involving interests of national security.
- (b) Matters relating to the conferring of honorary degrees and other honors and commemorations.
- (c) Matters involving gifts, devises and bequests.
- (d) Matters pertaining to the purchase or sale of real property prior to final decision thereon by the board in open session.
- (e) Matters involving litigation when discussion in open session concerning such matters might adversely affect or be detrimental to the public interest.
- (f) Personnel matters relating to the appointment, employment, compensation, or dismissal of officers and employees of the university.
- (g) Matters relating to complaints or charges brought against officers or employees of the university unless such officer or employee requests a public hearing. The board may also exclude from any such public or private meeting during the examination of a witness any or all other witnesses in the matter being investigated by the board.

With respect to the relationship of the bylaws of the Board of Regents and the provisions of the Brown Act, associate counsel for the Regents Mark Owens, Jr., commented:

MR. OWENS: I think you will note . . . there are only three sections which differ, to any extent, from the actual language of the Brown Act. These are sections (b), (c) and (d), and (e) of course is covered as a matter of general law.

Chairman Marks questioned Miss Marjorie Woolman, secretary of the Board of Regents, concerning a reported meeting on the Davis campus concerning the free speech activities of students on the Berkeley campus.

CHAIRMAN MARKS: It is my understanding that as far as the question of these students goes, that you did have a meeting—a closed meeting—and that you did consider the question of the students . . . is that correct? I have a newspaper article dated October 17 from Davis, stating that a meeting was held behind closed doors on the question of students and Dr. Kerr stated in answer to the question why the meeting was held behind closed doors, did state "because the subject involved personnel and students and therefore it was properly held in confidence."

MISS WOOLMAN: There was not a called meeting. There was a discussion, however, of some personnel problems, yes, but it was no called meeting.

CHAIRMAN MARKS: How many Regents were present?

MISS WOOLMAN: I wouldn't know.

CHAIRMAN MARKS: A majority?

MISS WOOLMAN: Yes.

CHAIRMAN MARKS: Do you think there is a difference between a called meeting and a meeting where it is not a called meeting?

MISS WOOLMAN: A distinction to this effect, that no action can be taken and one Regent can reopen anything that might have been said.

The committee feels that the public policy embodied in the Brown Act should apply to the conduct of the Board of Regents as a matter of law. While the Regents are required by their bylaws to conduct open meetings these provisions can be so liberally construed to cover almost any controversial issue which comes before the board. The bylaws do not require notice to the public and they may be revoked by the Regents at any time.

STATE COLLEGE TRUSTEES

Speaking on behalf of the Board of Trustees and the Chancellor of the California State Colleges, director of governmental affairs Les Cohen informed the committee that "In the short time the board has been in operation, it has achieved a fine record in conducting the public's business openly."

In response to the committee questionnaire, Mr. Cohen indicated:

In light of our fine record, it seems to me that the legislation proposed . . . is *totally unnecessary*, and, in fact, constitutes an unwarranted criticism on a board which has done so much to preserve the integrity of its public trust. We have not abused the authority given to us by the Legislature, nor do we intend to do so. We seriously question the advisability of requiring by statute that all committee meetings of the trustees be open and public. It is generally accepted that the public is entitled to information but not all information wherein the effect would be detrimental to the public interest. You gentlemen are well aware of the major areas involved, i.e., personnel, site selection, legal matters, and other matters which require frank discussions—for example, honorary degrees, etc. It is my understanding that no one objects to these matters being discussed in closed sessions.

Mr. Cohen informed the committee that if such legislation is deemed necessary, the trustees feel that the following exceptions to the open meeting requirement are necessary:

(a) Consideration of matters concerning site selection, where such committee or subcommittee is not authorized to take action on behalf of the state board or commission from which it was appointed, but only to recommend thereto, and must report any such recommendation at a public meeting.

(b) Consultation with an attorney employed by the agency of which the state board or commission was appointed is a part, where such consultation involves legal advice.

(c) Consideration of matters with respect to which such committee or subcommittee determines, by majority vote taken at a meeting open to the public, should, in the public interest, be considered in executive sessions; provided such committee or subcommittee is not authorized to take action with respect to any such matter on behalf of the state board or commission from which it was appointed.

OTHER AGENCIES

Certain other state agencies stated that there are compelling reasons for retaining confidentiality with respect to their meetings. The Franchise Tax Board, for example, points out that all their meetings are open to the public except in those cases where it might involve disclosure of a confidential tax return where public disclosure is forbidden by law.

The Colorado River Board of California informed the committee that "the extremely important and complicated legal aspects of Colorado River problems make it important that deliberations involving decisions in these areas be restricted information."

COMMITTEE RECOMMENDATIONS

The committee recommends the enactment of a comprehensive open meeting law applicable to all state agencies that is similar to the Ralph M. Brown Act for local legislative bodies.

This would eliminate much of the present confusion over whether or not specific boards and commissions are required by law to conduct their meetings open to the public. In addition, when new agencies are created they would automatically be covered by the law unless some specific justification exists for permitting executive sessions.

Presently, the open meeting statutes of the majority of state agencies which are covered by law simply state that "all meetings shall be open and public." As a result there are no uniform standards such as are specified in the Brown Act for holding open meetings. In some cases this limited language has hampered the operations of state agencies because it does not clearly indicate when closed meetings might be permissible, such as personnel sessions permitted by the Brown Act.

The committee concludes that a uniform open meeting law applicable to all state agencies that is similar to the Ralph M. Brown Act for local legislative bodies will be of significant benefit to the state agencies and the public.

APPENDIX A

STATE OF CALIFORNIA OFFICE OF LEGISLATIVE COUNSEL

Sacramento, California
October 19, 1964

Honorable Milton Marks
Russ Building
San Francisco 4, California

Public Meetings—No. 7288

Dear Mr. Marks:

Pursuant to your request we have prepared the enclosed list which designates which state agencies are, and which are not, required to hold open meetings.

You will notice that we broke this down into three categories: I. Those required to be open; II. Those required to be open with certain exceptions; and III. Those with no specific provision on whether they should have open or closed meetings. The statute reference in categories I and II are to the specific section on the meetings while the reference in III is to the section that creates the agency.

Very truly yours,

George H. Murphy
Chief Deputy Legislative Counsel

By
John R. Pierce
Deputy Legislative Counsel

JRP:AS
Kennedy

Sacramento, California
October 20, 1964

*1. State Boards and Commissions Whose Meetings are
Required to be Open to the Public—#7288*

Board	Statute
Aeronautics Board, State.....	P.U.C. 21220
Aeronautics Division.....	P.U.C. 21213
Aging, Citizens' Advisory Committee on.....	Gov.C. 11015
Agricultural Associations, District.....	Ag.C. 84.1
Agricultural problems, special committees on.....	Ag.C. 34.8
Agriculture, State Board of.....	Ag.C. 40.1
Alcoholic Beverage Control Appeals Board.....	B. & P.C. 23078
Alcoholic Rehabilitation, Advisory Committee on.....	Gov.C. 11015
Allocation Board, State.....	Gov.C. 15490
Apprenticeship Council, Division of Apprenticeship Standards.....	Lab.C. 3091
Arts Commission, California.....	1963:1742, Sec. 6
Atomic Energy Development and Radiation Protection, Advisory Council on.....	H. & S.C. 25763
Atomic Energy Development and Radiation Protection, Depart- mental Coordinating Committee on.....	H. & S.C. 25751
Bay Area Transportation Study Commission.....	Gov.C. 66505.5
Blind, Coordinating Council on State Programs for the.....	Gov.C. 11015
Building Standards Commission, State.....	H. & S.C. 18910
California-Nevada Interstate Compact Commission.....	Gov.C. 11015
California State Government Organization and Economy, Com- mission on.....	Gov.C. 8527
Cannery Inspection Board.....	Gov.C. 11015
Capitol Building and Planning Commission.....	Gov.C. 8165
Collection Agencies, California Advisory Board of, Licensing Bureau.....	B. & P.C. 6867
Communications Advisory Board, California State.....	Gov.C. 11015
Compensatory Education, Advisory Committee on.....	Ed.C. 6460.5
Consumer Counsel Advisory Committees.....	Gov.C. 12057
Control, State Board of.....	Gov.C. 13912
Controller, advisory committee to assist the.....	Gov.C. 11015
Correctional Industries Commission.....	Gov.C. 11015
Curriculum Commission, State.....	Ed.C. 7506.1
Dairy Council of California.....	Ag.C. 745.6
Disabled, advisory committee on medical and rehabilitation aspects of aid to the.....	Gov.C. 11015
Disaster Council, California State.....	Gov.C. 11015
Disaster, Citizens advisory committees to assist in specified fields of.....	Gov.C. 11015
Districts Securities Commission.....	Wat.C. 20023
Economic Development Agency, technical advisory committees for the Commissioner of the.....	Gov.C. 13493
Education, Coordinating Council for Higher.....	Ed.C. 22706
Education, Western Interstate Commission for Higher.....	Ed.C. 31007
Equalization, State Board of.....	Gov.C. 15625
Fairs Allocation and Classification Committee.....	Gov.C. 11015
Fire Advisory Board, State.....	H. & S.C. 13141.1
Firemen's Pension Fund Commissioners, Board of.....	Gov.C. 50847
Fish and Game Commission.....	F. & G.C. 106
Fish and Seafood Advisory Board, California.....	Ag.C. 5404.5
Forest Practice Committees, District.....	P.R.C. 4941.5
Forestry, State Board of.....	P.R.C. 505.1
Furniture and Bedding, California Advisory Board of.....	B. & P.C. 10035.9
Health and Welfare Advisory Council to Insurance Commissioner.....	Gov.C. 11015
Health Officers, California Conference of Local.....	H. & S.C. 1110.1
Highway Commission, California.....	Gov.C. 11015
Horse Racing Board, California.....	B. & P.C. 10431
Hospital Council, Advisory.....	H. & S.C. 431.3

Board	Statute
Housing Appeals Board, State	H. & S.C. 17939
Humboldt Bay, Board of Harbor Commissioners for	H. & N.C. 3804
Industrial Safety Board	Lab.C. 146
Interstate Cooperation, California Commission on	Gov.C. 8012
Investment, Board of	Gov.C. 15486
Law Library Trustees, County Boards of	B. & P.C. 6304.5
Law Revision Commission, California	Gov.C. 11015
Livestock Identification Advisory Board	Ag.C. 335.1
Livestock Sanitary Committee, State	Ag.C. 205.6
Manpower, Automation and Technology, California Commission on	Lab.C. 174
Marine Research Committee	F. & G.C. 731
Maritime Academy, Board of Governors of California	Ed.C. 26007
Mental Health Directors, California Conference of Local	Gov.C. 11015
Mental Health Service Advisory Boards, Community	W. & I.C. 9006.1
Mental Retardation, Study Commission on	W. & I.C. 7604
Milk Producer Control Boards, Statewide, Committee of	Gov.C. 11015
Mining Board, State	P.R.C. 507.2
Motor Vehicle Pollution Control Board	H. & S.C. 24385.5
Pacific Marine Fisheries Commission	F. & G.C. 14106
Park Commission, State	P.R.C. 506.1
Peace Officer Standards and Training, Commission on	Pen.C. 13507
Personnel Board, State	Gov.C. 18653
Pilot Child Care Centers, Advisory Committee on	Ed.C. 16645.26
Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun, Board of	H. & N.C. 1153.1
Pilot Commissioners for the Harbor of San Diego, Board of	H. N.C. 1355
Pilot Commissioners for Humboldt Bay, Board of	H. & N.C. 1261
Police Pension Fund Commissioners, Board of	Gov.C. 50847
Pooled Money Investment Board	Gov.C. 16480.1
Poultry Improvement Commission	Ag.C. 44.1
Public Library Development Board	Ed.C. 27115.4
Public Health, State Board of	H. & S.C. 103.1
Public Works Board	Gov.C. 11015
Purchases Standards Committee	Gov.C. 11015
Reapportionment Commission	Gov.C. 11015
Reciprocity Commission	Veh.C. 2604
Reclamation Board	Wat.C. 8562.5
Recreation Commission	P.R.C. 8609
Reforestation Methods and Procedures, Advisory Committee	P.R.C. 4364
San Francisco Harbor Bond Finance Board	Gov.C. 11015
San Francisco Port Authority	H. & N.C. 1710
San Francisco World Trade Center Authority	59:1508, Sec. 3.11
Scholarship Commission, State	Gov.C. 11015
Small Craft Harbors Commission	P.R.C. 5863
Social Welfare Board	W. & I.C. 102.1
Soil Conservation Advisory Board, State	P.R.C. 9071
Soil Conservation Commission, State	P.R.C. 9065.1
Spanish War Veterans Commission, United	Gov.C. 11015
State Employees' Retirement System, Board of Administration	Gov.C. 20136
State Fair and Exposition, Board of Directors of the California	Ag.C. 71.1
State Lands Commission	P.R.C. 6109
Teachers Professional Standards Commission	Ed.C. 13101.5
Teachers Retirement Board	Ed.C. 13866
Teachers Retirement Investment Board	Ed.C. 13914
Television Advisory Committee	Gov.C. 11015
Toll Bridge Authority, California	Gov.C. 11015
Treatment of Rights-of-Way, Advisory Committee on the	Gov.C. 14503
Unemployment and disability compensation, State advisory council on	Gov.C. 11015
Uniform State Laws, Commission on	Gov.C. 11015
Veterans Board, California	M. & V.C. 69.5

Board	Statute
Vocational Teachers, Board of Examiners for.....	Ed.C. 23957
Voting Machines and Vote Tabulating Devices, State Commission on.....	Gov.C. 11015
Water Commission, California.....	Wat.C. 164
Water Conservation District Boards.....	1931:1020, Sec. 18
Water Pollution Control Boards, Regional.....	Wat.C. 13007
Water Pollution Control Board, State.....	Gov.C. 11015
Water Resources Development Finance Committee, California.....	Wat.C. 12933.5
Water Rights Board, State.....	Wat.C. 181
Wildlife Conservation Board.....	F. & G.C. 1325
Workmen's Compensation Study Commission.....	Lab.C. 6220
World's Fair Exhibit Commission.....	1963:1678, Sec. 3

**State Boards Whose Meetings Are Required to Be Open to the
Public With Certain Exceptions—No. 1703**

(A) The following boards, which administer the licensing of persons engaging in certain businesses, may hold executive sessions to (1) deliberate on the decision to be reached upon the evidence introduced in a proceeding conducted in accordance with Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, of the Government Code, or (2) prepare, approve, grade or administer examinations. Variations from this are noted.

Board	Statute
Accountancy, State Board of.....	B. & P.C. 5017
(Only board members who are certified public accountants and the public member may hold executive sessions to prepare, approve, grade or administer examinations)	
Architectural Examiners, California State Board of.....	B. & P.C. 5524.5
Athletic Commission, State.....	B. & P.C. 18623.5
Barber Examiners, State Board of.....	B. & P.C. 6505.5
Cemetery Board.....	B. & P.C. 9629.5
Certified Shorthand Reporters Board.....	B. & P.C. 8003.5
Chiropractic Examiners, State Board of.....	B. & P.C. 1001.5
Civil and Professional Engineers, State Board of Registration for.....	B. & P.C. 6716.5
Contractors' State License Board.....	B. & P.C. 7008.5
Cosmetology, State Board of.....	B. & P.C. 7309.5
(The board is authorized to "review" rather than to "grade or administer" examinations)	
Dental Examiners of California, Board of.....	B. & P.C. 1610.5
Dry Cleaners, State Board of.....	B. & P.C. 9534.5
Funeral Directors and Embalmers, State Board of.....	B. & P.C. 7605.5
Guide Dogs for the Blind, State Board of.....	B. & P.C. 7206.5
Landscape Architects, California State Board of.....	B. & P.C. 5628.5
(Executive sessions may be held only to "discuss and prepare examination questions and to grade the examinees")	
Medical Examiners of the State of California, Board of.....	B. & P.C. 2121
Nursing Education and Nurse Registration, California Board of.....	B. & P.C. 2712.5
Optometry, State Board of.....	B. & P.C. 3017.5
Osteopathic Examiners of the State of California, Board of.....	B. & P.C. 2121
Pharmacy, California State Board of.....	B. & P.C. 4008.5

Board	Statute
Physical Therapy Examining Committee..... (Executive sessions are authorized only to "prepare, approve, grade or administer examinations")	B. & P.C. 2654.5
Podiatry Examining Committee..... (Executive sessions are authorized only to "prepare, approve, grade or administer examinations")	B. & P.C. 2130.5
Psychology Examining Committee.....	B. & P.C. 2917.5
Real Estate Commission.....	B. & P.C. 10058.5
Social Work Examiners of the State of California, Board of.....	B. & P.C. 9016
Structural Pest Control Board.....	B. & P.C. 8524.5
Veterinary Medicine, Board of Examiners in.....	B. & P.C. 4808.5
Vocational Nurse Examiners of the State of California, Board of.....	B. & P.C. 2851.5
Yacht and Ship Brokers Commission.....	B. & P.C. 8919.1

(B) The following boards have special provisions relating to their meetings, the pertinent parts of which we quote below.

Board	Statute
Education, State Board of	Ed.C. 111
111. All meetings of the board shall be open and public. Nothing contained in this section shall be construed to prevent the board from holding executive sessions to consider the employment or dismissal of an officer or employee of the board or of an agency over which the board has jurisdiction or to hear complaints or charges brought against such officer or employee by another officer, person, or employee unless such officer or employee requests a public hearing. The board may also exclude from any such public or private meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.	
Franchise Tax Board	Gov.C. 15703
15703. All meetings of the board shall be open and public, except during executive sessions of the board if public disclosure of the subject under discussion or consideration is prohibited by law.	
Industrial Accident Commission	Lab.C. 114
114. * * *	
All meetings of the commission and of the commission panels shall be open and public, and all persons shall be permitted to attend any and all such meetings in their entirety, save and except such meeting or portion of a meeting of the commission or a panel as may be held, following receipt of all evidence, briefs and arguments, to judicially determine in a specific case the benefits, if any, to be awarded for injury or death sustained by an employee, or to determine the liabilities to be assessed against, or penalties to be imposed upon a particular employer.	
* * *	
Industrial Welfare Commission	Lab.C. 71.1
71.1. All meetings of the commission shall be open and public, except that the commission may hold executive sessions to deliberate on the evidence before the commission prior to the promulgation of any order pursuant to the authority conferred upon it by Section 1182 of the Labor Code.	
Municipal Water District Board of Directors	Wat.C. 71275
71275. All legislative sessions of the board, whether regular or special, shall be open to the public.	

Board

Statute

Planning Advisory Committee.....Gov.C. 65020.7

65020.7. The committee shall meet at the call of the chairman and at such places as the committee may designate. With the exception of those meetings, or portions thereof, devoted to a discussion of personnel matters, all meetings of the committee shall be open and public and all persons shall be permitted to attend any meetings of the committee.

Public Utilities Commission.....P.U.C. 306

306. The office of the commission shall be in the City and County of San Francisco. The office shall always be open, legal holidays and nonjudicial days excepted. The commission shall hold its sessions at least once in each calendar month in the City and County of San Francisco. The commission may also meet at such other times and in such other places as may be expedient and necessary for the proper performance of its duties, and for that purpose may rent quarters or offices. Except for the commission's deliberative conferences, the sessions and meetings of the commission shall be open and public and all persons shall be permitted to attend.

* * *

School district governing boards.....Ed.C. 966 and 967

966. Except as provided in Section 54957 of the Government Code or in Section 967, all meetings of the governing board of any school district shall be open to the public, and all actions authorized or required by law of the governing board shall be taken at such meetings and shall be subject to the following requirements:

(a) Minutes must be taken at all such meetings, recording all actions taken by the governing board. Such minutes shall constitute public records and shall be available to the public. Until the governing board adopts such minutes as the official minutes, such minutes shall be labeled the unadopted minutes. The official minutes shall also constitute public records and shall be available to the public.

(b) A list of items that will constitute the agenda for all regular meetings shall be posted at a place where parents and teachers may view the same at least 48 hours prior to the time of said regular meeting, and, in the case of special meetings, at least 24 hours prior to said special meeting.

967. Notwithstanding the provisions of Section 966 of this code and Section 54950 of the Government Code, the governing body of a school district may hold executive sessions to consider the expulsion, suspension, or disciplinary action in connection with any pupil of the school district, if a public hearing upon such question would lead to the giving out of information concerning school pupils which would be in violation of Section 10751 of the Education Code.

Before calling such executive session of the governing board of the district to consider these matters, the governing board of the district shall, in writing, by registered or certified mail or by personal service, if the pupil is a minor, notify the pupil and his parent or guardian, or the pupil if the pupil is an adult, of the intent of the governing board of the district to call and hold such executive session. Unless the pupil, or his parent, or guardian shall, in writing, within 48 hours after receipt of such written notice of intention, request that the hearing of the governing board be held as a public meeting, then the hearing to consider such matters may be conducted by the governing board in executive session. If such written request is served upon the clerk or secretary of the governing board, the meeting shall be public. Whether the matter is considered at an executive session or at a public meeting, the final action of the governing board of the school district shall be taken at a public meeting and the result of such action shall be a public record of the school district.

State College Trustees.....Ed.C. 23606

23606. All meetings of the trustees shall be open and public. Nothing contained in this section shall be construed to prevent the trustees from holding executive sessions to consider the employment or dismissal of an officer or employee of the trustees, nor to hear complaints or charges brought against such officer or employee by another officer, person, or employee unless such officer or employee requests a public hearing. The trustees may also exclude from any such public or private meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the trustees.

Board	Statute
Unemployment Insurance Appeals Board	U.I.C. 408 and 2713
408. Except as provided in Section 2713, all meetings, hearings, and proceedings of the Appeals Board shall be public and all decisions and orders shall be in writing.	

2713. In proceedings under this part the claimant, upon a showing of good cause, may request a closed hearing except that the last employer and each base period employer of the claimant shall be entitled to participate in any such hearing.

III. Boards having no Specific Provisions on Open Meetings—#7288

Board	Created by
Adult Authority.....	Pen.C. 5076.1
Agricultural Prorate Advisory Commission.....	Ag.C. 2080
Californias, Commission of.....	Gov.C. 8700
Cancer Advisory Council.....	H. & S.C. 1701
Colorado River Board.....	Wat.C. 12510
Columbia Historic Park Advisory Committee.....	P.R.C. 5042
Compensation Insurance Fund, Board of Directors.....	Ins.C. 11770
Conservation Crusade, California Citizens'.....	63: Res. Ch. 164
Constitutional Revision Commission.....	63 1st. Ex.: Res. Ch. 7
Construction Program Committee, State.....	58 1st. Ex.: 89
Corrections, Board of.....	Pen.C. 6025
County Accounting Procedures, State Contollers Committee on.....	Gov.C. 30201
Credentials, Committee of.....	63:1748
Designers' Qualifications Advisory Committee.....	63:2133
Educational Planning and Coordination, State Council of.....	Ed.C. 501
Electronic Repair Dealer Registration Advisory Board.....	63:1492
Exposition and Fair Executive Committee.....	63:1743
Fair Employment Practice Commission.....	59:121
Fair Employment Practice Commission, Advisory Agencies and Councils.....	Lab.C. 1419
Fire Marshal, Advisory Committee to.....	61:1275
Goose Lake Compact Commission.....	61:1389
Governor's Council.....	Gov.C. 12040
Harbor Improvement Bond Committee.....	58 1st. Ex.: 103
Heritage Preservation Commission, California.....	63:1938
Handicapped Children, Coordinating Council on Programs for.....	W. & I.C. 7900
Historical Landmarks Advisory Committee.....	P.R.C. 5020
Hospital Advisory Board.....	H. & S.C. 1408
Indian Affairs, State Advisory Commission on.....	61:2139
Insanity, Special Commission on Problems of Criminal.....	Pen.C. 6028
Institution for Women, Board of Trustees of the California.....	Pen.C. 3301
Judicial Qualifications, Commission on.....	61:564
Livestock Health Committee, State.....	61:1008
Manpower Advisory Committee, State.....	63:998
Mount San Jacinto Winter Park Authority.....	1945:1040
Narcotic Addict Evaluation Authority.....	Pen.C. 6515
Narcotics Rehabilitation Advisory Council.....	63:1706
Narcotics, Study Commission on.....	Pen.C. 6028
Nursing Education and Nurse Registration, California Board of, Advisory Council to.....	61:1823
Park and Recreation Finance Committee, State.....	63:1690
Pilotage Rate Committee for San Francisco, San Pablo, and Suisun Bays.....	61:2227

Board	Created by
Riding and Hiking Trails Advisory Committee.....	59:2164
Safety of Operation of Motor Vehicles, Advisory Committee on.....	63:2148
San Francisco Bay Conservation Study Commission.....	64:98
School Building Finance Committee, State.....	Ed.C. 19510
School Employment, Commission to Assist in Problems of Discrimination in.....	Ed.C. 363
School Library Research Coordinator, Advisory Committee to.....	63:1650
Social Welfare Merit System Committee.....	63:1916
State Bar, Board of Governors.....	
State Bar, Examining Committee.....	B. & P.C. 6046
State Bar, Local Administrative Committees.....	63:1496
Table Grape Commission.....	61:1391
Table Grape Shipper Advisory Committee.....	61:1391
Tourism and Visitor Service Commission.....	Gov.C. 13891.2
University of California Regents.....	
Urban Policy, Coordinating Council on.....	63:1809
Veterans Finance Committee of 1943.....	M. & V.C. 991
World Trade Authorities Coordinating Council.....	Gov.C. 8427
Youth Authority Board.....	W. & I.C. 1711
Youth Committee to Prevent Delinquency.....	61:1676
Klamath River Compact Commission.....	Wat.C. 5901
Commission of the Californias (Commission expires at end of 1965 session).....	Gov.C. 8700

APPENDIX B

RESPONSES TO COMMITTEE QUESTIONNAIRE BY STATE AGENCIES REGARDING OPEN MEETINGS

For convenience in comparing responses of various state agencies, the boards and commissions have been organized under generally related headings. In general, this classification approximates the organizations of units of state government within the agencies.

AGRICULTURE

Department of Agriculture

... We shall answer the questions separately for the Department of Agriculture, for boards or commissions over which the department has some supervisory authority and which are covered by open meeting legislation, and for such boards not covered by open meeting legislation.

Department of Agriculture

It is the practice of the department to hold open meetings in the absence of specific statutory requirements.

There are no compelling reasons for *not* requiring by statute, that the department hold open meetings. However, we believe it necessary to define meetings to exclude staff conferences or conferences with individuals or groups who desire to discuss some matters with members of the department staff.

Boards Not Covered by Open Meeting Legislation

There are several boards and commissions over which the department has some supervisory jurisdiction which are not covered by open meeting legislation. These boards are as follows:

Marketing order boards established under the California Marketing Act.

Program committees established under the Agricultural Producers Marketing Act.

Milk producer advisory boards under the Milk Stabilization Law.

The California Beef Council.

Meetings of the above named boards are open except that they follow the provision of the Brown Act with respect to executive sessions when discussions are held on personnel matters.

There are no compelling reasons for *not* requiring by statute that these agencies hold open meetings, except at times it is compelling that the boards be allowed executive sessions on personnel matters.

Board or Committees Related to the Department Covered by Open Meeting Legislation

These boards are:

District Agricultural Association Directors.

The Dairy Council of California.

The Livestock Identification Advisory Board.

The Livestock Health Committee.*

These agencies hold open meetings for committees, subcommittees and other groups smaller than a quorum.

We have no compelling reasons for not requiring by statute that these agencies follow such practices.

We do not see any difference between the meeting of the whole and meetings of committees or subcommittees or other groups which would serve as compelling reasons for limiting the open meeting principles.

* The Livestock Health Committee is inactive and has not met for several years. The authority for the committee will expire the 91st day after the 1965 Regular Session of the Legislature.

Two boards, the California Fish and Seafood Advisory Board and the California Table Grape Commission, authorized under the Agricultural Code, Chapter 20 and Chapter 21 respectively of Division 6, were never activated. These programs called for majority approval in assent and referendum procedures by persons affected. The vote was not sufficient to put either programs into effect.

Charles Paul
Director

Board of Agriculture

... The California State Board of Agriculture is covered by open meeting legislation, Section 40.1 of the Agricultural Code.

Meetings for committees, subcommittees and other groups smaller than a quorum are open meetings.

We do not know of any compelling reasons for not requiring by statute that the board follow such practices.

We do not perceive any differences between the meetings of the whole and the meetings of committees and other groups which would serve as compelling reasons for limiting the extension of the open meeting principles.

D. A. Weinland
Executive Secretary

Poultry Improvement Commission

... In response to your questionnaire ... may we report that all meetings of the California Poultry Improvement Commission are open to the public. Announcements of the meetings so state, and if visitors are present they are invited to speak if they so desire.

Committee meetings of the commission likewise are open to the public, and on numerous instances, leaders in the poultry industry are given special invitation to be present and to participate in the discussions pertaining to the work of the commission.

Emery A. Johnson
Superintendent

BUSINESS AND COMMERCE

Department of Alcoholic Beverage Control

... Generally speaking, all "meetings" or "hearings" held by this department are conducted under the provisions of the Administrative Procedures Act and are held open to the public. Excepted are meetings held by the department's staff to deliberate on decisions to be reached upon evidence introduced in proceedings held under said act. Not open to the public are meetings held by the department's staff to consider and resolve such procedural and enforcement problems which may confront the department during its normal course of operation. It would not be in the public interest to hold such meetings open to the public.

James O. Reimel
Director

Alcoholic Beverage Control Appeals Board

... The Alcoholic Beverage Control Appeals Board is not covered by the open meetings provisions of Government Code Section 11015. However, it is the practice of this agency to hold open meetings. The only meeting that appears applicable is the regular meeting of the board at which oral argument is presented on pending cases. These meetings are open to the public.

Charles P. Just
Chief Counsel

Banking Department

... Although not a general practice of the State Banking Department, the superintendent on occasion when deemed to be in the public interest has ordered public hearings on new bank and branch applications.

The Banking Law gives the superintendent discretionary powers in approving or denying a bank or branch application and enumerates matters to be investigated and conditions that must be met before approval is granted.

Due to the confidential nature of banking department records and information, as provided by statute, the scope of public hearings now conducted by the State Banking Department are limited by the superintendent to protect this confidentiality.

The decisions of the superintendent are reviewable by the courts for arbitrariness or abuse of discretion, and to require public hearings by statute would place considerable administrative and financial burdens on the Banking Department.

John A. O'Kane
Superintendent of Banks
By James Ahlf
Chief Deputy

Districts Securities Commission

... This agency is presently covered by open meeting legislation, and it does not schedule meetings for committees, subcommittees, or other groups smaller than a quorum.

T. P. Stivers
Executive Secretary

Horse Racing Board

... We are covered by open meeting legislation (B. & P. Code, 19431).

There are only three members on the board and they do not delegate to or operate through any subcommittee.

Charles L. Harman
Secretary

Department of Insurance

... This agency is not presently covered by open meeting legislation because it is headed by a single individual rather than a board or commission.

In general, this agency holds open meetings (although not required by statute) in all situations where this is practical and feasible.

There are many situations in which it appears to me open meetings would not be practical, or feasible, or in the public interest. Most of my time is devoted to making decisions of one kind or another, frequently with the aid of advice from staff deputies. If this agency were placed under a full open meeting rule, I could not meet with any member of my staff on any problem which might result in my making a decision without giving notice to the press and others. I sincerely believe a single-headed agency could not operate practically under such a system.

It would seem to me to be most difficult, if not impossible, to define in advance the situations in which open meetings would be practical and in the public interest.

Stafford R. Grady
Insurance Commissioner

Board of Investment

The Board of Investment is made up of the heads of the Department of Insurance, Department of Banking, Division of Savings and Loan, Division of Corporations and Division of Real Estate.

To date no funds have been budgeted for the operation of the board, and it meets to confer on mutual problems in the investment field. The meetings are open (often attended by representatives of the press and of the industry groups licensed by the various divisions and departments making up the Board of Investment). As presently constituted, we know of no compelling reasons why the board should not be required by statute to hold open meetings.

John E. Hempel
Chief Assistant Commissioner

Department of Professional and Vocational Standards

The department consists of 24 separate boards and 5 bureaus under the supervision and control of the director of the department.

Board of Accountancy

The Board of Accountancy is presently covered by open meeting legislation as set forth in Section 5017 of the Business and Professions Code.

... The board does appoint committees from its membership; however, almost without exception these are one-man committees who make certain studies or otherwise and report back to the board at a regular open meeting.

Sections 5020 and 5020.3 of the Business and Professions Code provides that the board may appoint administrative committees consisting of licensees who are not members of the board. These committees conduct investigations to obtain information and/or evidence relating to violations or alleged violations by licensees. The purpose of such investigations is to assist the board's investigators in the technical accounting aspects of violations of certain provisions of the Accountancy Act (As: 5100(d) of the Business and Professions Code—gross negligence in the practice of public accountancy; 5100(g) of the Business and Professions Code—willful violation of the rules promulgated by the board).

As many of the complaints are resolved by these committees as being unfounded or of such a minor nature that formal disciplinary action is not warranted, it is our feeling that a person accused, unjustly or otherwise, might suffer personal damage if these meetings were open to attendance by the public.

Section 5023 of the Business and Professions Code provides that the board may establish an examining committee composed of certified public accountants not members of the board to recommend to the board applicants for the certificate of certified public accountants.

This committee reviews the files of applicants who have passed the C.P.A. examination and who have applied for issuance of a certificate. As good moral character is a requirement many of the files contain confidential investigation reports, CII and FBI "rap sheets," as well as statements by the applicants relating to criminal arrests, convictions and loss of other licenses.

We doubt that it is in the public interest that this information be released to the public as would, or could, be the case if these meetings were open.

Other than meetings of the two administrative committees and the examining committee, we favor the open meeting principle.

Harvey Shadle
Executive Secretary

Board of Architectural Examiners

... It is the practice of the agency to hold open meetings in the absence of specific statutory requirements.

Frank B. Cronin
Executive Secretary

Athletic Commission

... The Athletic Commission is covered by open meeting legislation.

The Athletic Commission schedules monthly meetings at which a quorum is always present; no other meetings are scheduled.

Should the commission ever schedule meetings at which a quorum is not present, commission policy would be that such meetings would be public.

Jack W. Urch
Executive Officer

Board of Barber Examiners

Does your agency schedule open meetings for committees, subcommittees, and other groups smaller than a quorum?

"Yes."

Are there any compelling reasons for not requiring by statute that your agency follow such practices?

"No. (Except to prepare examination questions.)"

James D. Knauss
Executive Secretary

Cemetery Board

... The board does not meet except in regularly scheduled meetings open to the public. Subcommittees are formed solely for investigatory purposes and do not conduct meetings.

We feel that all meetings of our board are covered under current statutes.

James A. Lahey, CPA
Executive Secretary

Board of Chiropractic Examiners

... It is the practice of this agency to hold open meetings.

The only compelling reason for not requiring *the statute* is that the governing act is an initiative, therefore would require direct vote of the people.

Earl E. Pope
Executive Secretary

Board of Registration for Civil and Professional Engineers

... Our board operates under Section 6716.5 of the Business and Professions Code.

The only purpose for which committee meetings are held is to prepare, approve, grade or administer examinations. Executive sessions are permitted for these functions under Section 6716.5(b).

Logan N. Muir, Jr.
President

Contractors' State License Board

... Section 7008.5 ... of the Business and Professions Code provides: "All meetings of the board shall be open and public, except that the board may hold executive sessions to:

(a) Deliberate on the decision to be reached upon the evidence introduced in a proceeding conducted in accordance with Chapter 5 (commencing with Section 11500), Part I, Division 3, Title 2, of the Government Code.

(b) Prepare, approve, grade or administer examinations.

Pursuant to Section 7008 of the Business and Professions Code, the board appoints committees.

The committee meetings are not considered to be meetings of the board. They constitute less than a board quorum. Their purpose is primarily to consider recommendations and resolutions by the board at its regular meeting extending to specific areas of interest indicated by the various board committees. The objective is to expedite board business by analysis and clarification of issues prior to its regular and special meetings. It is believed much time, expense, and inconvenience is saved by these meetings, not only to the state, but to the construction industry (labor and management) and to the interested public. Committee meetings are usually informal in nature and generally are not open to the public; however, on occasion, particularly the meetings of the Committees on Rules and Regulations and Legislation, where informative data and opinions are desired, are open public meetings and wide notice of such a meeting is afforded the public, particularly the construction industry. This open committee meeting is a more formal type meeting than the usual committee meeting and an official transcript may on occasion be made.

The Contractors' State License Board believes its policy in holding certain closed committee meetings is a sound one—particularly when it extends to areas of personnel and departmental relations; finance and budget; prequalification and examination; public relations; and grievances, and on occasions others. Often such committees meet for the sole purpose of determining policy involving the normal day-by-day functions, policies and procedures of the agency. Open meetings on such matters would be of little interest to the general public and would tend to invite participation in matters that could well result in unnecessary misunderstanding and confusion in strictly agency matters. It is emphasized that all committee business (open and closed) is made a matter of public record and it is further emphasized that all committee business is generally "aired" in an open meeting of the board at its regular or special meetings. A public record of any committee meeting of the board (open or closed) may be brought before the board by any person at its regular meetings.

Leo B. Hoschler
Registrar of Contractors

Board of Dental Examiners

Does your agency schedule open meetings for committees, subcommittees, and other groups smaller than a quorum?

"Yes."

Are there any compelling reasons for not requiring by statute that your agency follow such practices?

"No."

Victor A. Hill
Executive Secretary

Board of Dry Cleaners

... Section 9534.5 reads: "All meetings of the board shall be open and public except that the board may hold executive sessions to: (a) Deliberate on the decision to be reached upon the evidence introduced in a proceeding conducted in accordance with Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, of the Government Code. (b) Prepare, approve, grade or administer examinations . . ."

Does your agency schedule open meetings for committees, subcommittees, and other groups smaller than a quorum?

"These meetings are also open to the public."

Are there any compelling reasons for not requiring by statute that your agency follow such practices?

"None—as provided for under Section 9534.5."

Considering your agency alone, do you perceive any differences between the meeting of the whole and meetings of committees, subcommittees, and other groups smaller than a quorum, which would serve as compelling reasons for limiting or qualifying the extension of the open meeting principle to the latter?

"Only pertaining to informing the public or interested parties that such a meeting will be held. If an emergency meeting is to be conducted, it would be very difficult to advise anyone who might want to attend the meeting in time."

David M. Hayes
Executive Secretary

Board of Funeral Directors and Embalmers

... All meetings of the board, including committee and subcommittee meetings regardless of their size, are open to the public, except as provided by Section 7605.5 of the Funeral Directors and Embalmers Law. This section reads as follows:

"All meetings of the board shall be open and public, except that the board may hold executive sessions to:

"(a) Deliberate on the decision to be reached upon the evidence introduced in a proceeding conducted in accordance with Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, of the Government Code.

"(b) Prepare, approve, grade or administer examinations."

... The consideration of matters that are still under investigation, in which public knowledge may hamper the investigation, should not be of public knowledge until the matter is resolved by a formal hearing or whatever other action as may be necessary. Any information given in confidence should not be divulged because this could seriously hamper the gaining of information from that source or other sources in the future, and therefore would not be in the public interest.

Leroy M. Perrin
Executive Secretary

Board of Guide Dogs for the Blind

Meetings of the board are governed by statutes of the Business and Professions Code, Division 3, Chapter 9.5, Sections 7206 and 7206.5.

The board does not schedule meetings for committees smaller than a quorum of the board.

D. R. Mendelson
Executive Secretary

Board of Medical Examiners

... The provisions of Section 2121 of the Business and Professions Code provide that all meetings of the Board of Medical Examiners shall be open and public except that the board may hold executive sessions to deliberate on the decision to be reached upon the evidence introduced in a proceeding conducted under the Administrative Procedure Act, and to prepare, approve, grade or administer examinations.

Meetings of committees of the board or groups smaller than a quorum of the board may be open meetings, depending on the purpose for which the committee was appointed. In the event the purpose of the committee was inspectional in nature, or for the consideration of applications, examination material, or confidential information, such meetings would not be open to the public. However, we wish to point out that no final action could be taken by any of the committees, but such committees would report their recommendations to the board at an open meeting where final action could be taken.

We believe that the above indicates compelling reasons for not requiring by statute that all committee meetings of the board be open to the public and indicate certain differences between the meetings of the board and the meetings and activities of committees of the board.*

Wallace W. Thompson
Executive Secretary

Board of Nursing Education and Nurse Registration

... The Board of Nursing Education and Nurse Registration under the provisions of the Administrative Procedure Act does go into executive session to deliberate on decisions concerning disciplinary matters. The executive session is also used for the construction, preparation and administration of the licensing examination. This security involves not only the board's security for the examination, but the contractual agreement with the National League for Nursing, American Nurses' Association and the Committee on State Boards of Nursing. These have established very specific security measures for the handling of the construction, preparation and administration of the State Board Test Pool Examination, which is a national examination used by the 50 states and identified by each for the purpose of their own licensure. Beyond these two exceptions, the Board of Nursing Education and Nurse Registration encourages members of the discipline of nursing and others concerned with nursing to attend the open public meetings. The board would not advertise meetings of committees and subcommittees investigating, studying and exploring preliminary considerations prior to the board acting upon these matters. These exploratory meetings are a means of early preliminary investigation for data gathering before the board would be able to act in the best interest of the public. The committee approach expedites the work of the board and holds confidential certain materials which are a necessary part of the operation in order that the public's best interest will be appropriately served. No board committee acts independently of the board; nor does it establish policy, but rather brings data to the board for the total board to consider. In this way, the public is well served in that when the matter is ready for open discussion before the board there is adequate information upon which the board may act. If the data is not sufficient, the board then instructs the committee to seek further information.

Miss Beverly C. André, R.N.
Executive Secretary (Acting)

Board of Optometry

... There is a statutory requirement that the meetings of the Board of Optometry shall be open and public. Section 3017.5 of the Business and Professions Code provides as follows:

"3017.5. All meetings of the board shall be open and public except, that the board may hold executive sessions to:

"(a) Deliberate on the decision to be reached upon the evidence introduced in a proceeding conducted in accordance with Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, of the Government Code.

"(b) Prepare, approve, grade or administer examinations."

* The committee received similar responses to these questions concerning meetings from the Physical Therapy Examining Committee, the Podiatry Examining Committee, and the Psychology Examining Committee. These committees are under the general direction of the Board of Medical Examiners.

Four members of the Board of Optometry constitute a quorum (Section 3010, Business and Professions Code). Committees or subcommittees of the board or other groups of members smaller than a quorum do attend meetings on behalf of the board but do not initiate these meetings.

There does not appear to be any compelling reason for not requiring that meetings scheduled by committees of the board be open and public. However, it is not believed that imposing such a requirement by statute insofar as the Board of Optometry is concerned would be necessary in the light of the public interest.

If the open meeting principle were extended to meetings of committees or subcommittees of the board, probably some limitation or qualification ought to be considered.

Committees of the board are appointed to study and investigate various matters such as technical modifications to the clinical and other sections of the examination of applicants, contemplated changes in the curricula of schools of optometry, proposals for legislation, and activities which may constitute the practice of optometry on the part of unlicensed persons or entities.

Ordinarily, the committees are comprised of but one or two members who work with the executive secretary. The member or members of a committee generally transmit any information or suggestions gathered by means of written correspondence to the office of the board. Committees of the board may attend meetings in which the board is invited to participate. Often this is the primary function of the committee. Generally the executive secretary also attends these meetings.

J. R. Patterson
Executive Secretary

Board of Pharmacy

... The Board of Pharmacy is presently covered by open meeting legislation except for exemptions provided by Section 4008.5 of the Business and Professions Code.

Does your agency schedule open meetings for committees, subcommittees, and other groups smaller than a quorum?

"Yes."

Are there any compelling reasons for not requiring by statute that your agency follow such practices?

"No."

Joseph F. Bottini
Executive Secretary

Board of Shorthand Reporters

Does your agency schedule open meetings for committees, subcommittees, and other groups smaller than a quorum?

"Yes."

Are there any compelling reasons for not requiring by statute that your agency follow such practices?

"Yes, due to the confidential nature and the intrinsic essence of the examination material and subject matters. Generally the subcommittee and other groups smaller than a quorum are formed for the purpose of preparing, administering or grading of examinations." *

William E. Barbeau
Executive Secretary

Board of Social Work Examiners

... This agency does schedule open meetings for committees, subcommittees and other groups smaller than a quorum.

For the Board of Social Work Examiners there do not appear to be any compelling reasons for the agency to require other than open meetings for these subcommittee groups, and the common practice has been for all such meetings to be open except for those exclusions which are specifically stated in the statutes at this time. There is one situation which might cause some difficulty, although it has not arisen in the past, and this is in cases where the board or a subcommittee is selecting

* The committee received similar responses to these questions concerning meetings from the Board of Examiners in Veterinary Medicine, the Board of Landscape Architects and the Yacht and Ship Brokers Commission.

or evaluating members of the staff. Under certain circumstances, it might be desirable to have these as executive sessions.

Charles H. Dickinson, RSW
Executive Secretary

Structural Pest Control Board

... This agency is covered by open meeting legislation as set forth in Section 8524.5 of the Business and Professions Code.

This agency does schedule open meetings for committees, subcommittees and other groups smaller than a quorum.

We are unaware of any compelling reasons why this procedure should not continue to be followed.

Macon Bonner, *Registrar*
/s/ E. C. Sizemore, *Deputy Registrar*

Board of Vocational Nurse Examiners

... The board has never attempted to keep subcommittee meetings closed except when disciplinary problems or examination questions are being discussed.

Our contract with the National League for Nursing to use their licensure examination prohibits review of the questions by other than board members.

Maryellen Wood, R.N.
Executive Secretary

Collection Agency Licensing Bureau

Within the Collection Agency Licensing Bureau there is an advisory board of collection agencies. The board's primary duties are to advise the director of the Department of Professional and Vocational Standards and the chief of the Collection Agency Licensing Bureau.

... The provisions of Section 6867 require that all meetings of the board "shall be open and public" ...

No meetings are held by the Collection Agency Advisory Board unless a quorum is present to conduct business. Such meetings are always open and public.

Harvey McAchren
Chief of Bureau

Bureau of Electronic Repair Dealer Registration

... It is my understanding that our agency is governed by open meeting legislation and all our meetings have been public.

Daniel J. Weston
Chief

Bureau of Furniture and Bedding Inspection

... I should like to refer you to Section 19035.9 of the Business and Professions Code relating to furniture and bedding.

19035.9. All meetings of the board shall be open and public, and all persons shall be permitted to attend any meetings of the board.

Does your agency schedule open meetings for committees, subcommittees, and other groups smaller than a quorum?

"Yes."

Considering your agency alone, do you perceive any differences between the meeting of the whole and meetings of committees, subcommittees, and other groups smaller than a quorum, which would serve as compelling reasons for limiting or qualifying the extension of the open meeting principle to the latter?

"Not at the present time."

Frank C. Freer
Chief of the Bureau

Board of Osteopathic Examiners

... Section 2121 of the Business and Professions Code provides that all meetings of the board shall be open and public, except that the board may hold executive sessions to deliberate on the decision to be reached upon the evidence introduced and to prepare, approve, grade or administer examinations.

Proposition No. 22, an amendment of the initiative act, was approved by the people at the election held on November 6, 1962, and became effective on that date. Under this amendment, physicians and surgeons holding a license under the Board of Osteopathic Examiners who secured a degree of doctor of medicine from an approved medical school in California were qualified to elect to practice under the jurisdiction of the State Board of Medical Examiners under the title of "M.D." Those doctors of osteopathy who chose to remain under the Board of Osteopathic Examiners may continue their practice as licensed, but the board no longer has the power to approve schools or grant new licenses. At this time the Board of Osteopathic Examiners has 422 licentiates.

In the past this agency did not schedule open meetings for committees or subcommittees.

The committee or subcommittee met to take under advisement the approval, or disapproval, of osteopathic schools; or to approve or disapprove applications for examinations.

(Mrs.) Lola Tankersley
Assistant Secretary

Public Utilities Commission

... The Public Utilities Commission is a constitutionally created tribunal. (Article XII, secs. 21-23a.)

Although not a judicial tribunal in a strict sense, it is nevertheless both a court and an administrative agency, legislative and judicial functions having been united in a single agency. Its orders in many instances are legislative-administrative in character, as in fixing rates or issuing certificates. However, the Supreme Court has said that the procedure by which the result is to be reached, the determination of controverted facts between private litigants and disputants, and the decision upon those controverted matters, "are strictly judicial."

Public Utilities Code Section 306 provides in part as follows:

"... Except for the commission's deliberative conferences, the sessions and meetings of the commission shall be open and public and all persons shall be permitted to attend. . . ."

At its "deliberative conferences" the commission considers and issues decisions and orders. Such conferences are comparable to the conferences of the justices of the Supreme Court in considering matters pending before the court.

All hearings in formal proceedings before the commission are open to the public. Normally hearings are held in the area affected by the subject matter of a proceeding. Notice of a hearing is given to the parties, and publication of such notice in newspapers is often required.

There are no meetings of committees or subcommittees of the commission.

Frederick B. Holoboff
President

Real Estate Commission

... The commission's primary function is advisory; . . . Section 10058.5 of the Business and Professions Code provides for open meetings of the commission.

The Real Estate Law also charges the commission with passing on the claims of equivalent experience or educational qualifications made by broker applicants who have not been engaged actively and full time as real estate salesman for two years.

A committee of at least three members of the commission reviews and passes on each such claim. The committee's deliberations on such claims are not open to the public. The matter of a particular applicant's qualifications is only of interest to the individual applicant. The application contains many questions that require information of a personal nature. These are primarily of an investigatory nature, and it is in the applicant's interest to maintain the application confidentially. Further, the large volume of such applications render effective notice to the public administratively impractical.

J. P. Mahoney
Chief Legal Officer

San Francisco World Trade Center Authority

"Inasmuch as this agency is presently covered by open meeting legislation (Section 3.11 Calif. Stats. 1959, Chapter 845) . . .

Our agency has not followed the practice of holding committee meetings, therefore the question of whether or not they should be open has not arisen.

I know of no compelling reasons for not requiring open meetings.

I think there can be reasons why a group smaller than a quorum should meet in private. One reason would be when dealing with certain personnel matters. Another reason would be to consider various factors concerning a matter which requires the airing of opposing views. If a committee smaller than a quorum is dealing with such a matter with a view toward making a recommendation to the authority, then I do not see where failure to have an open meeting of the smaller group would be detrimental. Only in such a manner could full and complete airing of views take place.

J. Monroe Sullivan
Executive Director

CORRECTIONS

Adult Authority

. . . Since 1944, as a matter of policy, the Adult Authority has opposed any "secret" or "star chamber" meetings. Our meetings are open in the sense that guests are invited, the only limitation being the hearing room size, the problem of security within the institutions, and the intimate or personal nature of the hearings. During the past year, our visitors have included numerous legislators, judges, law enforcement and other officials, and members of the general public.

The meetings are not "open" in the sense that the public at large is invited or permitted to attend. Adult Authority hearings are held inside the various institutions where the security of inmates and the protection of the public would be involved if such meetings were to become "open" by law and thus accommodate large segments of the public. Physical accommodations at the institutions are such that the "public" could not be present, as a practical matter.

Advance announcements of executive clemency meetings, usually held in San Francisco, including the time and place of such meetings, are forwarded to the press.

Fred R. Dickson
Chairman

Board of Trustees

California Institution for Women

. . . Hearings are held in state prisons under strict security conditions to prevent introduction of money and other contraband.

Facilities for open meetings are not adequate.

Visitors are already recommended—judges, attorneys, news media representatives, representatives of women's organizations and interested citizens for attending meetings. Through long experience we have found that the inmates appearing at these hearings where a large number of visitors are present have been affected in their ability to respond to questions and are not able to do themselves justice. For this reason we have restricted the number of visitors to a maximum of three at any one time.

The sensationalism involved in particular cases must be avoided in order to have a fair and impartial hearing.

Percy B. Crow
Executive Officer

Board of Corrections

. . . The Board of Corrections is not presently covered by open meeting legislation. The Board of Corrections firmly believes in the public's right to know how its business is conducted. It has been the practice of the board to hold open meetings even though this is not required.

It would be in the interest of the public to provide that executive meetings would be permitted in the discretion of the board when it is hearing dismissal charges against personnel (Section 6025 Penal Code and others) and when it is considering reports concerning crime conditions (6027 Penal Code) premature disclosure of which might jeopardize an investigation or reflect unfairly upon an

individual or group. These situations are infrequent. Occasionally a complicating condition is that the board sometimes meets within prisons or other correctional institutions in the course of its duty to correlate correctional programs.

Walter L. Barkdull
Executive Officer

Correctional Industries Commission

Does your agency schedule open meetings for committees, subcommittees, and other groups smaller than a quorum?

"Yes. The commission, until this year, made no use of committees or subcommittees and has had only one committee meeting to date."

Are there any compelling reasons for not requiring by statute that your agency follow such practices?

"No."

Walter L. Barkdull
Executive Officer

Governor's Narcotic Rehabilitation Advisory Council

... The meetings of the Governor's Narcotic Rehabilitation Advisory Council are not closed meetings. They are announced, however, only to members and others specifically required by law. Attendance of the general public at meetings should be carefully evaluated—especially in view of the following considerations:

(a) Meetings frequently require examination of privileged communications such as medical and psychiatric reports, etc.

(b) Some meetings are conducted at the California Rehabilitation Center itself and violation of the basic security of the institution, its residents and staff might be encountered in such meetings.

(c) When professional discussion and evaluation of the program is scheduled participation by nonprofessionals might impede the evaluation process.

This committee is a study, discussion, analysis and recommending committee. It has no other administrative or management responsibilities.

William F. Quinn, M.D.
Chairman

Youth Authority

... Meetings of the Youth Authority Board are closed; other meetings such as staff and operations meetings are open.

Meetings of the Youth Authority Board should not be required to be open for two reasons:

(1) The meetings are held for the purpose of discussing the treatment and/or disposition of the cases of Youth Authority wards.

(2) Court and other treatment records are used as a basis for decision of these cases.

Heman G. Stark
Director

EDUCATION

State Board of Education

... Education Code Section 111 requires meetings of the board, other than executive sessions to consider employment or dismissal of officers or employees of the board, to be open and public.

The board has 11 standing committees ... Except for the Appointments Committee, meetings of the board's committees are open to the public. Advance notice of the time and place of the meetings is given to the press and to persons who have indicated a desire for that information.

There appears to be no compelling reasons for not requiring such practices by statute.

The meetings of these committees are conducted more informally than meetings of the board. I have not observed that freedom of discussion has been materially inhibited by the presence of the press and members of the public. I presume that any legislation proposed would not be so stringent as to prohibit discussion of a

matter of board interest by telephone or by two or more members who might find themselves in each other's company during a meal or while in transit to or from a meeting.

Laurence D. Kearney
Administrative Adviser

State Department of Education

... Formal meetings within the department by statutorily created bodies are confined to those of the State Board of Education, the Curriculum Commission (and their committees), and the Committee of Credentials.

Meetings of the state board and Curriculum Commission are open to the public as required by law. Persons who wish to attend meetings of the Committee of Credentials are permitted to do so.

Dr. Everett T. Calvert

Board of Governors, California Maritime Academy

... Section 26007, Education Code, requires that all meetings of the board of governors shall be open and public, and all persons shall be permitted to attend any meetings.

The board of governors has meticulously observed the foregoing

E. N. Kettenhofen
Chairman

State Scholarship Commission

... The State Scholarship Commission is an agency covered by open meeting legislation and Government Code, Section 11015.

... as a matter of fact not many people have expressed interest in attending commission meetings. Common practice is for the commission to meet on a college campus and usually personnel from the administration and faculty will sit in at the commission meetings.

... The commission committees do not meet frequently. To the best of my knowledge no one other than a commission member has attended a committee meeting although they would be quite welcome.

Arthur S. Marmaduke
Executive Director

Coordinating Council for Higher Education

... The Education Code specifically states that all meetings of the council shall be open. It should be noted that there is no provision for executive sessions in regard to personnel matters as in the case of the State Scholarship Commission, the State Board of Education, etc.

The requirement for open meetings has been considered by the council to apply to meetings of its officially constituted committees, generally of five members each (council members total 15). While such committee meetings are generally working sessions, there seems to be no reason in our view that these meetings should not continue to be open to all those persons interested.

Willard B. Spalding
Associate Director
Educational Programs

State Teachers' Retirement System

... The State Teachers' Retirement Law already provides that all meetings of the State Teachers' Retirement Board and the State Teachers' Retirement Investment Board shall be open to the public. It has never been our practice to hold any closed-door executive meetings, and the board has not, as a matter of policy, operated through committees or subcommittees. I would understand that such committee or subcommittee meetings would also be open to the public.

Leo J. Reynolds
Executive Officer

Western Interstate Commission for Higher Education

... Since I joined the staff in 1960, all meetings of the commission and its executive committee have been open to the public. Occasionally an executive session has been held to discuss personnel matters.

Robert H. Kroepsch
Executive Director

EMPLOYMENT RELATIONS

Apprenticeship Council

... Chapter 4, Division 3, Sections 3091 and 3092 of the Labor Code of the State of California, provide that all meetings of the council shall be open to the public. ...

The California Apprenticeship Council has several subcommittees; none of these subcommittee meetings are closed.

In general, there appear to be no compelling reasons for not requiring by statute that all subcommittee meetings be open to the public. There might be two exceptions to this inasmuch as the council acts as an appellate body on decisions of the administrator under hearing procedures as established in the Labor Code. It might be possible that adverse parties, contesting before a hearing of the council, would not wish to reveal in public certain matters that are confidential to the contesting parties.

Charles F. Hanna
Chief

State Compensation Insurance Fund

... The sole function of the State Compensation Insurance Fund is to conduct a workmens' compensation insurance business on a fair and fully competitive basis with privately owned insurance companies. ...

Because the State Compensation Insurance Fund is a competitive insurance business its board of directors' meetings have been conducted in the same manner as those of its competitors.

It is our deep and abiding conviction that requiring the meetings of the board of directors to be open to the public would be inimical to the best interests of the State Compensation Insurance Fund, and, in a larger and broader sense to the State of California, and its citizens who are benefited by the Workmen's Compensation Law. ...

The matters dealt with by the fund's board of directors are of no interest to the general public. The views of the general public could be of no assistance to the board of directors in arriving at their conclusions. For example, the board must inform itself of general business trends, of significant trends in the workmen's compensation insurance field, of the business progress and effectiveness of the fund. This is accomplished through the medium of reports and discussions with the manager. The problems of individual corporate policyholders, involving intimate information concerning their business affairs and financial stability must be discussed with the board. If such discussions took place in public, rather than within the confines of the board room, these firms would transfer their business to a private carrier where a proper confidential business relationship could be assured. The board must concern itself with the fund's sound fiscal management. Investment of funds is an important phase of any insurance business. A review of an investment program must be continuously pursued—yet the opinions of the general public on such matters could serve no useful purpose.

T. Groezinger
Chief Counsel

Department of Employment

... The department does not hold formal meetings except with respect to the adoption, amendment, or repeal of regulations for the administration of the Unemployment Insurance Code. Regulation meetings are governed by Sections 305 through 308 of the Unemployment Insurance Code and Chapter 4.5 (commencing with Section 11371), Part 1, Division 3, Title 2, of the Government Code.

S. G. Goodman
Deputy Director

Governor's Advisory Council on the Department of Employment

... Section 355 of the Unemployment Insurance Code ... does not specifically require that the meetings of the advisory council must be open to the public. However, a number of our meetings have been public meetings in that notice of the meetings was given to the public. Even where we do not give a notice to the public, the public is not precluded from attending the meetings.

Sam Kagel
Chairman

Fair Employment Practice Commission

... The Fair Employment Practice Commission heartily endorses the policy of holding open meetings whenever possible. Therefore, so far as this commission is concerned, it is agreed that all of their meetings be public meetings, except in sessions where certain matters are considered and which are listed below:

1. *Conciliation conferences:*

These conferences are made confidential by both the FEP Act and the Fair Housing Act and, therefore, under the law, cannot be open meetings.

2. *Disposition of cases:*

In order to afford the respondent and complainant in our case matters some confidential protection, the commission has always followed the practice of not discussing these matters or disposing of them in public meetings. This has worked well and has made respondents more cooperative in resolving issues that arise out of cases. We would, therefore, recommend that the commission be allowed to continue to hold closed meetings for this purpose.

3. *Consultation with legal counsel:*

This merely embodies the legal concept of the confidential relationship between attorney and client. It is the commission's feeling that it should be allowed under the law to confer with their legal counsel in closed sessions.

4. *Personnel matters:*

This is a generally accepted procedure under the Brown Act, and we feel the same should apply to our Agency.

5. *Deliberations of commission in arriving at a decision following a public hearing:*

Here again, we might compare the commission hearing a case with a jury in civil matters. In other words, it appears that it is reasonable to allow the hearing panel of commissioners at a public hearing to deliberate and arrive at a decision in a closed session. During these deliberations, they will also have legal counsel with whom they may consult. We, therefore, suggest that closed sessions are quite necessary for these purposes.

Edward Howden
Executive Officer

Industrial Accident Commission

... By Section 136 of the Labor Code, all meetings of the commission, except for the purpose of judicial deliberation of cases, shall be open to the public.

... We do not schedule meetings for committees, or subcommittees, and other groups smaller than a quorum.

Since a group smaller than a quorum would not be effective in determining either policy or matters that concern the commission as a whole, there would be no reason to schedule other than a meeting which could produce effective results.

J. William Beard
Chairman

Industrial Safety Board

... The board's duty is that of reviewing and adopting industrial safety orders to become a part of the California Administrative Code. After adoption such regulations have the effect of law in establishing minimum safety requirements applying to California employment.

Does your agency schedule open meetings for committees, subcommittees, and other groups smaller than a quorum?

"No. I know of no such small meetings having been held."

Are there any compelling reasons for not requiring by statute that your agency follow such practices?

"No."

George A. Sherman
Secretary

Industrial Welfare Commission

. . . The Industrial Welfare Commission is covered by specific requirement and exception in Labor Code Section 71.1.

The Industrial Welfare Commission does not hold meetings of committees, subcommittees or other groups smaller than a quorum. However, under Labor Code Section 1178 the commission is required to appoint a wage board made up of an equal number of employer and employee representatives with an impartial chairman. The purpose of the wage board is to make recommendations to the commission on minimum wages, maximum hours and working conditions for women and minors in a particular industry. The proceedings and deliberations of the board are made a matter of record to be reviewed by the Industrial Welfare Commission in public hearings. Traditionally, the meetings of the wage boards have been attended by members, alternates and required staff. On the chairman's request expert witnesses and additional information is sometimes requested. Labor Code Section 71.1 is silent as to the meetings of the wage boards. . . .

Since the wage board meetings are composed of an equal number of employer and employee representatives and the public does not participate in these recommendations, we feel that the present practices are sufficient since the conclusions of the wage board become a subject of public hearings.

Florence G. Clifton
Chief

Commission on Manpower, Automation and Technology

Does your agency schedule open meetings for committees, subcommittees, and other groups smaller than a quorum?

"No."

Are there any compelling reasons for not requiring by statute that your agency follow such practices?

"The reasons may not be compelling but they are persuasive to the point that, if disregarded, the work of the commission would be seriously hampered.

"We have reference, especially, to the work of the Research Committee of the commission. This committee's practice is to meet with representatives of government and private organizations asking them for a full and frank discussion of the problems confronting their agencies that lie within the commission's area of interest. They are also questioned concerning their research needs. We have good reason to believe that much information of great value to the commission in its subsequent deliberations would not have been given to the public or to the press, or presented before the full commission at an open meeting."

Andrew C. Boss, S.J.
Chairman

Unemployment Insurance Appeals Board

. . . Section 408 of the code provides that meetings, hearings, and proceedings of the appeals board are open to the public. There is no specific statutory provision requiring that hearings on appeals to referees shall be open to the public. However, Section 408 has been interpreted by the board to apply to referee hearings.

There is one exception to the above provided by Section 2713 of the Unemployment Insurance Code whereby a claimant for disability benefits may request a closed hearing.

Gerald F. Maher
Chairman

HEALTH AND WELFARE

Citizens' Advisory Committee on Aging

... As an agency not presently covered under the open meeting legislation, we wish to report as follows:

It is the practice of the committee to consider all of its meetings open to the public and press. All of our meetings are accompanied by advance publicity and notice and are frequently attended by interested persons or groups.

We believe that there are no compelling reasons why the committee should not be required by statute to hold open meetings. This would merely reaffirm and formalize our present practice.

William D. Bechill
Executive Secretary

Coordinating Council on Programs for Handicapped Children

... As a note of explanation, the coordinating council consists of the directors of the Departments of Education, Mental Hygiene, Public Health, Social Welfare, and Rehabilitation. Much of the work of the council is done by a committee consisting of administrative personnel from the various departments, who ... are called the staff committee of the Coordinating Council on Programs for Handicapped Children.

In response to your questionnaire, we are not certain as to whether the coordinating council is covered by open meeting legislation, but the members of the council would certainly have no objections to specific legislation being prepared if it is deemed advisable ...

The meetings of the council and of the staff committee are open to the public although no particular effort has been made to advertise such meetings or to solicit public attendance.

Andrew Marrin
Chairman

Department of Public Health

... The meetings of the boards, commissions, and committees affiliated with this department are open to the public and it is so stated in many of the statutes governing such groups.

There are, however, two situations ... to which we would like ... call your attention, involving the Cancer Advisory Council and the Coordinating Council for State Programs for the Blind.

Enclosed are copies of letters written to Mr. Marks in 1963 which clearly outline the problems of making these two groups "open to the public" by law. ...

Robert G. Webster
Chief

Enclosures

Letter to Assemblyman Marks relating to the Cancer Advisory Council, May 1, 1963.

... The responsibility of the council is that of investigating the efficacy of drugs and devices alleged to be proper for the treatment of cancer, and to control the enforcement of the Cancer Quackery Law ...

The Cancer Advisory Council, at their meetings, discuss freely some of the following matters:

a. The nature of evidence accumulated against a proponent of an unorthodox remedy.

b. The known facts regarding the personal activities of the proponent.

c. The name of the next proponent to be investigated and the specific remedy in use by him.

d. The names of informers and of undercover operators furnishing information to us and the nature of that information.

A disclosure of proposed activities would alert a proponent to the point where he would be able to cover up his activities. If the names of informers and undercover operators became known to a proponent prior to the formal hearing required by Section 1720 of the Health and Safety Code, it would provide the proponent with an opportunity to annoy, threaten or use actual violence to prevent testimony being given. Also, the knowledge that an individual or a method of therapy is being in-

vestigated might cast public doubt on the individual or the procedure before findings were made.

There are occasions when it is necessary for the council to examine records pertaining to specific patients alleged to be inflicted with cancer, and who are being treated for this condition. And there are situations where such records should not be available to the public and should not be discussed in open meetings. There might also be situations wherein a medical practitioner would be required to present evidence relative to his specific treatment of a given patient where the evidence could be properly considered as Confidential.

We would not expect other governmental agencies dealing with crime, such as the police department or narcotic enforcement agency to publish in advance proposed activities dealing with the elimination of narcotic or other violations, and I believe that the crime of using fake remedies in the diagnosis or treatment of cancer is closely enough related to the violations referred to that advance warning should not be given here. The intent of the legislation is to put cancer quacks out of business, and restrictions such as are inherent in public meetings should not provide them with the means of escaping that intent.

Letter to Assemblyman Marks relating to the Coordinating Council on State Programs for the Blind, May 2, 1963.

... These meetings have never been "closed" to any one but experience indicates that there have never been any "members of the public" who have appeared at such meetings.

... Since the council is made up of three department heads, they have been in the habit of meeting four times a year, at an informal luncheon, when the reports of committees are presented to them and they make suggestions for the coordination of the efforts of the various state departments interested in this activity. There is, of course, nothing "secret" in any of their deliberations.

On the other hand, our concern is that if this council is listed as a group meeting "in public," it will be necessary for the meetings to be formalized with advance notice, for an agenda to be prepared, and for the meeting to be conducted in a hearing room where members of the public can be accommodated and heard. This would involve considerable additional activity.

It is our feeling that the public has adequate means to be heard by the departments which are involved in the program of Aid to Blind and the Prevention of Blindness, and that there would be no particular point in making the meetings of the Coordinating Council on State Programs for the Blind available to them.

Department of Mental Hygiene

... All the committees in this department which are not covered by "open meeting" requirements serve only an advisory or informational role. They typically do not have public or "open" meetings. Those units covered by open meeting laws may meet without call by officers of this department.

Only one reason seems to argue against compelling that this agency hold open meetings of all committees, boards, and commissions. When a committee has an advisory function in addition to any regulatory function, it seems unreasonable to compel the director to seek advice and counsel in a public setting. He should have the option of gathering information from bodies with a specific assignment of providing that information without being subject to public audit, just as the Legislature has the prerogative of conducting executive sessions. Otherwise, compelling public meetings creates no serious problems except for the additional clerical preparation in arranging public notices and making records of the meetings available to the public later.

This agency does not schedule open meetings of groups smaller than a quorum. Those boards and committees closely related to this department which have open meeting requirements in the law are sufficiently autonomous in operation that they do not depend upon this agency to call meetings. They are not instruments of this department.

Tom Moore
Executive Assistant

Study Commission on Mental Retardation

... The Study Commission on Mental Retardation was created by the 1963 session of the Legislature and the commission will go out of existence when the regular 1965 session adjourns.

The study commission conducted all of its work in the public eye. There were seven meetings, all of them open to the public, publicized in advance through the major news media and attended by interested citizens. Moreover, when the commission had reached agreement on its tentative conclusions and recommendations, it undertook to share its ideas with the people of California at regional workshops arranged and conducted by University of California extension.

Such work of the commission as was assigned to committees was generally executed by one member of the commission who involved others by correspondence and telephone, rather than by regularly called meetings.

Leopold Lippman
Executive Secretary

Motor Vehicle Pollution Control Board

All committee meetings are fully covered by public reports so there is no secrecy involved. The problem of a public committee meeting is twofold.

First we are dealing with highly proprietary and competitive data on auto smog control devices. For a full discussion of (for example) test procedures or criteria, it is necessary to tailor requirements to cover all these proprietary possibilities.

Secondly, there is a question of timing. Oftentimes emergency committee meetings are necessary in this fast moving field and sufficient public notice would be difficult.

... There has been little or no interest in our committee meetings on the part of developers of smog devices. If they ask to attend we invite them with a limitation on discussion of proprietary data of competitors. The press occasionally has a reporter stop in but they invariably leave because of the usually highly technical discussion *without* any conclusions being reached.

Only the board at an open public meeting can make any decisions.

D. A. Jensen
Executive Officer

State Social Welfare Board

... The State Social Welfare Board ... since 1963, has been an advisory body ... which is required by law to have open meetings. The board likewise has no closed door committee meetings. ...

J. M. Wedemeyer
Director

HIGHWAY AND TRANSPORTATION

Aeronautics Board

Our department is completely covered already in regard to the necessity of holding all action meetings open to the public.

We do not hold any board meetings with the exception of those dealing only with personnel matters in a closed fashion.

Our board meets only eight or nine times a year for one day, and inasmuch as the nature of our business is entirely public, there is no reason why we should not be open to the public in any event.

Clyde P. Barnett
Director

Department of California Highway Patrol

... It is the practice of this department to hold open meetings on any subject not related to personnel matters or matters pertinent to the administration of the department.

We know of no compelling reason why this department should not be subject to statute requiring open meetings except for meetings relating to personnel administration matters.

... Open meetings are scheduled. If less than a quorum is in attendance, such matters as it may be possible to consider are discussed.

Bradford M. Crittenden
Commissioner

Board of Harbor Commissioners for Humboldt Bay

... This is to advise that the local board of harbor commissioners does not have any closed meetings. All of our meetings are open to the public ... however, this board does not have finances available to post notices in the local newspapers re meeting dates, time, etc.

R. W. Saukko
Chairman

Department of Motor Vehicles

... This agency is presently covered by open meeting legislation and we do not schedule meetings for committees, subcommittees, or other groups smaller than a quorum. There are no compelling reasons for not requiring by statute that this agency follow such practices. We see no difficulties between meetings of the whole and meetings of lesser groups which would serve to limit the open meeting plan.

Tom Bright
Director

California Reciprocity Commission

... This agency is covered by open meeting legislation.

This commission holds no meetings involving groups smaller than a quorum, and consequently, no open meetings are scheduled except for those meetings officially at which a quorum is present.

Tom Bright
Director

San Francisco Port Authority

... The San Francisco Port Authority is covered by the present open meeting legislation. Advanced notification and copies of tentative agenda of the semimonthly meetings are sent to newspapers, radio, and TV stations. As a rule, only newspaper people provide coverage of authority meetings. However, arrangements have been and will be made for TV and radio coverage when requested. It is also made clear to interested inquirers that our authority meetings are open to the public. Citizens attending such meetings are always welcomed and are given the opportunity to comment on matters being presented to the authority.

Edward L. David
Assistant to the Port Director

Department of Public Works

... The following bodies are concerned with the operation of the Department of Public Works:

1. The California Highway Commission
2. The California Toll Bridge Authority
3. The advisory committee on a master plan for scenic highways

The highway commission and the toll bridge authority are expressly subject to the open meeting requirements of Government Code Section 11015. The advisory committee on scenic highways is not subject to such specific legislation. In answer to the questions contained in your questionnaire, the following information is furnished regarding these bodies:

- (1) Concerning the advisory committee on scenic highways:
 - (a) It is the uniform practice of the advisory committee to hold open meetings.
 - (b) There would appear to be no compelling reasons for not requiring by statute that this agency hold open meetings.
- (2) Concerning the highway commission and the toll bridge authority:
 - (a) The highway commission and the toll bridge authority seldom conduct meetings for groups smaller than a quorum. Occasionally, one or more highway commissioners will preside over a public meeting called for the

purpose of taking evidence concerning proposed highway route locations. Also, the highway commission has appointed two of its members to serve with members of the park commission on a special joint committee for the purpose of attempting to solve problems of common interest.

- (b) and (c) There would appear to be no compelling reasons for not requiring by statute that these bodies conduct open meetings should they decide to meet in groups smaller than a quorum. However, there might be some merit in delaying the enactment of such legislation until the law is further clarified concerning the meaning of the word "meeting." We have been advised that some local bodies have been experiencing some difficulty as a result of the interpretation that the Attorney General's office has placed upon the meaning of the word "meeting" in the Brown Act.

John Erreca
Administrative Officer

RESOURCES

Colorado River Board of California

... The Colorado River Board does not hold open meetings. Section 12516 provides that all information and records of the board are confidential and they are not available to the public except upon authorization of the board.

The board considers it to be essential that all meetings be closed to the public in order that it may effectively fulfill its statutory functions and activities and that it is consistent with its policy-making decisions that this restriction be maintained. The Colorado River Board is singular in that its policy-making activities relate to interstate relationships with both state and federal agencies having functions and responsibilities relating to Colorado River resources and developments. The extremely important and complicated legal aspects of Colorado River problems make it important that deliberations involving decisions in these areas be restricted information.

Harold F. Pellegrin
Executive Secretary

Department of Conservation

... This department operates with the policy stated in Government Code 54950 and all meetings called, either by the department or any of its boards and commissions, are conducted to both the letter as well as the spirit of that policy statement.

DeWitt Nelson
Director

Fish and Game Commission

... Our meetings are covered by the open meeting legislation.

... When less than a quorum is present no action can be taken, and the commissioner or commissioners are generally acting as hearing officers.

Leslie F. Edgerton
Assistant to the Commission

Forest Practice Committees

... There are four forest practice committees, each consisting of four citizen members appointed by the Governor and serving at his pleasure and a fifth member from the Division of Forestry . . .

These committees meet on call of the chairman, usually meeting to review forest practice rules, to propose new or amended rules or to consider approval of alternate rules of forest practice . . .

All meetings of the committee are required to open to the public . . . by Sec. 4941.5, Pub. Res. Code.

Any meeting of the committee or any subcommittee is open to the public.

There is no compelling reason for not requiring such practices.

There are no differences between the meeting of the whole and meetings of any subcommittee which would be compelling reasons for not extending the open meeting principle to the latter.

F. H. Raymond
State Forester

Board of Forestry

The State Board of Forestry is required by law, under Sections 505.1 . . . to hold open and public meetings . . .

Committees and subcommittees and groups smaller than a quorum of the board have customarily held their meetings open to the public.

There are no compelling reasons why this practice should not be required by statute.

Insofar as this board is concerned, meetings of committees of the board have no reason to be secret or closed to the public any more so than would regular or special meetings of the board itself.

W. B. Carter
Chairman

Klamath River Compact Commission

The Klamath River Compact Commission is an interstate agency. Rules and regulations for the conduct of its meetings are set forth in Article IX of the Klamath River Basin Compact between the States of Oregon and California. Paragraph 9 of subdivision A of this article provides that:

"All meetings of the commission for the consideration of and action on any matters coming before the commission, except matters involving the management of internal affairs of the commission and its staff, shall be open to the public. Matters coming within the exception of this paragraph may be considered and acted upon by the commission in executive sessions under such rules and regulations as may be established therefor."

The commission is composed of two voting members and one nonvoting member. No meetings for groups smaller than a quorum are practicable, and therefore are not scheduled.

Since it is an interstate agency, the commission would not be subject to statutes of the State of California regarding meeting practices. As a practical matter the commission cannot function as a group smaller than a quorum.

Robert B. Bond
Executive Director

Pacific Marine Fisheries Commission

The Pacific Marine Fisheries Commission is presently composed of membership from the States of California, Washington, Oregon, and Idaho.

The Pacific Marine Fisheries Commission is covered by open meeting legislation as follows: "All meetings of the commission shall be open and public, and all persons shall be permitted to attend any meetings of the Commission." (Fish and Game Code Section 14106.)

W. T. Shannon
Director

Goose Lake Compact Commission

To the best of its knowledge this commission is not presently covered by open meeting legislation.

It is the practice of this commission to hold open meetings.

There are no apparent compelling reasons for not requiring by statute that this commission hold open meetings.

Reginald C. Price
Chairman

California-Nevada Interstate Compact Commission

To the best of its knowledge this commission is not presently covered by open meeting legislation.

It is the practice of this commission to hold open meetings.

There are no apparent compelling reasons for not requiring by statute that this commission hold open meetings.

A. M. Barton
Chairman

Marine Research Committee

. . . Subcommittees in the formal sense are rarely used. Occasionally one or more members are requested to study a particular problem and report back to the entire committee.

However, I would like to observe that too stringent a requirement for open meetings of subcommittees and working parties would tend to weaken appointive bodies for the simple reason that the only persons with the privilege of thoughtful, private, and thorough consideration of problems would be paid staff members.

As already indicated meetings of less than the full committee are always in the nature of study groups seeking to develop in depth problems that have arisen during open meetings. These have always been ad hoc assignments. Sometimes only one member is involved. A requirement to perform such tasks in public would negate their usefulness and we would have to assign the studies to staff members.

J. G. Burnette
Chairman

The Reclamation Board

... Section 8562.5 of the Water Code provides that all meetings of the board shall be open and public. . . . The board has two committees which have met on very rare occasions during the past few years. Insofar as we have been able to ascertain, the meetings of the committees held in the past were not scheduled as open meetings. . . . we do not know of any compelling reasons for not requiring that the meetings of the board's committees be open meetings.

A. E. McCollam
General Manager

Recreation Commission

The Recreation Commission is required by law to have all its general meetings open to the public. The commission, during my chairmanship, has not had any subcommittee meetings or meetings of other groups smaller than a quorum. I can think of no reason for not requiring that our meetings be public with the exception, of course, of executive meetings where personnel might be discussed.

Considering our commission alone, I can perceive no differences between meetings of the whole and meetings of subcommittees and other groups smaller than a quorum which would serve as reasons for limiting or qualifying the extension of the open meeting plan to the latter.

Mrs. Dewey J. Forry
Chairman

Small Craft Harbors Commission

... The Small Craft Harbors Commission is required by statute to hold open meetings.

Open meetings are not scheduled for groups smaller than a quorum nor are such meetings held.

The statutes provide that no action shall be taken by the commission by less than a majority of its members. A meeting of less than four of the seven members of the commission would therefore be pointless.

Lachlan M. Richards
Chief

Water Commission

... Section 164 of the Water Code already provides for such practices.

The use of subcommittees and committees of the Water Commission is necessary because of the large membership of the commission and the fact that its members come from widely separated parts of the state and because of the large number of statutory responsibilities. Section 164 of the Water Code provides that the commission may conduct any hearing or investigation by any member or nominee on authorization of the commission but that final action of the commission must be taken by a majority of the members at a meeting duly called and held. The section further provides that all hearings held by the commission or by any member or nominee thereof, shall be open and public. The commission subcommittees have, in the past, conducted work sessions following such hearings for the purpose of drafting their recommendations to the full commission. Similarly, subcommittees of the commission have inspected various water projects as a part of the commission's responsibility for prior approval of loans and grants under the Davis-Grunsky Act and for various other projects. Without such work sessions and field trips the work of the subcommittees and of the commission as a whole would be seriously restricted.

It is our opinion that the Legislature noted the difference between hearings and other meetings of the subcommittee in Section 164. That section held that the com-

mission could hold hearings and investigations by subcommittees but further provided that only hearings by such subcommittees must be open and public.

William M. Carah
Executive Secretary

Water Rights Board

... The Water Code in Sections 181 and 183 expressly provides with respect to the State Water Rights Board that all meetings of the board and hearings held by it "shall be open and public."

With possible rare exceptions, the work of the board is not conducted on a committee or subcommittee basis. Water Code Section 183 does authorize any board member upon authorization of the board to conduct any hearing or investigation, but all such hearings are open and public.

L. K. Hill
Executive Officer

Water Quality Control Board

... The State Water Quality Control Board is presently covered by open meeting ... legislation (Water Code Sections 13007 ...), but the board has never established a policy regarding open meetings for committees. ... I will reply to the questionnaire after I have been given some guidance as to board policy. ...

Paul R. Bonderson
Executive Officer

Water Quality Control Board

... The board, on occasion, schedules open meetings for committees.

The board is of the opinion that there are compelling reasons for *not* requiring by statute that all of its committee meetings shall be open to the public.

The board feels that there are differences between meetings of the whole and meetings of committees and other groups smaller than a quorum.

Paul R. Bonderson
Executive Officer

Wildlife Conservation Board

... The full Wildlife Conservation Board and legislative interim committee meet as a group as required by law.

R. J. Nesbit
Executive Officer

REVENUE AND MANAGEMENT

State Allocation Board

The meetings ... of the State Allocation Board are required to be open and public pursuant to Section 15490 of the Government Code.

The State Allocation Board, from time to time in the past, has appointed a committee from its membership to study particular problems. While the committee meetings are open, general notice is not given. However, any persons or groups known to be interested are notified and invited to attend.

There are no compelling reasons against requiring (by statute) that committee meetings be scheduled and open—provided the procedures for meeting the requirements do not impede progress, timewise or otherwise. On the other hand, there appear to be no compelling reasons for such requirements since the proceedings and findings of the committee are reviewed in a regularly scheduled open meeting of the board and interested persons are afforded an opportunity to be heard before a decision is made.

There are no differences between the meeting of the whole and the meeting of the committee that would be compelling reasons for limiting or qualifying the application of the open meeting principle to the *committee* meetings. However, the application of the open meeting principle to "other groups smaller than a quorum" could interfere with the board's efficient operation if what constitutes a "meeting" is not clearly defined or if informal discussions, etc., were included.

Paul T. Hoyenga
Assistant Executive Officer

Capitol Building and Planning Commission

... It is the practice of Capitol Building and Planning Commission to hold open meetings.

... There are no compelling reasons for not requiring the commission to hold open meetings by statute.

James M. Bordenkircher
Staff Coordinator

Communications Advisory Board

... All meetings of this board are open meetings to the public and press.
There are no compelling reasons for not following this practice.

William E. Whiting
Chairman

Board of Control

... Meetings of the Board of Control are presently open to the public. Item (2) of the questionnaire is not applicable since the board does not have committees, subcommittees, or other groups smaller than a quorum.

B. V. Dittus
Secretary

Exposition and Fair Executive Committee

... The committee has held open meetings. Their agenda is distributed to the press.

There are no reasons for other than open meetings except when the committee has been interviewing and selecting staff for appointment.

Committee meetings have been open, except personnel interviewing and selection committees.

Stanley B. Fowler
Executive Officer

Board of Equalization

... The board does not hold meetings or make decisions with less than a quorum of its members present.

Under published rules of procedure, individual board members act as hearing officers for specified types of tax appeals. The hearings are scheduled hearings which are open to the public and the board member reports the facts to the board for its decision.

Each member of the board also acts as chairman of a committee of employees of the board concerned with a specified segment of our administrative operations. These staff committees meet on an irregular basis. Staff recommendations originating from a committee are reported to the board for decision at scheduled open meetings.

H. F. Freeman
Executive Secretary

Franchise Tax Board

... The Franchise Tax Board is covered by open meeting legislation. Section 15703 added by Stats. 1957, p. 3865, provides:

15703. All meetings of the board shall be open and public, except during executive sessions of the board if public disclosure of the subject under discussion or consideration is prohibited by law.

... the Franchise Tax Board may authorize any person to conduct a public hearing for the purpose of considering proposed regulations. However, the results of the hearing and summaries or copies of material presented at the hearing must be submitted to the Franchise Tax Board before it acts on the proposed regulation.

Martin Huff
Executive Officer

Public Works Board

... As you are aware, in 1963, Section 11015 was added to the Government Code. Pursuant to this section all meetings of the State Public Works Board must be open and public. In practice, this section has had no changed effect on meetings of the State Public Works Board since the policy of the board has always been that all meetings of the board shall be open and public. Since the Public Works

Board consists of only three voting members and does not hold committee meetings, the board never has taken a position on the question of whether committee meetings should be open and public.

H. C. Vincent, Jr.
Administrative Secretary

State Building Standards Commission

... Meetings of the Building Standards Commission are open to the public. (Section 18909 H. & S. Code.)

There appears to be no reason for not requiring that the commission meetings shall be open to the public.

Meetings for committees, subcommittees, advisory panels and other groups smaller than a quorum are handled occasionally with some degree of informality and are not *always* scheduled as open meetings.

There appears to be no absolutely compelling reason for not requiring that meetings of the committees, subcommittees, advisory panels and other minor groups shall be open to the public. However, in many instances such meetings are open to the public. Also all known divergent interests are represented in these informal groups.

No official action of the commission shall be taken at an informal session which includes meetings of committees, subcommittees, advisory panels and minor groups (Title 24 Calif. Admin. Code Section 312). Some informality involving closed meetings is desirable for reasonable economy, effectiveness, expediency and promptness of action particularly regarding special assignments involving factual exploration and investigation. All findings, conclusions and recommendations, however, are subject to review and confirmation by the commission at formal open meetings.

Harry A. Cobden
Executive Secretary

State Employees' Retirement System

... The Board of Administration is subject to the requirement that its meetings be open and public (Sec. 20136, Govt. Code). The board's meetings have always been open and public.

The board is authorized to delegate authority to act to a committee of its members. It has not used this authority in recent years, except in the investment field. It has appointed a standing committee to assist in the purchase of securities from lists of securities acceptable for purchase established by the board in open meeting. The system is a large investor. Opening of this committee's meetings would supply information as to purchases under consideration to the system's disadvantage in the market. Opening of the meetings of this committee could obstruct the system's obligation to obtain maximum productivity of employer and employee contributions entrusted to its care. We think the public's right to know in his area is adequately protected by the board's action in open meetings to establish its list, to approve all purchases by name and the publication of the system's security holdings.

William E. Payne
Executive Officer

State Lands Commission

... All meetings of the State Lands Commission are open to the public pursuant to Section 6109 of the Public Resources Code.

The lands commission consists of three members. Attendance less than a quorum would amount to a committee or group consisting of one member. Therefore, such a statutory requirement could place each commissioner in the untenable position of having to call a public meeting for the purpose of conferring with one of the commission's staff or any other person.

Meetings of the lands commission always consist of a quorum. No action or resolution may be taken or passed at meetings of committees, subcommittees or groups. In fact, no public hearing may be conducted by the executive officer of the lands commission or a commissioner without authority of the full commission and adequate public notification.

F. J. Hortig
Executive Officer

State Personnel Board

... Under the provisions of Government Code Section 18653 the meetings of the State Personnel Board are open to the public. ...

The Personnel Board does not have meetings of subcommittees or other groups with a number smaller than a quorum.

We do not believe additional legislation is necessary. We have always interpreted and applied Government Code Section 18653 as precluding meetings or action with less than quorum and as requiring that all meetings be opened to the public.

For the reasons stated above, additional legislation does not appear necessary.

John F. Fisher
Executive Officer

Television Advisory Committee

... Please be assured that the Television Advisory Committee conducts all of its meetings in public sessions with locations and agendas published prior to the meetings, a practice we intend to continue.

Dr. Frymire
Television Coordinator

PUBLIC SAFETY

Atomic Energy Development and Radiation Protection

... The Advisory Council on Atomic Energy Development and Radiation Protection is required by Statute (Section 25763, Chapter 7.5, Division 20, California Health and Safety Code) to hold only open and public meetings.

All council meetings are open regardless of the number of members present.

Gene A. Blanc
Secretary

Departmental Coordinating Committee on Atomic Energy Development and Radiation Protection

... The Departmental Coordinating Committee on Atomic Energy Development and Radiation Protection is required by statute (Section 25751, Chapter 7.5, Division 20, California Health and Safety Code) to hold only open and public meetings.

All committee meetings are open regardless of the number of members present.

Gene A. Blanc
Chairman

California Disaster Office

The following responses are provided to your questionnaires of November 24, 1964, addressed to the California State Disaster Council and the citizens' advisory committees to assist in specific fields of disaster:

... Both the California State Disaster Council and citizens' advisory committees are covered by the provisions of Section 11015 of the Government Code.

Normally, the California Disaster Office only schedules meetings of the disaster council or of an advisory committee as a whole. These bodies have no standing subcommittees. Occasionally one of the advisory committees appoints a subcommittee of three or four members to prepare a detailed report and recommendations on some specific subject; meetings of such subcommittees are customarily arranged informally by the subcommittee chairman at the convenience of its members.

The principal difficulty created by a requirement for public notice and open meetings in connection with such subcommittees would seem to be that it would prevent their meeting in one of the members' offices on short notice.

Members of these advisory committees receive no compensation for their services. A few of their members are employees of some public agency, but most of them are private citizens who are expert in some field related to disaster preparedness. In accepting membership, they are agreeing to donate a certain amount of time, as a public service, to make their experience available to the state. When a few of these members agree to research some problem and prepare a report for the committee as a whole, it would seem to impose an unnecessary burden to require that they give

public notice of their meetings and make the special arrangements necessary for the holding of a public meeting.

John W. Gaffney
Director

State Fire Advisory Board

The State Fire Advisory Board is created within the office of the State Fire Marshal and acts in an advisory capacity to the State Fire Marshal. The board meets at the call of the Fire Marshal and all meetings are open and public.

It has been my general practice to schedule meetings of the board as a whole. However, should meetings of committees, subcommittees, and other groups smaller than a quorum be scheduled, such meetings would also be open and public.

There are *no* compelling reasons for not requiring by statute that the State Fire Marshal follow such practices.

There are *no* differences between the meeting of the whole and meetings of groups smaller than a quorum which would serve as compelling reasons for limiting the open meeting principle in the case of groups smaller than a quorum.

Glenn B. Vance
State Fire Marshal

Department of Veterans Affairs

... The Department of Veterans Affairs participates in meetings of the California Veterans Board which is open to the public. An advisory committee to the veterans board meets at the call of the veterans board and this also is open to the public. The Director of Veterans Affairs is secretary to the Veterans Finance Committee which is also open to the public.

Our department does not schedule meetings for these boards with less than a quorum present.

There are no reasons for not requiring by statute that our department follow such practices.

Dean Hooper
Administrative Assistant

OTHER BOARDS AND COMMISSIONS

Governor's Council

This is in response to your questionnaire regarding the meetings of the Governor's Council. The Governor's Council meetings are open to the public and press coverage is always invited.

The council does not currently have any subcommittees, and has not held special meetings or meetings other than those regularly scheduled.

Since the purpose of the council is an exchange of reports between department heads and the Governor, there is no reason to restrict public information regarding these reports. As a matter of practice, copies of written reports are made available to the press and any interested parties.

Ronald A. Clark
Assistant Cabinet Secretary

California Arts Commission

... Chapter 1742 creating the California Arts Commission provides under Section 6, "All meetings of the commission shall be open and public and all persons shall be permitted to attend any meetings of the commission."

There would be some question in my own mind as to whether or not personnel committee meetings should be open meetings. Confidential and personal information may be involved.

Abbott Kaplan
Chairman

Coordinating Council on Urban Policy

... The coordinating council is an agency presently covered by open meeting legislation. ... all meetings of the council are open to the public. The only meeting of a group smaller than the full council are those of the council executive committee consisting of five members and all of these meetings are held in meeting rooms and

offices which are open to the public. I know of no compelling reasons why all meetings of the coordinating council should not be open to the public.

Philip G. Simpson
Executive Secretary

Controller

. . . While all of their meetings are, in fact, open to the public, the statutes do not specifically name the Committee on County Accounting Procedures (Government Code Sec. 30201) or the Advisory Committee on Tax-Deeded Property (Revenue and Taxation Code Sec. 3534).

All meetings thereof are open.

The advisory committee to assist the Controller in developing complete and adequate records (Government Code Sec. 12463.1) is specifically mentioned in Government Code Sec. 11015.

Ralph I. McCarthy
Deputy

Commission on Judicial Qualifications

. . . With respect to questions (1) (a) and (1) (b), it is *not* the practice of this agency to hold open meetings and there *are* compelling reasons for not requiring the agency to hold open meetings.

The applicable law on the subject is contained in Section 10b of Article VI of the California Constitution, "all papers filed with and proceedings before the Commission on Judicial Qualifications or masters appointed by the Supreme Court, pursuant to this section, shall be confidential . . ."

Before the constitutional amendment establishing this commission was submitted to the people, this subject received the most careful attention. It was decided by the Legislature and the various persons who had been working on a method of removing unfit judges that the public interest required the fullest protection of the courts and reputations of judges against unjustified accusation. It was, therefore, determined that unless a recommendation for removal or retirement were filed with the Supreme Court matters pending before the commission would be confidential.

Lloyd E. Griffin
Chairman

Commission on Voting Machines and Vote Tabulating Devices

In answer to your inquiry of November 24, this is to advise that all meetings of the State Commission on Voting Machines and Vote Tabulating Devices are open to the general public.

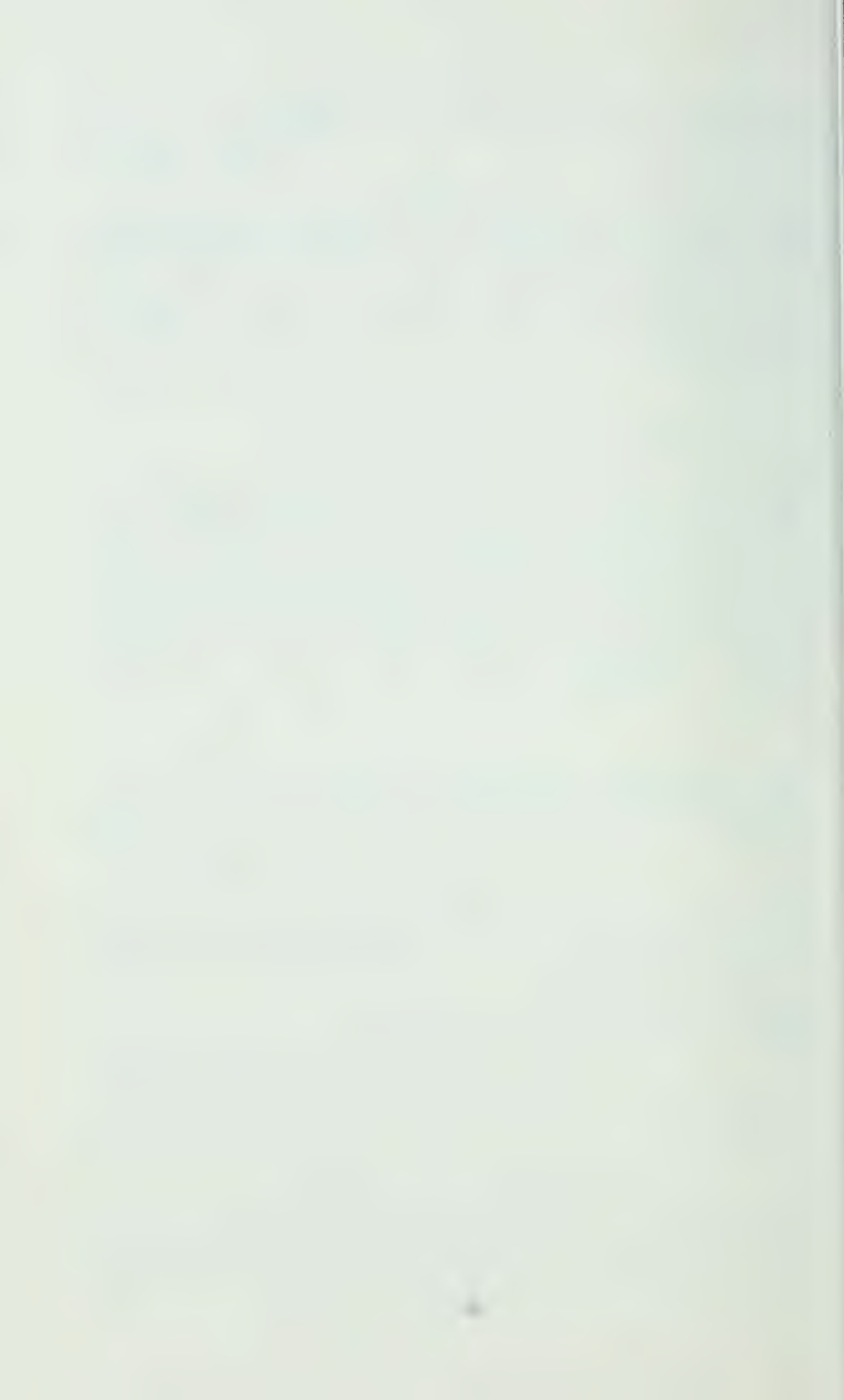
Frank M. Jordan
Secretary to Commission

Treasurer

. . . For your information, the Pooled Money Investment Board consists of the Director of Finance, the State Controller, and the State Treasurer as chairman. All meetings are required to be open to the public in accordance with Section 16480.1 of the Government Code.

I would just like to add that I am in complete accord with the open meeting principles as regards all governmental agencies.

Bert A. Betts
State Treasurer



III. PUBLIC RECORDS
AND
THE RIGHT OF INSPECTION

THE RIGHT OF INSPECTION

The English courts declared that there was no common law right in all persons to inspect public records. However, the courts commonly recognized the right of inspection where a record was sought for use as evidence or information in pending litigation. As a result of this **background**, the development of a definition of "public records" was for use in litigation, rather than as an instrument for making the public's business the public's business. This purpose has tended to produce a more restrictive definition which appears to have no uniform or essential relevance to access to the end that the people may know about the activities of the government agencies which exist to serve them.

CALIFORNIA LAW

California's statutory law reflects this development. The specific public records provisions were enacted in 1872 and are found in the Code of Civil Procedure relating to the admissibility of evidence in judicial proceedings.

WHAT IS A PUBLIC RECORD?

There are various statutes which bear on this question. Section 1888 and 1894 C.C.P. provide as follows:

"1888. Public writings are:

1. The written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country;

2. Public records, kept in this state, of private writings.

"1894. Public writings are divided into four classes:

1. Laws;

2. Judicial records;

3. Other official documents;

4. Public records, kept in this state, of private writings."

While these statutes might appear to be broad in their application, the courts have tended to be restrictive in their interpretation. For example, the above sections have been construed in the leading case of *Mushet v. Department of Public Service* (1917), 35 Cal. App. 630, as exclusionary. In determining whether a document in question is a public record a process of elimination must be applied. It must be either a "law" a "judicial record" or a "public record . . . of private writings" and this latter category has been construed to apply only to documents filed or recorded in public offices by virtue of recording or other laws. This leaves remaining "official documents" and "written acts or records of acts of official bodies or tribunals or public officers" and the *Mushet* case held that these sections must be construed together.

In other words, it is not enough that they be written acts or records of acts or official documents—they must be both.

PRIVILEGED COMMUNICATIONS

There is another consideration. Even though a record is public in nature it may be withheld because a public officer maintains it in official confidence. In this connection, Section 1881 (5) C.C.P. provides as follows:

“1881. (5) A public officer cannot be examined as to communications made to him in official confidence, when the public interest would suffer by disclosure.”

This statutory statement of public policy has been recognized in several cases. In *City and County of San Francisco v. Superior Court*, 38 Cal. 2d 156, the court held that private employment data acquired for the purpose of fixing the compensation of municipal employees could be treated as confidential because disclosure would have an adverse effect on the public interest.

COMMITTEE REVIEW

The most recent legislative study of the accessibility of public records was undertaken in 1953 by the Senate Special Committee on Governmental Administration. The committee report published in 1955 was titled “Public Records Survey.” In the foreword the committee stated:

This report deals with a survey as to the accessibility of government records to public inspection and is submitted without conclusions or any recommendation except that further study be given. This presentation is made at this time to afford those interested in the problem an opportunity to study these conditions prior to the preparation of legislation to clarify existing law and resolve policy in those instances where uncertainty now prevails.

This committee has undertaken to update the work of the special Senate committee pursuant to House Resolution No. 564 by Assemblyman William T. Bagley.

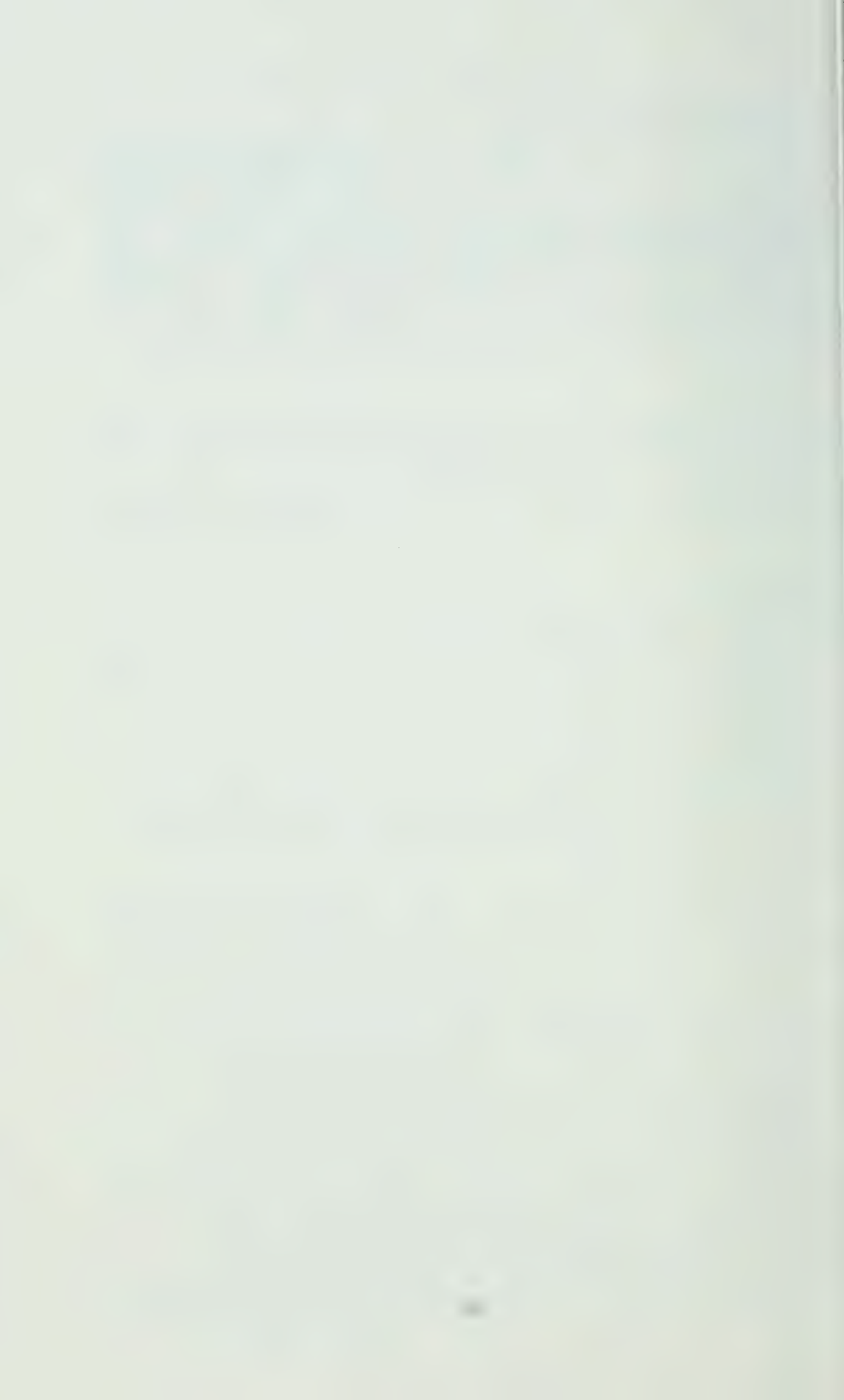
In order to facilitate our study a questionnaire was sent to all state agencies asking the following questions:

- (a) What agency records are presently closed to the public?
- (b) For what reasons are these records closed to the public (other than by law)?
- (c) If under certain conditions these records are open to particular sectors of the public, for instance the press, please specify?
- (d) For what reasons are these records open to a part rather than all of the public?
- (e) What suggestions have you for further opening the records of your own agency to the public?
- (f) What charges are made, and what facilities are provided for the inspections and duplication of public records?

Responses to the committee questionnaire are included as **Appendix B** to this section of the report.

COMMITTEE RECOMMENDATION

On the basis of the responses to the committee questionnaire and the decisions of the courts in interpreting the law providing for inspection of public records, the committee supports the enactment of general legislation providing for access based on the public's right to know. Such legislation should apply to all governmental agencies and require all records to be open to the public except where public policy as expressed by statute requires confidentiality. The committee also recommends continued review of statutes granting to specific agencies a privilege of nondisclosure with respect to certain of their records.



APPENDIX A

STATE OF CALIFORNIA OFFICE OF LEGISLATIVE COUNSEL

Sacramento, California
November 23, 1964

Honorable Milton Marks
Russ Building
San Francisco 4, California

Inspection of Public Records—No. 7755

Dear Mr. Marks:

You have requested a brief summary of the California laws relating to the inspection of public records by members of the public, and a short digest of cases that interpret the law on this subject.

The general provisions are found in various sections of the Code of Civil Procedure and the Government Code, and read as follows:

“1888. Public writings are:

“1. The written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country;

“2. Public records, kept by this state, of private writings.”
(Sec. 1888, C.C.P.)

“1894. Public writings are divided into four classes:

“1. Laws;

“2. Judicial records;

“3. Other official documents;

“4. Public records, kept in this state, of private writings.”
(Sec. 1894, C.C.P.)

“1892. Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute.” (Sec. 1892, C.C.P.)

“1227. The public records and other matters in the office of any officer, except as otherwise provided, are at all times during office hours open to inspection of any citizen of the state.” (Sec. 1227, Gov.C.)

Consolidating the language of Sections 1888 and 1894 of the Code of Civil Procedure (see above), the court in *Mushet v. Department of Public Service* (1917), 35 Cal. App. 630, 634, held that before questioned documents can be denominated as public writings they must not only be “official documents” but must also be the “written acts or records of the acts” of public officials or bodies. In other words, it is not

enough that they be written acts or records of acts or official documents—they must be both. (See 44 Cal. Law Rev. 305, 316 and 50 Cal. Law Rev. 79.)

This interpretation has led to a number of opinions of the Attorney General holding that the records of various governmental agencies need not be made public. Thus, in 31 Ops. Atty. Gen. 103, 104, where the question was whether the Real Estate Commissioner need make public the applications for licenses filed by persons seeking to engage in business as real estate brokers or salesmen, the Attorney General, after stating that he found no provision of law making such applications either confidential or subject to inspection, went on to hold that since the applications were filled out by private individuals they are not the "written acts or records of the acts of the sovereign authority" nor "other official documents" and therefore there was no requirement that such applications be open for public inspection (see also 11 Ops. Atty. Gen. 41, 44 and 18 Ops. Atty. Gen. 231, 233).

Government Code Section 1227 (see above), however, provides that not only public records but "other matters" must be held open to inspection. This language has been used by the court to permit the inspection of certain papers even though they are not public records. In *Coldwell v. Board of Public Works* (1921), 187 Cal. 510, the court held that a private person had the right to inspect the preliminary estimates and plans prepared in the office of the city engineer of San Francisco in connection with the Hetch-Hetchy Project, even though the documents were memoranda prepared for use in the office and had not been formally adopted as the official acts of the engineer. Inspection was granted on the basis they were "other matters" in which the "whole public" had an interest (see also *Musket v. Department of Public Service*, supra; *City Council of the City of Santa Monica v. The Superior Court*, (1962), 204 Cal. App. 2d 68, 75; and 44 Cal. Law Rev. 305 and 50 Cal. Law Rev. 79).

Another statutory provision to be considered is Section 1881, subdivision 5, of the Code of Civil Procedure, which reads as follows:

"A public officer can not be examined as to communications made to him in official confidence, when the public interest would suffer by the disclosure."

In interpreting this section, together with the others previously set out, the courts have held that the right of inspection may be curtailed in relation to communications or portions thereof where public policy demands that disclosure be prohibited. Thus, where private employment data required for the purpose of fixing compensation of municipal employees could not be obtained except upon the express pledge that the source of the material would be treated as confidential and where the disclosure of information thus acquired would have an adverse effect on the public interest a municipal corporation was held to be entitled to keep this matter confidential (*City and County of San Francisco v. Superior Court*, 38 Cal. 2d 156). The same holding was made with regard to a report of an investigation made by a city in connection with the drowning of a child in a municipal swimming pool, in preparation for a possible action against the city (*Jessup v. Superior Court*, 151 Cal. App. 2d 102). Similar holdings have been

made with reference to documents and records filed in the offices of law enforcement agencies relating to the apprehension, prosecution, and punishment of criminals (*People v. Wilkins*, 135 Cal. App. 2d 371).

The statutes discussed above are general ones which are applicable to both the State and local governmental units such as cities and counties. They are qualified by a number of provisions relating to certain kinds of records. In respect to state governmental agencies, there are many statutes requiring all records of a particular state board or commission to be open to the public (for example, see P.R.C. Sec. 506.2, re records of State Park Commission; Ed.C. Sec. 113, re records of State Board of Education).

Other provisions require specific departmental records to be open. Illustrative are provisions concerning the records of the Department of Motor Vehicles relating to the registration of vehicles (Veh.C. Sec. 1808), wine price schedules or changes therein of the Department of Alcoholic Beverage Control (B. & P.C. Sec. 24874), records of animal brands (Ag.C. Sec. 336.2), and grain warehouse inspection records in the Department of Agriculture (Ag.C. Sec. 1260.25). Also, all records, papers, documents and reports filed with the Commissioner of Corporations under the provisions of the Corporate Securities Law, except those he elects to withhold, are open to public inspection (Corp.C. Sec. 25314).

On the other hand, certain departments are specifically prohibited from releasing certain information. For example, all information and records of the Inheritance Tax Department are confidential as to the Inheritance Tax Law and the Gift Tax Law, except those necessary for enforcement of the provisions of the laws or as permitted by such laws (R. & T.C. Secs. 14813, 16563). Except as otherwise provided, all records of the Department of Social Welfare relating to individuals in connection with the administration of the provisions of the Welfare and Institutions Code involving grants-in-aid from the United States Government except disbursement records are confidential (W. & I.C. Sec. 118). For at least six months all required accident reports are for the confidential use of the Department of Motor Vehicles and the Department of the California Highway Patrol (Veh.C. Secs. 20012-20015).

As for local governmental entities, the books, records, and accounts of a county board of supervisors are required to be kept at the office of the clerk of the board and open at all times for public inspection (Gov.C. Sec. 25104). Many district laws also contain a specific section requiring a district's records to be open to public inspection, for example, recreation and park districts (P.R.C. Sec. 5782.14), resort districts (P.R.C. Sec. 10472), irrigation districts (Wat.C. Sec. 21402), and fire protection districts (H. & S.C. Sec. 14105).

We have not attempted to compile a list of all the special laws relating to inspection of public records, but merely to show examples. Unless qualified by a special law, the general statutes discussed above will determine whether a particular record is required to be open to public inspection, regardless of whether it is a state, or a city or county record.

There are no constitutional provisions concerning the inspection of public records, but some records are required by federal law to be kept confidential as a condition of receiving federal aid (see W. & I.C. Sec. 118 as to public assistance for the aged, needy children, and blind).

Very truly yours,

George H. Murphy
Chief Deputy Legislative Counsel

By

Barbara Cochrane Calais
Deputy Legislative Counsel

APPENDIX B

RESPONSES TO COMMITTEE QUESTIONNAIRE BY STATE AGENCIES REGARDING PUBLIC RECORDS

For convenience in comparing responses of various state agencies, the departments, boards and commissions have been organized under generally related headings. In general, this classification approximates the organizations of units of state government within the agencies.

AGRICULTURE

Department of Agriculture

... On April 14, 1954, we answered a questionnaire by the Senate Special Committee on Governmental Administration covering this same subject. The policy stated in this letter which was published in the Committee Report "Public Records Survey," commencing on page 68, provided the basis for the development of our present policy. The department's present policy governing records closed to the public, is stated in Policy Letter No. I-3, dated April 7, 1964. A copy of this policy statement is enclosed.

In addition, there are two omissions in this policy letter with regard to records that are closed to the public. These are: (1) Military information—records pertaining to the movement of armed services and their ships; aircraft, vehicles, personnel and equipment. Such information on military movement may from time to time be in our records in connection with our plant and animal quarantine inspection work; and (2) referendum ballots—several marketing programs under different marketing laws, provide for referendum voting by producers or handlers, or both. These referendums are conducted by the department. The ballots received under these programs are considered confidential and the voting record of each individual voter is closed to the public.

Question 3(b)

Records closed to the public other than by law include:

Examination questions. Disclosure would destroy the value of the examination to be given.

Records, correspondence and lists of names pertaining to the operations of individual persons or firms. Some of this information is obtained under the authority of Article 2, Chapter 2, Division 3, Part 1, Title 2, of the Government Code, and therefore is by law, confidential. Much of it is obtained by other means. Disclosure of such information would often be harmful to the person concerned and disclosure would be detrimental to the public interest.

Information developed in connection with the apprehension or prosecution of violations of laws—the reasons given for "2" above, would also be applicable here.

Information obtained under a pledge of confidence. If such information is made public, the sources of such information will disappear.

Question 3(c)

Certain records are disclosed to persons who have a direct financial interest in the transactions or upon written release of the principal. Please refer to Item B, page two of department policy letter, for a statement of these records.

Question 3(d)

The reason these records are not open to all the public is that they deal with the affairs of private individuals or firms and it is not considered to be in the public interest to disclose the information except to persons who have a direct financial interest in the particular transaction.

Question 3(e)

We do not believe the public interest would best be served by further opening of records to the public. The Department of Agriculture policy, as stated in our policy letter, regarding the disclosure of records is sound. A lot of study has gone into the development of the policy. It serves the public well and records not available to the general public, if not confidential by statute, are withheld for valid reasons.

Question 3(f)

Copies of many records are available and are given to any interested person free of charge. A \$2 fee is charged for shipping point inspection certificates, issued to financially interested parties. Mailing lists not available for free distribution, which may be released, are issued for the actual cost of preparation.

Adequate work space is provided for persons who desire to examine or copy public documents.

Question 4

The current practice of the department is to permit radio and television coverage at public meetings and hearings conducted by the department.

We do not see any problem which would impede the beneficial effects of such coverage. However, we would hope for appropriate standards of conduct which would cause a minimum of interruption or hindrance to the proper conduct of such meetings or hearings.

Boards Not Covered by Open Meeting Legislation

There are several boards and commissions over which the department has some supervisory jurisdiction which are not covered by open meeting legislation. These boards are as follows:

Marketing order boards established under the California Marketing Act.

Milk producer advisory boards under the Milk Stabilization Law.

The California Beef Council.

Program committees established under the Agricultural Producers Marketing Act.

Questions 3(a) through (f) and Question 4

The answer to these questions with respect to these boards is the same as for the policies stated above for the Department of Agriculture.

Boards or Committees Related to the Department Covered by Open Meeting Legislation

These boards are:

District Agricultural Association Directors

The Dairy Council of California

The Livestock Identification Advisory Board

The Livestock Health Committee *

Question 3(a)-(e)

All records of these agencies are open to the public by statute except as provided in Section 84.2 of the Agricultural Code with regard to records of district agricultural association directors. These records which are closed to the public are: Entries in events scheduled for future judging and for overnight entries in races on which there is pari mutual wagering prior to such events, judging times, or races.

* The Livestock Health Committee is inactive and has not met for several years. The authority for the committee will expire the 91st day after the 1965 Regular Session of the Legislature.

Question 4

Our answer is the same as stated above for the Department of Agriculture.

Two boards, the California Fish and Seafood Advisory Board and the California Table Grape Commission, authorized under the Agricultural Code, Chapter 20 and Chapter 21 respectively of Division 6, were never activated. These programs called for majority approval in assent and referendum procedures by persons affected. The vote was not sufficient to put either program into effect.

Chas. Paul
Director

Enc.

State of California
DEPARTMENT OF AGRICULTURE

POLICY LETTER: NO. 1-3

TO: All Employees

SUBJECT: Records Available to the Public

Section 1892 of the Code of Civil Procedure and Section 1227 of the Government Code give to any citizen of the state the right to inspect public records, except as otherwise provided by law. There have been no court cases that have laid down any broad general rules that can be followed in determining what type of records or documents are "public writings" or "public records" within the meaning of these sections.

Officers and employees of the department should therefore be guided by the following in considering requests for permission to inspect or take copies of any records or documents in their possession:

A. The following records are considered confidential in accordance with provisions of law or because disclosure of their contents would not be in the public interest:

(1) The following personnel records:

(a) Formal signed applications for state civil service examinations (Section 18934, Government Code).

(b) Employee appeals to Personnel Board and communications in connection therewith (Section 18952, Government Code).

(c) Information required by the Personnel Board in connection with each appointment, separation from service, or other change in position or salary or other matter affecting the status of positions or the performance of duties of employees in the state civil service, except that a person may inspect any record relating to his own services (Section 18573, Government Code). This would include such material as comments and item ratings on reports of performance, information concerning written and performance tests and oral examinations, and information concerning the medical condition of an employee.

(d) Examination questions.

(2) Information acquired from the private books, documents or papers of any person while acting or claiming to act under any authorization pursuant to Article 2 of Chapter 2, Division 3, Title 2, of the Government Code, in respect to the confidential or private transactions, property, or business of any person (Section 11183, Government Code).

(3) Individual reports of handlers of farm products required to be filed with the director pursuant to the provisions of Section 1300.13 of the Agricultural Code (Section 1300.13, Agricultural Code).

(4) Records or reports made by distributors or manufacturers of milk, cream or dairy products pursuant to the provisions of Article 4, Chapter 16, Division 6, or by distributors of fluid milk or fluid cream pursuant to the provisions of Article 13, Chapter 17, Division 6, of the Agricultural Code (Sections 4163 and 4401, Agricultural Code).

(5) Lists of persons reporting, and reports made by farmers, stockmen, processors, dealers, handlers, and others, to the California Crop Reporting Service, as well as tabulated copies of such reports and copies of reports made to the Federal Crop Reporting Board at Washington, D.C. (Federal regulations require confidentiality.)

(6) Records, correspondence and lists of names which would reveal the confidential affairs of individual persons or firms, such as the volume of business done, the composition or secret formulas of products manufactured, prices paid or charged, financial condition, or like items.

(7) Information developed in connection with the apprehension or prosecution of violations of laws. Such information should not be disclosed until it is found necessary to use it at a hearing or in court. Prior disclosure would, in most cases, not only be detrimental to the public interest, but might work an undue hardship on innocent persons.

(8) Information included in requests en route to the Attorney General's office.

(9) Information obtained under a pledge of confidence.

B. The following records may be disclosed only to persons who have a direct financial interest in the particular transaction or, upon written release of the principal, may be disclosed to other interested persons:

(1) Records and correspondence indicating that the business operations, premises, equipment, or products of specific persons or firms have been found not to comply with the laws and regulations governing such materials, or are of inferior quality, or that such premises, crops, livestock, or other products have been found to be infected or infested with pests or diseases. Examples of this type of material are: inspection reports, certificates of inspection, and notices of violation or rejection. Records of hearings, court actions and other disciplinary proceedings pertaining to such materials are not restricted as to public inspection. Results of examination or chemical analysis of official samples of fertilizing materials and economic poisons are, however, required by law to be published, at least annually, and are so published.

(2) Certificates of inspection and reports of analysis for individual persons or firms when such certificate or report is issued as a service upon payment of a fee, and indicates the quality or grade of the product. Examples are: shipping point inspection certificates, field crop inspection certificates, reports of seed analyses, and canning tomato inspection certificates.

C. The following are also privileged and need not be disclosed except upon order of a court:

(1) Intra-agency memoranda.

D. Lists of names and addresses on record with the department may be made available to any interested person subject to the following conditions:

(1) Lists of producers or handlers developed pursuant to Section 1300.13 of the California Marketing Act, or pursuant to any comparable authority, may be released only with the approval of the director and subject to such conditions as will assure that they are to be used for a purpose authorized by law and relating to a proposed or established marketing program.

(2) Lists which are compiled and distributed by the department in order to effectively carry out its official responsibilities may be distributed free of charge.

(3) Other lists may be furnished upon payment of any costs incurred by the department in preparing such material, provided further that such preparation does not interfere with the regular work of the department. Lists or reproduced records will be furnished by the data processing section only when so ordered by the program division concerned. The data processing section will notify the fiscal officer of the costs to be recovered. The fiscal office will bill such costs to the recipient of the data furnished. If two or more lists or sets of records are prepared in a simultaneous operation, the cost of each list or set of records shall be determined by dividing the total cost of the work by the number of lists or sets of records prepared.

E. Unless specifically restricted by law, any records or information in possession of the department may be made available to any cooperating agency when necessary to the conduct of the business of the department.

Chas. Paul
Director

April 7, 1964

Board of Agriculture

... All records of the board now on hand are open to the public.

The board has certain powers under Article 2 of Chapter 2, Part 1, Division 3, Title 2, of the Government Code. This authority is seldom exercised. However, in the event that it is exercised, the provisions of Section 11183 of the Government Code regarding the divulging of information would be applicable. All other records are open and available to the public.

We do not have any suggestions for further opening the records to the public since all records are available other than those restricted by law.

No charges are made for records when copies are available. Appropriate provisions are made for any interested persons to inspect and copy any records.

D. A. Weinland
Executive Secretary

Poultry Improvement Commission

... Copies of the minutes of the previous meeting of the commission are circulated to all who are present at the meetings of the commission, and requests for access to the public records are granted.

Emery A. Johnson
Superintendent

BUSINESS AND COMMERCE

Department of Alcoholic Beverage Control

... Not open to the public for inspection are *investigative reports* dealing with either accusatory or application matters.

Also not open to the public are forms of the type which are mandatorily required by the department containing personal information supplied by applicants. These forms contain such personal information as financial status, arrest history, marital history, etc., and are furnished by the applicant with the understanding that they are to be held confidential. Much of this information would not be available if it were to be open to public inspection.

The department has adequate facilities providing for the inspection and duplication of public records. ... No charges are made for providing copies to public agencies.

James O. Reimel
Director

Alcoholic Beverage Control Appeals Board

... Concerning the records of this agency, all records are public records except for those cases which are pending before the board and have not yet been decided. No provision is made by the agency for duplication of records for members of the general public at the agency's expense.

Charles P. Just
Chief Counsel

Banking Department

... Section 254 of the Financial Code states: "The records of the department are not public documents and are not open to inspection by the public." Such records include information set forth in files, correspondence, memoranda, documents, reports, books, records and other papers of the department relating to: (1) reports of examinations and investigations of supervised institutions; (2) the business, financial or other affairs of supervised institutions; (3) relations between the department and supervised institutions and relations between the department and other bank supervisory or other governmental agencies; (4) the internal operations of the department where disclosure could be of no public interest or benefit or would interfere with the operations of the department.

These records are closed to the public to protect the state banking system and to enable the Superintendent of Banks to properly administer his responsibilities. Improper disclosure of such information could: (1) adversely effect the stability and welfare of supervised institutions; (2) unreasonably interfere with the confidential business relationships and encroach upon the right to privacy of business transactions of supervised institutions, their customers, and other persons dealing with them; (3) interfere with the performance of the superintendent's statutory duties

and impede the collection of information and advice, much of which cannot be obtained except on a voluntary and confidential basis; (4) permit speculators and others unfairly to profit in speculative trading in securities and otherwise.

John A. O'Kane
Superintendent of Banks
 James Ahlf
Chief Deputy

Districts Securities Commission

... All records of this agency are open to the public. No charge is made for inspection of commission records. A charge of 15 cents per folio is made for duplication of record by the staff.

T. P. Stivers
Executive Secretary

Horse Racing Board

What agency records are presently closed to the public?

"Reports to the board by the board's investigators and reports from law enforcement agencies."

For what reasons are these records closed to the public? (Other than by law)

"To facilitate detection and prevention of illegal activities."

What charges are made, and what facilities are provided, for the inspection and duplication of public records?

"No charge for inspection. Duplication performed by private firm which bills directly to member of public requesting such duplication."

Charles L. Harman
Secretary

Department of Insurance

... Those agency records which are closed to the public and those open to the public are defined in administrative memorandum No. 26, copy attached.

Closing of certain records is based upon the provisions of Section 12919 of the Insurance Code.

The public interest and reason back of this statute is the necessity of the Insurance Commissioner to obtain, for purposes of proper regulation, a great deal of really personal information concerning some 200,000 people licensed by, or connected with organizations licensed by, the Department of Insurance. To make all this information public could be very detrimental to many of these individuals and in some special cases could cause "runs" on institutions, which would be of great evil to large numbers of the public. It also might impede effective regulation especially in the area of enforcement and rehabilitation.

This agency makes only one exception to its rules on closed materials. Under careful safeguards information from our closed records are made available to recognized public law enforcement agencies, local, state and federal.

Copies of those records which are open to the public may be obtained by anyone by paying our cost of making the copy. We have Xerox equipment available in both San Francisco and Los Angeles. Copies made in this manner require a very nominal per page charge. Pages too large for the Xerox machine are taken by our custodian to a public reproduction firm. Charges for such reproduction are substantially higher and include the time of the custodian. If a certification is required on any document an additional charge of \$1 or \$2 is made.

Stafford R. Grady
Insurance Commissioner

Board of Pilot Commissioners

What agency records are presently closed to the public?

"None."

Captain Henry W. Simonsen
President

Pilotage Rate Committee

What agency records are presently closed to the public?
 "None."

Bert W. Levit
Chairman

Department of Professional and Vocational Standards

The department consists of 24 separate boards and 5 bureaus under the supervision and control of the director of the department.

Board of Accountancy

What agency records are presently closed to the public?

... Investigation reports, examination grades of candidates (except to the candidate himself), names of clients or former clients (where such is contained in the application), lists of persons failing the examination, minutes of the two administrative committees.

A \$2 charge is made for certification of public records. Uncertified copies are supplied free of charge. Records may be examined at the board's office, Monday through Friday between the hours of 8 a.m. and 5 p.m. Chairs and tables are supplied if required.

Harvey Shadle
Executive Secretary

Board of Architectural Examiners

... No agency records are presently closed to the public.

Frank B. Cronin
Executive Secretary

Athletic Commission

... All medical records and all investigative records are closed to the public.

Medical records are not made public because to do so might discourage full disclosure to the doctor and, moreover, might violate the doctor-patient privilege.

Investigative matters are not made public until such time as the matters are tried before a proper tribunal. Many times there are statements and reports in investigative files which are not competent legal evidence. To make these investigations public so that they might be reported as being contained in the states files would often add a dignity and efficacy they do not deserve, thus only investigative matters presented in public hearings are deemed public material.

Careful comments to the press in regard to the results of investigative reports or medical examinations are given; however, every effort is made not to try a case in the press. In some isolated cases with the consent of the doctor and applicant, the actual medical reports are made available.

The purpose in keeping medical records confidential is to protect the doctor-patient privilege and to encourage full disclosure to the doctor. If the doctor and patient decide to waive this privilege, the commission feels the purpose has been served.

The Department of Professional and Vocational Standards, of which the athletic commission is a part, maintains a duplicating service and a charge is made based on the actual cost of such service. Thus, should anyone desire records duplicated, an estimate is prepared by the department and such charges are prepaid.

Jack W. Urch
Executive Officer

Board of Barber Examiners

What agency records are presently closed to the public?
 "Individual examination scores are not available to the public."

For what reasons are these records closed to the public? (Other than by law)
 "Considered personal to the applicant."

James D. Knauss
Executive Secretary

Cemetery Board

What agency records are presently closed to the public?

Annual endowment care fund and special fund reports submitted to the board showing the results of operation and financial condition of these trust funds; and (II) examinations and investigations *in process*.

For what reasons are these records closed to the public?

These reports are closed by statute and we feel that legislation opening these records to the public would enable competitors to gain an unfair advantage and would not benefit the public as the information on these trusts is available at the office of the cemetery authority to the persons directly concerned—the lot purchasers.

If examinations and investigations were not closed during the process of completion we feel that our position would be compromised with a resulting lack of ability to gather necessary information.

All records open to the public are available for review during the regular office hours of the board. Space is provided for the reviewers and they are permitted to bring their own duplicating machines if they so desire. If we duplicate records, we charge the exact cost we are charged for such duplication. If certification is required, we charge a fee of \$2.

James A. Lahey
Executive Secretary

Board of Chiropractic Examiners

... The only records presently closed to the public are those of confidential nature pursuant to Section 1881 (5) C.C.P. as interpreted by the Attorney General—i.e., applications, investigation reports, complaints, examination papers.

These records are closed to the public for no other reason than by law.

These records are not open to particular sectors of the public.

Records are available for inspections during the regular business hours. Duplication of records is provided by photostat and Xerox equipment in the department. Charges are those set forth in Sections 161 and 163 B. & P. Code.

Earl E. Pope
Executive Secretary

Board of Registration for Civil and Professional Engineers

What agency records are presently closed to the public?

... "None."

Logan N. Muir, Jr.
President

Contractors' State License Board

What agency records are presently closed to the public?

... The regulations set forth in the Manual of Policies of the Contractors' State License Board specify:

Private records of the board include:

Examination papers

Investigation reports

Inter-office memorandum

Correspondence, unless the correspondence is used to note records.

For what reasons are these records closed to the public? (Other than by law.)

Examination papers—These are used for continuous testing and must be kept confidential.

Investigation reports—Legal advice has been received that these documents are privileged communications between the deputy and the registrar.

Correspondence—Any correspondence *not* used to note the records is considered confidential on the basis of the registrar's administrative decision.

Confidential records are opened to other law enforcement or regulatory agencies only.

For what reasons are these records open to a part rather than all of the public?

To permit the Contractors' State License Board to cooperate in the enforcement of governmental legislation.

Persons who call in person are permitted to inspect the licensee's record purged of confidential information.

Requests of license histories are typed and signed by an authorized representative of the agency certifying to the information (P. & V. Code 161). A charge of \$2 is made.

Requests for uncertified copies of public records are filled by copying the document on a Transcopy or Xerox duplicator and a charge of 50¢ per page is made.

A fee of \$2 is made for certification of a copy of any public record. (P. & V. Code 163.)

Leo B. Hoschler
Registrar of Contractors

Board of Dental Examiners

What agency records are presently closed to the public?
Apparently none. See B. & P. Code, Sec. 1617.

Victor A. Hill
Executive Secretary

Board of Dry Cleaners

... The only records presently closed to the public are reports from the Bureau of Criminal Identification and Investigation, and from the Division of Investigation; the preparation of examination material and the examinations themselves; complaints from the public and all other documents designed as such by statute.

David M. Hayes
Executive Secretary

Board of Funeral Directors and Embalmers

What agency records are presently closed to the public?

... Section 7611 of the Business and Professions Code requires that

"Except as otherwise provided by law, all records of the board shall be open to inspection by the public during regular office hours."

Leroy M. Perrin
Executive Secretary

Board of Guide Dogs for the Blind

... All records of the board are open for inspection to the public during regular office hours, except as follows: certain records are perceived as confidential. For example, records of investigative procedures in connection with the licensing process, records of investigation of private complaints, and records of deliberations of decisions to be reached upon the evidence introduced in a proceeding concerning the suspension, revocation, limitation or conditioning of a license.

D. R. Mendelson
Executive Secretary

Board of Medical Examiners

... In connection with the records of the board, certain records at the present time are not open to the public. These records would include investigative reports and other information gathered in connection with investigations, complaints received regarding licensed and unlicensed persons, correspondence when its disclosure would interfere with the performance of the duties of the board in which event the public interest would suffer by such disclosure. Information gathered in connection with an applicant relating to a determination to be made on the granting or denying of the application other than such information required by law to be filed.

Full disclosure of the above-mentioned information would place the board in a position wherein certain valuable information would not be divulged if it were known that such information would be open to the public and where complaints might not be filed if the complainants were aware that their names and information submitted to the board would be open to the public.

The records of the board are either open to all sectors of the public or considered confidential information and not revealed to any segment of the public with the exception that certain information may be divulged to other law enforcement agencies.

The charge made for duplication of public records is closely related to the actual cost of the duplication, and facilities are available in the office of the board for duplicating the records that are open for public inspection and duplication.*

Wallace W. Thompson
Executive Secretary

Board of Nursing Education and Nurse Registration

... At the present time the records of the board such as accredited school lists, regulations and policies of the board, and directories of the licentiates serve the public well.

There are, however, records in the office of the board that need to be kept confidential. These concern the individual licentiates who have given information which would not have been given if the individual thought it would become a matter of public record. There are certain areas of school records that should not be shared. This confidential material would not serve the public's best interest. If the records were to become a matter of public knowledge, the services of the board would be hampered in assisting schools with problem areas. The area of the results of the state board test pool examination is kept confidential. The individual schools are notified of their achievement and their ranking on the scale, but they are not apprised of the ranking of other schools. This has been treasured as a highly confidential matter and is known only to the board and staff. The value of this is that the nursing education consultant staff may assist the schools which indicate an area or several areas of curriculum wherein their graduates seem to be having difficulty in successfully passing the licensing examination. The general overall pattern of the schools might be a matter of interest, such as the report that was given in co-operation with the junior college committee when the Legislature was interested in the performance of the graduate of the two-year program as compared to the graduate of the diploma and baccalaureate program. No reference in this study was made to an individual school or an individual candidate.

Information on enrollment, faculty members and other areas of the same nature are made public to those who are concerned and would gain from this information. Very careful identification needs to be made in order not to cite any confidential information concerning an individual school or individual licentiate.

The public may come into the Sacramento office and obtain names and addresses from the directory. Information about the licentiates given on the application is another restricted factor. With 160,000 potential licentiates and about 120,000 currently licensed there would be a tremendous number of individuals calling the board for addresses, names and other such information rather than seeking it through other sources. Therefore, information of this kind from an operational standpoint has to be carefully evaluated. There are selected agencies with whom the board works and to whom the board would give additional information such as the Attorney General's office or other public or governmental agencies specifically prescribed by policy and again in the best interest of the public in order to effectively carry out the provisions of the laws and regulations. These matters are shared with those who are concerned and who are serving the public well.

The matter of press releases would have to be considered in terms of whether the public's interest would well be served and also to recognize whether certain basic information is desirable and what information is not of public interest. For example, following the administration of the licensing examination there is a press release on the successful candidates by name and address. This information does serve the public in a very important manner and this publication is made in the communities wherein the newly licensed professional nurse resides.

Beverly C. André
Executive Secretary (acting)

Board of Optometry

What agency records are presently closed to the public?

... The contents of applications for examination other than names and addresses of applicants, names and address of applicants who do not successfully pass an examination for licensure, complaints and reports of possible unlawful or unprofes-

* The committee received similar responses to these questions concerning meetings from the Physical Therapy Examining Committee, the Podiatry Examining Committee, and the Psychology Examining Committee. These committees are under the general direction of the Board of Medical Examiners.

sional activity, investigation requests and reports, and privileged communications between the board and its attorney, the Attorney General.

These records are primarily of an investigative nature containing confidential information which, if disclosed, would impair rather than enhance the protection of the public.

... Official records of the agency other than those of a confidential nature having to do with investigation of applicants or licensees are available to the public at all reasonable times.

J. R. Patterson
Executive Secretary

Board of Pharmacy

What agency records are presently closed to the public?

... Records involving:

Personnel matters

Cases under current investigation, including contents of prescriptions

Private formulae and special manufacturing processes

Examination papers

For what reasons are these records closed to the public? (Other than by law)

None.

Joseph F. Bottini
Executive Secretary

Board of Shorthand Reporters

... It is the opinion of this office that there are three areas where certain records are closed to the public:

Matters under investigation concerning licensees or nonlicensed individuals, which are by their very nature confidential and not for dissemination to the public.

Matters relating to the preparation, subject matter and grading of examinations.

Information contained in applications filed with this agency other than the date of application and the name, age and address of such applicant.

The public records and other matters in the office of this agency, except as otherwise provided by law are, at all times during normal office hours, open to inspection by any citizen of the state.

It is naturally assumed that such inspections would not interfere with the normal administrative activities of this agency.*

William E. Barbeau
Executive Secretary

Boards of Social Work Examiners

... The agency records presently closed to the public are those which go into the preparation of the examination, the examination itself, and investigative material; in general, that which goes into any investigative efforts to help the board determine whether later public action should be taken in reference to revocation or suspension of a license.

The reason that such material is closed in the first two cases is that this is provided by law. As for the third reason, such material is considered privileged communication in the public interest and it is desired to preserve confidentiality to promote full disclosure for any complainants. In addition, it is desired, by all means, to prevent any defamation of individual licensees or applicants when complaints without proper basis have been made.

Charles H. Dickinson
Executive Secretary

* The committee received similar responses to these questions regarding agency records from the Board of Examiners in Veterinary Medicine, the Board of Landscape Architects and the Yacht and Ship Brokers Commission.

Structural Pest Control Board

... The records of this agency that are closed to the public are examination material, investigation records, privileged communications and other items as limited by the Administrative Procedure Act.

These records are closed to the public other than as required by law so that we may promote confidentiality and preserve our sources of information.

Under certain conditions these records are made available to other agencies but are not open to any particular sections of the public or the press.

E. C. Sizemore
Deputy Registrar

Board of Vocational Nurse Examiners

What agency records are presently closed to the public?

Examinations, medical records, and information given in confidence.

Maryellen Wood
Executive Secretary

Collection Agency Licensing Bureau

What agency records are presently closed to the public?

The results and details of complaints and investigations which do not result in a formal disciplinary proceeding. The only records actually open and public are the following:

- Formal disciplinary accusations.
- Decisions by the director relating to accusations.
- Names and addresses of licensees.
- Names and addresses of qualified persons.
- Names and addresses of licensed entities.
- Names and addresses of officers of corporate licensed entities.

For what reasons are these records closed to the public? (Other than by law.)

The results of investigations and the names of complainants are considered to be privileged information. Primarily, complainants against collection agencies consist of debtors, customers of licensees, employees or exemployees of licensees. Complaining debtors often fear reprisals by the collection agencies in the form of harassment and misuse of legal process. Customers of collection agencies fear legal process by "suit happy" collection agencies. Some agencies would file a suit at "the drop of a hat" since they already retain an attorney and the cost of legal action would be minimal. Employees of licensees are reluctant to have their names divulged for fear of losing their positions, and further, of being "blackballed" in the industry. If the bureau were required to make the names of informants and complainants open and public, information now available to the bureau from such sources, we believe, would be reduced considerably, if not completely cut off.

Investigations of complaints, on many occasions, reveal no wrongdoing on the part of the licensee. However, if the complaint and/or the results of the investigation were made an open record, unethical competitors may take advantage of the information by publicizing it to the clients of the licensee involved. A licensee is considered innocent of any wrongdoing until such time as a hearing officer has adjudicated the issues and the director has formally adopted the hearing officer's findings and recommendations.

To make the details of complaints and/or investigations available before the licensee has exhausted his legal remedies is, we believe, eminently unfair to the licensee.

Bureau of Electronic Repair Dealer Registration

The only records presently closed to the public are those concerning unlitigated complaints from the public against service dealers suspected of misconduct.

These records are closed to the public to protect service dealers from possible unjustified harm, resulting from unproven or fictitious allegations.

These records are not open to the public.

Daniel J. Weston
Chief

Bureau of Furniture and Bedding Inspection

What agency records are presently closed to the public?

Records relating to pending investigations.

Frank C. Freer
Chief

Board of Osteopathic Examiners

... The only agency records that are presently closed to the public are the investigation reports.

(Mrs.) Lola Tankersley
Assistant Secretary

Marriage, Family and Child Counselor Licensing Section

... The statutes setting up the program do not have a statement in reference to the records. In the absence of other statutory provisions, all records would be open except those pertaining to that investigative material which is used to help determine whether later public action should be taken in reference to revocation or suspension of a license. The reason here is that such material is considered privileged communication in the public interest and it is desired to provide confidentiality to permit full disclosure from any complainants.

Charles H. Dickinson
Coordinator

Public Utilities Commission

... As to accessibility of public records, the record in all formal proceedings (consisting of pleadings, briefs, exhibits, transcripts of testimony, and orders) is open to public inspection in San Francisco and Los Angeles. Certified copies of such documents may be obtained.

Section 583 of the Public Utilities Code provides as follows:

"583. No information furnished to the commission by a public utility, except such matters as are specifically required to be open to public inspection by the provisions of this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any officer or employee of the commission who divulges any such information is guilty of a misdemeanor."

The commission's General Order No. 66A specifies the records of the commission which are open to public inspection. A copy of this general order is enclosed. It will be noted therefrom that files and records not open to public inspection may be opened to such inspection by order of the commission or by a hearing officer in the course of a hearing. The order also provides that any person, desiring to see a record not open to public inspection, may request such inspection, setting out the reason or justification for the request, and upon good cause shown the commission may grant such request.

Frederick B. Holoboff
President

GENERAL ORDER
No. 66-A

(Supersedes General Order No. 66)

Public Utilities Commission of the State of California

IN THE MATTER OF RECORDS OF THE PUBLIC UTILITIES COMMISSION WHICH ARE OPEN TO PUBLIC INSPECTION AND THOSE RECORDS WHICH ARE NOT; SUBPOENAS AND OTHER PROCESS SEEKING PRODUCTION OF SUCH RECORDS AND SUBPOENAS DIRECTED TO THE COMMISSION, ITS MEMBERS, OFFICERS AND EMPLOYEES, IN THEIR OFFICIAL CAPACITIES.

Approved October 18, 1955 Effective October 18, 1955
(As amended December 15, 1959)

SEC. 1. It is hereby ordered, that the following records of the Public Utilities Commission of the State of California are open to public inspection:

1. Annual Reports and General Orders of the Commission.
2. Uniform Systems of Accounts.

3. Annual Reports filed by public utilities including reports to stockholders, and individual system reports of multi-system utilities.
4. All pleadings, briefs, exhibits, and transcripts in formal proceedings.
5. Material filed in compliance with Commission decisions.
6. All reports (except accident reports) filed with the Commission pursuant to any of the Commission's General Orders, unless at the time of filing request is made in writing that any part thereof be not open to public inspection and the Commission has so ordered. Accident reports are not open to public inspection.
7. Tariff schedules, including "advice letters" and service area maps contained in such tariff schedules.
8. Resolutions and minutes of the Commission.
9. Contracts filed by utilities for services at other than filed rates, and filings of rate deviations.
10. Filed contracts between utilities.
11. Material or reports which have been declared by Commission action to be open to public inspection.
12. Grade Crossing data:
 - Name of street and location and number of crossing.
 - Number and description of tracks at crossing.
 - Description of existing crossing protection, and date installed.
 - Accident experience at crossing, i.e., date and number of persons killed or injured only.
13. Transportation Rate Section docket applications.
14. Powers of attorney and concurrences applicable in connection with transportation tariffs.
15. Copies of Interstate Commerce Commission filings, pleadings and copies of reports, orders and certificates filed with the California Public Utilities Commission pursuant to the Interstate Commerce Act.
16. Annual Reports relating to hospital service filed by common carriers by rail pursuant to Labor Code Sec. 2508.
17. All applications for the issuance or transfer of permits filed under the Highway Carriers' Act, City Carriers' Act, or Household Goods Carriers' Act, and all permits, authorizations, and notices in connection therewith.
18. Certificates of insurance pertaining to bodily injury and property damage, insurance, including notices of cancellation and reinstatement, bodily injury and property damage liability bonds when an accident has occurred involving such insurance and bonds.
19. Certificates of cargo insurance, notices of cancellation and notices of reinstatement.
20. C.O.D. bonds, required by General Order No. 84-C, including notices of cancellation and notices of reinstatement.
21. Subhaul lease bonds, required by General Order No. 102-A, including notices of cancellation and notices of reinstatement.

Correspondence files and records not enumerated above are not open to public inspection but may be opened to public inspection by order of the Commission or by the Commission, a Commissioner or an Examiner in the course of a hearing or a proceeding. Any person desiring to inspect a record of the Commission, which is not open to public inspection, may apply to the Commission in writing requesting such inspection, setting out the reason or justification for such inspection. Upon good cause shown the Commission may grant such request.

SEC. 2. The experience of the Commission reveals that parties to litigation have seriously abused the process of the courts by causing subpoenas, other similar process and orders to be issued to this Commission and its personnel seeking the production of its original records in such litigation, there to be held for indeterminate periods of time, and have caused such personnel to be subpoenaed in such litigation in their official capacities, seeking their testimony concerning matters which could be shown by a certified copy of a record or records of the Commission, or seeking testimony from such personnel concerning matters not open to public inspection. This abuse of process has resulted in the taking from the Commission of its original records, thus interfering with its proceedings and the performance of its official duties, and in taking the time of Commission personnel without justification or excuse and to no public or otherwise justifiable purpose. In the past the Commission, although the law did not require response to such process, did at-

tempt to cooperate in such matters but such cooperation, apparently, was construed as an acquiescence in such abuse of process by litigants. Hereafter, the Commission will invoke the authority granted to it by the Constitution and statutes of this State to correct these abuses and hereby promulgate the following rules and regulations to that end:

(a) No original record (whether open to public inspection or not) shall be removed from the office of the Commission without the approval of the Commission having first been granted so to do; provided, that such records may be removed from the office of the Commission for the purpose of hearings and other proceedings before the Commission and for use in proceedings to which the Commission is a party or in which it may be interested.

(b) Any record of the Commission, which is open to public inspection, may be duplicated by the Secretary of the Commission, certified as a true copy and furnished to any person upon such person paying the fee required by law. For good cause shown, the Commission may authorize the Secretary to furnish a certified copy of a record of the Commission not open to public inspection upon payment of the fee required by law.

(c) No original record of this Commission (whether open to public inspection or not) shall be removed from the office of the Commission in response to any subpoena duces tecum or similar process or order unless issued by the Supreme Court of this State or a Federal Court. In a proper case, the Commission, for good cause shown, may waive this provision.

(d) No member, officer or employee of this Commission shall respond in his official capacity to any subpoena or similar process or order which purports to require him to testify concerning records of the Commission or the contents thereof which are not open to public inspection or which purports to require him to testify to any matter concerning the official business of the Commission which is not open to public inspection, unless issued by the Supreme Court of this State or a Federal Court. Where a subpoena or similar process or order, not issued by the Supreme Court of this State or by a Federal Court, purports to require the production of a record or records of the Commission which are open to public inspection or purports to require any member, officer or employee of the Commission to testify in his official capacity concerning any such record or records, the Secretary shall inform the party or parties, at whose instance such subpoena, process or order was issued, if the name or names and address of such party or parties be shown by the subpoena, process or order, and the Court or other tribunal which issued the same, that such record or records may be secured by certification of a copy thereof by the Secretary of the Commission upon payment by the interested party or parties of the fee required by law for such certification. The foregoing action of the Secretary shall constitute the only response to such subpoena, process or order permitted or authorized by the Commission. In a proper case, the Commission for good cause shown may waive this provision.

(See Sections 22 and 23 of Article XII, Constitution of California; Sections 1759 and 1901, Public Utilities Code; *Oakland v. Key System Transit Lines* 52 Cal. P. U. C. 779, 783; *Seaton v. A. T. & S. F. R. R. Co.* 173 Cal. 760, 763-764; *Miller v. Railroad Commission* 9 Cal. (2d) 190, 195, 198; *Clemmons v. Railroad Commission* 173 Cal. 254, 256-258; *Pacific Telephone & Telegraph Co. v. Eshleman* 166 Cal. 640, 650, 655-656, 658, 689; *San Jose v. Railroad Commission* 175 Cal. 284, 283, 290; *Northwestern Pacific R. R. Co. v. Superior Court* 34 Cal. (2d) 454; *Live Oak Water Users Assn. v. Railroad Commission* 192 Cal. 132, 143; *Loustalot v. Superior Court* 30 Cal. (2d) 905, 912; *People v. Northwestern Pacific R. R. Co.* 20 Cal. App. (2d) 120, hearing by Supreme Court denied; *People v. Brophy* 49 Cal. App. (2d) 15, hearing by Supreme Court denied; *Southern Pacific Co. v. Public Utilities Commission* 41 Cal. (2d) 354, 359; *People v. Western Air Lines* 42 Cal. (2d) 621, 630.)

The effective date of this Order shall be October 18, 1955. Approved and dated at San Francisco, California this 18th day of October 1955.

PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

R. J. PAJALICH, *Secretary*

Real Estate Commission

... All records of the Division of Real Estate are open to the public except records pertaining to investigations involving disciplinary actions, subdivision filings, real property security permits, information of a purely personal nature in applications, and examination questions. Effective law enforcement requires that such investigatory material be held confidential. Should formal action be initiated, the hearings are public and the records pertaining to such proceedings, including the pleadings, notices, and documentary evidence, are public. Should a formal proceeding not result, it is in the public interest, as well as that of the licensee or applicant, that unsupported accusations and conjectural material remain confidential.

J. P. Mahoney
Chief Legal Officer

San Francisco World Trade Center Authority

Section 3.12 California Stats. 1959, Chapter 845, provides "all records of the authority shall be open to inspection by the public during regular office hours."

J. Monroe Sullivan
Executive Director

CORRECTIONS

Adult Authority

... Official Adult Authority records of board actions are open to the public and in numerous instances are published.

Fred R. Dickson
Chairman

Board of Trustees

California Institution for Women

What agency records are presently closed to the public?

Those involving privileged communications, i.e., psychiatric reports; clinical studies; staff recommendations.

For what reasons are these records closed to the public?

Information contained in these records would serve no known useful public purpose. The board of trustees has a two-fold purpose—that of protection of the public and the rehabilitation of the offender. Disclosure of privileged communications would be detrimental to the rehabilitation of the offender if made available to the public.

Percy B. Crow
Executive Officer

Board of Corrections

... We have no records presently closed to the public.

Walter L. Barkdull
Executive Officer

Correctional Industries Commission

What agency records are presently closed to the public?

... "None."

Walter L. Barkdull
Executive Officer

Governor's Narcotic Rehabilitation Advisory Council

... None of the council's records is presently closed to the public. In view of this fact we have no suggestions to offer with respect to the further opening of records.

William F. Quinn, M.D.
Chairman

Youth Authority

What agency records are presently closed to the public?

All case records.

If under certain conditions these records are open to particular sectors of the public, for instance the press, please specify.

Some portions of our records are made available to law enforcement, social welfare, school districts, social security, selective service, etc., where this information would be of assistance to the court, the Youth Authority, or the ward himself.

For what reasons are these records open to a part rather than all of the public?

These records are open to only those agencies which could be of assistance in either the correction or rehabilitation of Youth Authority wards.

Heman G. Stark
Director

EDUCATION

State Board of Education

... The only records pertaining to the board to which the public and the press have been denied access are complaints and investigatory material obtained or developed by departmental investigators relating to grounds for revocation or denial of a teaching credential.

These "confidential" files often contain highly defamatory material, some of it unfounded. Complaints come from many sources, some irresponsible. To make them open to the public would expose teachers to calumny resulting from untrue, inaccurate or unprovable charges. Such charges as are deemed having merit are set forth in pleadings under the Administrative Procedure Act. The latter documents when filed are considered public records and are available to interested persons.

Records of the board, particularly its minutes, are made available at all reasonable times in the department's offices in Sacramento, San Francisco, and Los Angeles. Persons are allowed to make notes. Copies are furnished at a cost of 10 cents per page.

Laurence D. Kearney
Administrative Adviser

State Department of Education

... Correspondence and other records of the department have been made available to the press and the general public in accordance with the provisions of the Code of Civil Procedure and the Government Code.

Dr. Everett T. Calvert

Board of Governors, California Maritime Academy

What agency records are presently closed to the public?

Only those disciplinary and personnel matters, the divulgence of which would infringe upon the right of privacy of the individual concerned.

E. N. Kettenhofen
Chairman

State Scholarship Commission

... By commission policy all pupil personnel tests and informational records obtained from parents, students, and schools are treated as confidential and are not disclosed to anyone except on special resolution of the commission.

... Confidential financial information from the parents is confidential because of our agreement with the parents at the time of submission of the financial data. It is standard practice to maintain as confidential transcripts of grades, test scores, and other material commonly submitted for scholarship application.

Arthur S. Marmaduke

Coordinating Council for Higher Education

... The council as primarily a research-advisory agency does not maintain formal records in the sense of certain other state agencies. Our files of research data, etc., are open to any and all persons with the general consideration in mind that such persons should be able to benefit from such examination of files. Reports, minutes, etc., of the council are available to any persons on request so long as supplies last.

Willard B. Spalding
Associate Director

State Teachers' Retirement System

... Generally speaking, the records of the retirement office are available for public inspection, but the same cannot be said of individual member files. The law provides

that such information as is filed by the members shall be confidential, and I know our board would insist on the continuance of this provision. Information filed by a member, including such data as birth dates and beneficiaries, are personal matters, and should not be available for inspection by persons other than the members, nor used for purposes other than the administration of the retirement system. If such information were open to public inspection, I am quite sure the members would be most reluctant to supply certain information which is necessary to follow the dictates of the retirement law and the orderly operation of the retirement program.

Leo J. Reynolds
Executive Officer

Western Interstate Commission for Higher Education

... The compact states that "The commission shall keep accurate books of account, showing in full its receipts and disbursements, and such books of account shall be open at any reasonable time for inspection by the Governor of any compacting state or territory or his designated representative. The commission shall not be subject to audit and accounting procedures of any of the compacting states or territories. The commission shall provide for an independent annual audit."

Copies of the audit are sent to the governors and fiscal offices of the 13 states, and single copies are available to others upon request.

Robert H. Kroepsch
Executive Director

EMPLOYMENT RELATIONS

Apprenticeship Council

... The only agency records which are presently closed to the public are those authorized and required to be held confidential by a ruling of the Attorney General which deals with the ethnic background of apprentices...

The reasons that the agency might hold certain records confidential, other than by law, would be at the request and direction of higher authority, or during certain investigations under the authority of law, or when the revealing of certain information might be prejudicial or damaging to the parties involved.

Charles F. Hanna
Chief

State Compensation Insurance Fund

... The records of the State Compensation Insurance Fund consist of insurance policyholders' files and the files of injured employees who are receiving medical care and indemnity benefits.

The insurance policyholders' files contain confidential business and financial data concerning the individual business enterprises we insure which are essential to the successful underwriting of the insurance risk. If these files were open to public inspection, it would result in a serious loss of business because our policyholders would seek their insurance from a private carrier.

The injured employees' files contain intimate and personal medical data from hospitals and doctors concerning each injured worker. All insurance companies treat this vital information as strictly confidential, protecting inviolate the right to privacy of the individual together with the well recognized doctor-patient confidential relationship.

These records are always available to parties with a legitimate interest under the careful scrutiny of the subpoena powers of the courts.

We are firmly convinced that our records must continue to have the protection of the confidentiality they are presently accorded.

T. Groezinger
Chief Counsel

Department of Employment

... all information obtained in the course of administration of the Unemployment Insurance Code is confidential and may not be published or made available for public inspection in any manner except to the extent necessary to protect the rights of an employer or a claimant under the Unemployment Insurance Code. However, such information may be published in statistical form (Unemployment Insurance Code Sections 1094, 1095, 2111, and 2714). We have previously been advised by the United States Department of Labor, Bureau of Employment Security, that a state unemployment insurance law must contain a provision limiting disclosure of information received from employers or individual claimants before the Secretary of

Labor will make a certification for payment of administrative funds. For this reason, we cannot suggest that such records be made available to the public.

S. G. Goodman
Deputy Director

Fair Employment Practice Commission

... As to open records, the commission has not made the case files open in public records for the same reason that it does not dispose of cases in public meetings, that is to give reasonable protection to the respondent and to other parties in the case. We would hope that the commission be allowed to continue this policy.

It would follow that as to the minutes of meetings, the portions of the minutes that report on the public sessions be considered a public record, but that those portions having to do with closed sessions not be made public.

Records of this agency not concerned with specific cases or investigations could well be considered public records.

Edward Howden
Executive Officer

Industrial Accident Commission

... The answer to your division III(a) is that, pursuant to Section 137 of the Labor Code, all records of the commission shall be open to inspection by the public during regular office hours.

J. William Beard
Chairman

Industrial Safety Board

What agency records are presently closed to the public?

... None.

Geo. A. Sherman
Secretary

Industrial Welfare Commission

... All records and proceedings of the Industrial Welfare Commission are open to the public. Original copies are on file in the administrative office of the division. A complete copy is on file in the Los Angeles office for the use of the public.

The records of the individual cases processed by the Division of Industrial Welfare are open to the public after completion. In the enforcement of the regulations the division requires the employer to produce payroll records and wage data for all employees of the firm in order to determine whether the minimum wage has been paid and the hours limitations have been complied with. This information is treated as confidential in order to protect an employer from his competitors. The division also takes confidential complaints of employees who allege violations as to wages, hours and working conditions. These complaints are treated confidentially to prevent possible recrimination against the employee. However, upon the completion of all investigations, the determination made by the division on whether a violation does exist becomes public information. On the rare occasion when one of these cases is referred to the district attorney for criminal prosecution, the case file is made available to the prosecutor and the defense attorney. There are no charges involved in providing for an examination of a case filed.

Florence G. Clifton
Chief

Commission on Manpower, Automation and Technology

... Those records which by law cannot be opened to the public, as follows:

"The information received from any group, firm, or individual in response to the commission's request shall be for the confidential information of the commission insofar as it relates to planning, manning, personnel, union membership and related matters."

And research committee meeting minutes which are labeled "working document, confidential—not for distribution."

Research committee minutes are not freely distributed for the same reason that its meetings are not open to the public. We do not wish to inhibit a free flow of information and we do not wish premature conclusions to be reached, based on preliminary findings.

Minutes of research committee meetings are sent to any consultant to the research committee who was invited to the specific meeting recorded in these minutes and who attended. (These consultants, many of them officers of state and federal government serve the commission on a voluntary basis. They were selected as experts in certain relevant fields so that they might contribute their expertise to the commission when problems falling within their fields of competence are under consideration.) Sending them the minutes of the meetings they attend is due them as a courtesy and further enhances their value to the commission.

Except for that portion of the commission's records where disclosure is prohibited by law, we expect that all findings eventually arrived at by this body will not only be open but actively disseminated to the public. This is, in large part, the purpose of the commission.

Andrew C. Boss
Chairman

Unemployment Insurance Appeals Board

What agency records are presently closed to the public?

... none, with the exception that by interpretation the records, where a closed hearing is granted under Section 2713, are likewise considered closed to the public.

Gerald F. Maher
Chairman

HEALTH AND WELFARE

Citizens' Advisory Committee on Aging

... All of our records, except for our mailing lists for our newsletter, *Maturity*, are open to the public for inspection upon request.

William D. Bechill
Executive Secretary

Coordinating Council on Programs for Handicapped Children

... There are no records of the coordinating council or the staff committee which are presently closed to the public.

Andrew Marrin
Chairman

Department of Mental Hygiene

... The following kinds of records are closed to the public:

Any information required by a physician which is necessary to enable him to prescribe or act for a patient including case history, diagnosis, continuous notes, and any information recorded or not which is deemed necessary or connected with treatment, including information received by other persons, is confidential under the Code of Civil Procedure, Section 1881. This does not apply to testimony in certain cases.

This department is also governed by the rule in Business and Professions Code, Section 2379, which in our case prohibits an unjustified disclosure of information with intent to injure a patient.

This department is also governed by Section 1881 of the Code of Civil Procedure which prohibits examination of a public officer as to communications made to him in official confidence when public interest would suffer by the disclosure.

For what reasons are these records closed to the public? (Other than by law)

In addition to legal closure, the records ... are closed in order to protect the interests of patients. The courts have upheld the traditional right to privileged correspondence between patient and physician.

Circumstances under which medical records are open to the public are limited to cases where permission is given by the patient or his lawful representative in which case the records are available to any person designated by the patient to receive them, or where records are subject to court order.

Medical records are open only to the persons specified by the patient.

Tom Moore
Executive Assistant

Study Commission on Mental Retardation

... No records of the study commission are closed to the public. In fact, we have made available on request even the suggested drafts, position papers and other preliminary documents which did not receive official commission endorsement.

Leopold Lippman
Executive Secretary

Motor Vehicle Pollution Control Board

What agency records are presently closed to the public?

... Only confidential proprietary plans of devices and interim test results prior to a conclusion as to "pass or fail."

For what reasons are these records closed to the public? (Other than by law)

Attorney General's informal opinion indicated the above action was consistent with the law and in the public interest.

If under certain conditions these records are open to particular sectors of the public, for instance the press, please specify.

After public action approving a device, then all records become public since auto smog device presumably will be marketed and subject to "pirating" at that time by competitors. Records are open to all of the public—not part.

D. A. Jensen
Executive Officer

Department of Rehabilitation

... Regarding records in our Division of Vocational Rehabilitation the case records on individual clients are governed by a federal regulation since the major portion of our financial support comes from the Federal Department of Health, Education, and Welfare. The regulation concerned is Section 401.22, Confidential Information of the Federal Regulations, which is enclosed.

The reason for the regulation is that much information of a personal and confidential nature, such as medical records, psychiatric reports, and social history data, is included in all such case records.

With the consent of the client it is possible for us to make these records available to a potential employer or to an agency from which the individual is requesting services. They also are occasionally released under subpoena from a court or an Industrial Accident Commission referee.

Andrew Marrin
Chief Deputy Director

State Social Welfare Board

§ 401.22 Confidential information.

(a) The state plan shall provide that the state agency will adopt such regulations as are necessary to assure that:

(1) All information as to personal facts given or made available to the state or local rehabilitation agency, its representatives, or its employees, in the course of the administration of the vocational rehabilitation program, including lists of names and addresses and records of agency evaluation, shall be held to be confidential.

(2) The use of such information and records shall be limited to purposes directly connected with the administration of the vocational rehabilitation program and may not be disclosed, directly or indirectly, other than in the administration thereof, unless the consent of the client to such release has been obtained either expressly or by necessary implication. Release of information to employers in connection with the placement of the client may be considered as release of information in connection with the administration of the vocational rehabilitation program. Such information may, however, be released to welfare agencies or programs from which the client has requested certain services under circumstances from which his consent may be presumed, provided such agencies have adopted regulations which will assure that the information will be held confidential, and can assure that the information will be used only for the purposes for which it is provided.

(3) All such information is the property of the state agency or of the state and local rehabilitation agency, and may be used only in accordance with the agency's regulations.

(b) The state plan shall further provide that the state agency will adopt such procedures and standards as are necessary to: (1) give effect to its regulations; (2) assure that all rehabilitation clients and interested persons will be informed as to the confidentiality of vocational rehabilitation information; (3) assure the adoption of such office practices and the availability of such office facilities and equipment as will assure the adequate protection of the confidentiality of such records.

What agency records are presently closed to the public?

Adoption and public assistance records.

None of the records are open to the public except with the consent of the person affected.

J. M. Wedemeyer
Director

HIGHWAY AND TRANSPORTATION

Aeronautics Board

. . . All of our records are open to the public at any time for any purpose.

Clyde P. Barnett
Director

Department of California Highway Patrol

What agency records are presently closed to the public?

Those accident reports and portions of accident reports made in compliance with Sections 20000-20016 Motor Vehicle Code. In addition to the code provision Attorney General's Opinions NS-268 and NS-4970 govern release of information from such reports.

Criminal investigation case histories including correspondence relative to auto theft received from police authorities throughout the state. Public revelation of information in these reports could subject the department to litigation, eliminate the reception of information from confidential sources and hinder prosecution.

Reports of accidents involving department equipment and personnel. These are considered confidential primarily because they are available in the office of the state's insurance officer and should be reviewed there for proper coordination with the insurance carrier. In addition, the file in this office contains recommendations as to responsibility.

A file of civil defense and security matters is maintained by our coordinating officer. These have been deemed confidential or restricted by competent military authority.

The department maintains files of leases of office buildings. In some instances a lease file contains an assignment of rentals which reflects the financial status of the lessor. This part of a lease file is considered confidential although the lease itself or the fact that an assignment was made is not.

Personnel files of departmental employees contain some information and reports which are considered confidential. These consist mostly of investigations and complaints. Release of this information is done only with the advice and consent of the Attorney General.

Records of the accomplishment of officer trainees and appraisal of trainees by instructors are considered confidential since they apply to the individual.

The officer's daily activity report and special detail report are considered confidential since information contained could be detrimental to others.

If under certain conditions these records are open to particular sectors of the public, for instance the press, please specify.

The basic information that an accident occurred, who was involved, the time, date, and injury information is made available to all news media and to any other person who cares to review a file maintained on the public counter of the field office concerned for this purpose.

Reports of criminal investigations are made available to allied law enforcement agencies and district attorneys when necessary to their activity.

The confidential reports in the personnel files are made available to the employee or his attorney with the advice and consent of the Attorney General.

For what reasons are these records open to a part rather than all of the public?
 Protection of the individual concerned. Any record now confidential record is considered open to the public generally if the reason for inquiry is believed to be non-vindictive or does not interfere with the normal operations of the department.

Bradford M. Crittenden
Commissioner

Board of Harbor Commissioners for Humboldt Bay

... All of our meetings are open to the public as well as our records.

R. W. Saukko
Chairman

Department of Motor Vehicles

... Our agency records are open to the public as provided by Section 1808 of the California Vehicle Code. This provision makes confidential such records of the department relating to the physical or mental condition of any person. There are no records that are open to particular sectors of the public and we have no suggestions for further opening of records to the public since we feel that the present restriction on physical and mental condition is appropriate.

Tom Bright
Director

California Reciprocity Commission

... None of the records of the California Reciprocity Commission are closed to the public.

Tom Bright
Director

San Francisco Port Authority

... Generally speaking, the records of the port authority are open to the public. The only exception to this rule would be records which are subject to the provisions of the United States Shipping Act of 1916, which forbids the dissemination of information regarding nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to a common carrier. The specific section of the Shipping Act which is germane to this prohibition is attached for your review.

Edward L. David
Assistant to the Port Director

Department of Public Works

The department responded by including statements, regarding public records for the:

California Highway Commission
 The California Toll Bridge Authority
 The Advisory Committee on a Master Plan for Scenic Highways

The following records are presently not available for public inspection for the following reasons:

Questionnaires and financial statements submitted by prospective bidders in order to qualify for bidding under the State Contract Act. These financial statements are expressly made confidential by Government Code Section 14312. They must be kept confidential in order to promote full disclosure of each contractor's true financial status and also to avoid the improper use of such information by his competitors.

Copies of accident reports made to the California Highway Patrol by peace officers, members of the patrol, or employees of the Department of Motor Vehicles. These documents are expressly held to be confidential by Vehicle Code Section 20014. Again, the reason for holding them confidential is to promote the full disclosure of information so that corrective action might be taken to avoid the occurrence of similar accidents in the future.

Estimates of costs of projects proposed to be done under contract to be awarded to the lowest responsible bidder. These estimates are kept confidential until the construction contract document is fully executed. Failure to keep these cost estimates confidential until after the submission of bids could tend to promote collusion among prospective bidders, lead to a lack of individual computation of bids, and cause some bidders to use the state's figure rather than their own (if the former were higher).

Employees' personnel records. It has been the long time and consistent policy of the department that employees' personnel records are confidential. This position is taken by this department and other state agencies on the basis of *Colnon v. Orr*, 71 Cal. 43, 11 Pac. 814, and an opinion from the Legislative Counsel for Senator George Miller, dated February 5, 1954, to the effect that under Government Code Section 18573, all information and correspondence concerning employees must be considered strictly confidential unless the Personnel Board has specifically provided by rule for disclosure.

Matters involved in prospective or pending litigation. Confidential communications between officers and employees of the department with the attorneys of the department are obviously matters covered by the attorney-client privilege found in Section 1881 (2) of the Code of Civil Procedure. Also, other documents concerning prospective or pending litigation are normally not made available to the states' adversary except pursuant to the procedures and safeguards provided in the California discovery statutes.

Real property appraisal reports. A related matter is the confidentiality of reports made by staff members of the Division of Highways to determined the amount to be offered to property owners for rights of way. Similar appraisal reports are also obtained from independent appraisers if litigation appears imminent. These reports are kept confidential because the particular property owner involved is entitled to this consideration. Also, the free examination of such reports would permit the state's opponent in such condemnation proceedings to examine the state's entire case before trial, while the state would not have an opportunity to examine its opponent's case.

For the above reasons, the department has established the practice of divulging its real estate appraisal information only pursuant to the procedures and safeguards set forth in the California discovery statutes. In this way, the interested property owner can obtain all the relevant information properly available for his inspection and, at the same time, the state has an opportunity to obtain similar information that may be in the possession of its opponent. In this way, the interested property owner is protected from the unwarranted prying into his financial affairs by mere curiosity seekers. Also, by insisting upon compliance with the applicable discovery statutes, the state is protected from being required to give all the information it has and receiving nothing in return. Such procedures tend to bring about the full disclosure of all information relating to the value of the real estate, thereby tending to bring about a more equitable disposition of the eminent domain action.

Information transmitted to the department with the express understanding that it be kept confidential. Occasionally, the department receives communications from a variety of sources (e.g., employees of contractors, competitors of contractors, other governmental agencies, citizens who disagree with the actions of certain city councilmen, etc.) who provide certain information and expressly request that such information be kept confidential. Whenever possible, we endeavor to respect the request that the communication itself be kept confidential.

Except as mentioned above, none of our records are open to inspection by a particular sector of the public while not available to all of the public.

John Erreca
Administrative Officer

RESOURCES

Colorado River Board of California

... "All records of the board are confidential and not available to the public."

Harold F. Pellegrin
Executive Secretary

Department of Conservation

... Two segments of records held by divisions within this department are held confidential by statute. The Division of Mines and Geology holds the production records of individual mines and mineral consumption records of individual consumers confidential. The figures totaled from these individual records are published in gross but individually are not available for public scrutiny in order to protect the free enterprise and private rights of the individuals.

Similarly, the Division of Oil and Gas holds confidential the logs, histories, and production records of oil and gas wells in California for the same reason of individual enterprise protection.

By opinion of the Attorney General's office, the Division of Mines and Geology also holds confidential reports filed by licensed ore buyers who purchase gold.

The reasons for keeping these records closed to the public seem logical for the proper protection of individual's business activities, and inasmuch as reports are required to be filed by law with the state it seems appropriate that the state also should provide this personal protection.

In the case of the records held confidential by the Division of Oil and Gas, an individual owner may, under the law, give written authorization to others to inspect his individual records held by the Division of Oil and Gas. This is the only exception to the confidentiality of the records held by this department.

We do not suggest that these records be opened to the public because the general public has not interest in individual records and the gross information from them is available to the public.

DeWitt Nelson
Director

Fish and Game Commission

What agency records are presently closed to the public?

None.

Leslie F. Edgerton
Assistant to the Commission

Forest Practice Committees

What agency records are presently closed to the public?

No records of the committees are closed to the public.

F. H. Raymond
State Forester

Board of Forestry

What agency records are presently closed to the public?

No records of the State Board of Forestry are closed to the public.

W. B. Carter, Chairman
State Board of Forestry

Klamath River Compact Commission

What agency records are presently closed to the public?

Paragraph 5 of Subdivision A of Article IX provides that "All records, files and documents of the commission shall be open for public inspection at its office during established office hours."

Robert B. Bond
Executive Director

Pacific Marine Fisheries Commission

What agency records are presently closed to the public?

The Pacific Marine Fisheries Commission is covered by the following legislation: "All records of the commission shall be open to inspection by the public during regular office hours." (Fish and Game Code Section 14107.)

W. T. Shannon
Director

Goose Lake Compact Commission

What agency records are presently closed to the public?

None of the records of this commission are presently closed to the public.

Reginald C. Price
Chairman

California-Nevada Interstate Compact Commission

What agency records are presently closed to the public?

None of the records of this commission are presently closed to the public.

A. M. Barton
Chairman

Marine Research Committee

What agency records are presently closed to the public?
None so far as I am aware.

J. G. Burnette
Chairman

The Reclamation Board

... The only board records which are now closed to the public are those nonpublic records involving litigation wherein the Reclamation Board is a party.

... we feel that the protection of the state's interests and the preservation of the confidential relationship between the Attorney General and the board as his client requires that these office records be closed to the public.

A. E. McCollam
General Manager

State Recreation Commission

... "to the best of my knowledge all our records are open to the public."

Mrs. Dewey J. Forry
Chairman

Small Craft Harbors Commission

What agency records are presently closed to the public?

Boating accident reports (see Section 656(c) Harbors and Navigation Code) and personnel records.

Lachlan M. (Lock) Richards
Chief

Water Commission

What agency records are presently closed to the public?
"None."

William M. Carah
Executive Secretary

Water Rights Board

... No records of the board are closed to the public. All documents filed with board pursuant to the Water Code or the rules and regulations of the board, all correspondence relating thereto, all transcripts of hearings, and all minutes of board meetings are open to the public for inspection and copying. (The only documents of any kind not open to the public are staff analyses and proposed decisions which are ordinarily prepared subsequent to the termination of hearings and prior to adoption of decisions by the board. Until and unless adopted by the board, the proposed decisions and related documents merely represent informal and unofficial opinions and recommendations of members of the staff.)

L. K. Hill
Executive Officer

Department of Water Resources

... A general statement of our practice regarding release of documents to the public is found in Section 2800 of the Administrative Manual of the Department of Water Resources:

"Official departmental records, correspondence, reports, attachments or other materials, or copies thereof, are not to be publicly released either as an enclosure to an official communication, or in any other form until adopted, approved, or authorized by the director."

This statement recognizes the proposition that interim records and working papers are not "public records" as this term is used in Government Code Section 1227. Permission to inspect such nonpublic record papers is not given without my approval. In deciding whether to permit inspection in a given case, I exercise the discretion given me as a public officer by Section 1881 of the Code of Civil Procedure; that is, if in my judgment the public interest would suffer because of inspection, I do not permit inspection of the paper.

Examples of interim records which I do not release for public inspection are the interim audit letters of the Department of Finance and correspondence relating thereto.

In addition to interim records and working papers, I respect the confidence of agencies outside the Department of Water Resources which submit reports to the department for review purposes. Included in this category are U.S. Army Corps of Engineer reports, marked "Confidential," concerning flood control projects in which the federal government is interested, and reports made by local water districts in connection with application for financial aid under the Davis-Grunsky Act. I believe that the appropriate source of public inspection of such reports is the office of the originating agency.

I do not, of course, permit public inspection of personnel files. Such records are normally not "public records" nor are they matter in which the whole public has an interest, which latter test, it has been held, must be fulfilled if matter other than public records is required to be made accessible to the public under Government Code Section 1227.

Finally, Water Code Section 7076.1 requires that well drilling reports made pursuant to Section 7076 shall not be made available for inspection by the public. Copies of such reports, which are on file with this department, retain their confidential character.

William E. Warne
Director

Water Quality Control Board

. . . With the possible exception of some personnel documents, all of the board's records are open to the public as required under Water Code Section 13008.

Some personnel records are of a confidential nature and probably would be open to an individual only if he had a legitimate reason for examining the record. From a practical standpoint, this issue has never arisen during the 15 years the board has been in operation.

With the possible exception noted above, all records are open to all sectors of the public.

Paul R. Bonderson
Executive Officer

Wildlife Conservation Board

What agency records are presently closed to the public?
None.

R. J. Nesbit
Executive Officer

REVENUE AND MANAGEMENT

State Allocation Board

. . . All agency records are presently open to the public except that real property appraisals are held confidential until negotiations for acquisition, or condemnation proceedings, are carried out. (Appraisals addressed to a school district's county counsel often are held confidential at his request.)

It is in the best interests of the public welfare that appraisals remain confidential so that negotiations for acquisition, or condemnation proceedings, may be carried out without undue prejudice.

All records (with the exception of that stated . . . above) are open to the public. Various board reports, minutes, etc., are distributed to interested parties or groups including certain universities and public libraries. Press releases are prepared covering salient points of the board's regular meetings. Other press coverage and publicity are provided as the occasion presents itself. Additional efforts to further open this agency's records to the public may be more than is warranted.

Paul I. Hoyenga
Assistant Executive Officer

Capitol Building and Planning Commission

. . . None of the records of the commission are presently closed to the public.

James M. Bordenkircher
Staff Coordinator

Communications Advisory Board

What agency records are presently closed to the public?

No records are closed to the public.

William E. Whiting
Chairman

Board of Control

... The records of the board are open to the public. Inspection of such records may be made in the offices of the Board of Control, and a charge of 15 cents per page for duplication of records is made.

B. V. Dittus
Secretary

Exposition and Fair Executive Committee

What agency records are presently closed to the public?

... None.

Stanley B. Fowler
Executive Officer

Board of Equalization

What agency records are presently closed to the public?

Records, files and information relating to business affairs of persons filing returns and being audited under provisions of various excise tax laws administered by the Board of Equalization. (Illustrative of these statutory limitations is Revenue and Taxation Code Section 7056, for bidding the disclosure of information acquired as a result of the board's administration of the Sales and Use Tax Law.)

Information and records relating to the property of state assesseees, except assessment rolls, maps and plats, etc. (Revenue and Taxation Code, Section 833.)

Appraisal data acquired under our intercounty equalization program. (Revenue and Taxation Code, Sections 1818-1820, inclusive.)

The only board records closed to the public are those which we are precluded by law from disclosing. The basis for these restrictions would appear to be the legislators' belief that the imposition of a tax should not be used as a device for any unnecessary public disclosure of the taxpayer's confidential business affairs.

H. F. Freeman
Executive Secretary

Department of Finance

... The Department of Finance has a significant role in the preparation of the administration's program. It functions under the scrutiny of the press, representatives of interest groups and of the public in general. The staff of the department, from long experience, know the importance of making available public information, official records, and agency reports. Our working papers, however, are usually restricted to internal circulation.

A recent opinion by the departmental administrative advisor states that *interim* reports prepared by the Division of Audits for submission to departments under audit are not themselves considered public records. Such preliminary materials need not be made available for public inspection prior to completion of the final report. Final audit reports are considered public records and are made available on request.

Staff papers are memoranda or proposals submitted by other departments to the Department of Finance are generally not treated as public records. Nor are data or information secured from industry, business, or other jurisdictions on an understanding of confidentiality, included in public records.

Plans, research efforts or planning models are considered public records after they have been accepted and/or endorsed by the department as official papers. Prior to that time, they are not made accessible.

Inquiries are, on occasion, made to the staff and interviews sought with them by members of the public or representatives of groups. We make every effort to accommodate these requests. Our offices are open to the public during our regular office hours. Whenever we have copies of reports, statistical tables, or other data which come within the definition of public records, we make these available on request free of charge. The Governor's budget is available for purchase through the documents division of the printing office.

Hale Champion
Director

Franchise Tax Board

What agency records are presently closed to the public?

All reports and returns required to be filed under the Personal Income Tax Law or the Bank and Corporation Tax Law. (Sections 19282 to 19289, inclusive, and 26451 to 26455, inclusive, of the Revenue and Taxation Code.)

For what reasons are these records closed to the public? (Other than by law.)

So that taxpayers will make full and truthful declarations without fear that their statements will be revealed or used for other purposes. *Webb v. Standard Oil Co.*, 49 Cal. 2d 621.

None of the records are open to any sectors of the public.

Martin Huff
Executive Officer

Public Works Board

... all records of the board are open to public inspection with the exception of reports of real estate appraisers as to the value of parcels of real property being acquired by the board. While these reports are open to the public after the property appraised has been purchased, prior to the acquisition of the property the reports are not open to the public, or the press. We believe that until such time as the board approves a negotiated price, which is done in open meeting, the valuation placed upon property should be considered a confidential matter between the property owner and the board.

In negotiations between the state and the property owner, the state's appraisal report is normally not available to the owner. It is believed that the state should be in the same position as any private individual, and should not be required to reveal all of its information if the owner is not also required to reveal his. On the other hand, if the negotiations are carried on in an atmosphere of free exchange of information and the state's negotiator is of the opinion that it will facilitate reaching a negotiated settlement, the contents of the report are disclosed to the property owner.

H. C. Vincent, Jr.
Administrative Secretary

State Building Standards Commission

... All records of the commission are open to public inspection during regular office hours (Section 18911 H. & S Code).

Harry A. Cobden
Executive Secretary

State Employees' Retirement System

... Data filed by any member or beneficiary with the board is confidential, and release of his individual record without his consent is prohibited by statute. All other records of the system are open to inspection (Secs. 20134 and 20137, Govt. Code). The formula for the benefits paid, the conditions under which they are paid, the basis of member contributions, and the persons who may be designated as beneficiaries by members are all set forth in statute, and therefore, public information. The system is regularly audited by the Auditor General and the Department of Finance, thus giving assurance that the statutes are followed. Disbursements are made through the State Controller, whose records are open to public inspection. We think that currently a proper balancing of the public's right to know and an employee's right to privacy in his personal affairs is achieved.

William E. Payne
Executive Officer

Commission on California State Government and Economy

What agency records are presently closed to the public?
All.

State Lands Commission

... Section 6826 of the Public Resources Code: All factual and physical exploration results, logs, or records resulting from geological and geophysical survey operations conducted by a state permittee on state lands which are required to be made available to the commission, shall be for the confidential use of the commission and shall not be open to inspection by any other person or agency without the written consent of the permittee.

Transactions in process and prior to lands commission consideration for authorization or approval.

Confidential data of lessee and permittees.

For what reasons are these records closed to the public? (other than by law)

To prevent collusion between bidders and to prevent discounting of bids through disclosure of confidential data of lessees or competitive bidders.

These records are not opened to any sectors of the public.

F. J. Hortig
Executive Officer

State Personnel Board

... The following records of the State Personnel Board are closed to the public:

1. Applications for employment.
2. Examination test materials.
3. Examination scoring records.
4. Information obtained as a result of investigation of applicants.
5. Individual employee employment records.
6. Supervisory appraisals of individual employee performance.

Authority to keep the above records closed to the public is provided in sections of the Government Code and Personnel Board rules. The pertinent laws and rules are attached.

For the press, credit associations and others who have a bonafide reason for requesting the information, we do provide some of the basic facts concerning individual employment record (such as department in which employed, job title and salary.)

The refusal to make details of employment records available to all members to the public is based on cost factors as well as upon a belief that the individual should have his privacy respected from the standpoint of indiscriminate or harassment types of inquiry. However, we do presume that the employee would not wish us to refuse to verify basic facts about his employment with the state with the press, credit bureaus and others who present a logical need and purpose in their request.

John F. Fisher
Executive Officer

Television Advisory Committee

What agency records are presently closed to the public?

None.

L. F. Feymire
Television Coordinator

PUBLIC SAFETY

Atomic Energy Development and Radiation Protection

... All records of council actions, including minutes of meetings, are open and available to the public.

Gene A. Blanc
Secretary

Departmental Coordinating Committee on Atomic Energy Development and Radiation Protection

... All committee records are open to the public.

Gene A. Blanc
Chairman

California Disaster Office

... No records of the California State Disaster Council or of the citizens advisory committees to assist in specific fields of disaster are closed to the public.

John W. Gaffney
Director

State Fire Advisory Board

... At the present time, the following records of the State Fire Marshal are closed to the public:

Arson investigations.

Information concerning the release of persons from state penal institutions convicted of arson.

Information concerning the discharge of persons from state hospitals having arson tendencies.

These records, being criminally investigative in nature, are closed to the public by virtue of statutory provisions.

Under certain conditions, portions of these records are open to police and fire investigation officials.

... access to these records is limited to law enforcement officials.

Since the remainder of our records are open to the public, we have no suggestions for further opening them to the public.

Glenn B. Vance
State Fire Marshal

Department of Veterans Affairs

... Of the total records in the Department of Veterans Affairs, all are open to the public or to those specific segments that have a legal reason for access except the following:

Medical records at the Veterans Home which are accessible only with the approval of the patient and/or doctor;

Records within the department's attorney's office which have information of a confidential nature and which can be released only by the confidant;

Credit and financial statements within the department's Farm and Home Division which under the provisions of the Military and Veterans Code cannot be made open to the public.

Portions of the records within our division of service and coordination which deal with a claim and which are of a confidential nature. Access to any of these records require a power of attorney from the veteran claimant.

Dean Hooper
Administrative Assistant

OTHER BOARDS AND COMMISSIONS

Governor's Council

... Since the purpose of the council is an exchange of reports between department heads and the Governor, there is no reason to restrict public information regarding these reports. As a matter of practice, copies of written reports are made available to the press and any interested parties.

Ronald A. Clark
Assistant Cabinet Secretary

California Arts Commission

What agency records are presently closed to the public?

The commission has no policy in this regard. The problem has never arisen.

Abbott Kaplan
Chairman

Office of Consumer Counsel

What agency records are presently closed to the public?

... Consumer letters and correspondence with the Governor.

In order to maintain the trust of the public, it is necessary to treat their letters as confidential. These letters can be made public when a release is given by the writer.

Correspondence with the Governor involves a confidential relationship between him and the Consumer Counsel.

Helen Nelson
Consumer Counsel

Economic Development Agency

... The only agency records that are treated confidentially are those involving prospective industries and businesses interested in a California location. This treatment is necessary to avoid disclosure of business or industry's intention to competitors and is a recognized and accepted procedure with all agencies and organizations working to achieve economic development.

Lewis M. Holland
Commissioner

Coordinating Council on Urban Policy

... none of the council records are closed to the public. There is no specific provision for charging the public for the duplication of our records.

Philip G. Simpson
Executive Secretary

Controller

... The following records in this office are required by law to be kept confidential:

Govt. Code, Sec. 12573. Vouchers in support of claims for expenses of secret investigations by the Attorney General under Sections 12572 and 12573.

Ch. 23, Stats. 1948, Item 57. Vouchers in support of claims for expenses of the Director of Corrections paid from such item, in the study of crime pursuant to Section 6027, Penal Code.

Rev. and Tax. Code, Sec. 14813. Inheritance tax records (except copies of inventories, tax reports, and tax receipts—the originals being public records in the county clerk's office).

Rev. and Tax. Code, Sec. 16563. Gift tax records.

Rev. and Tax. Code, Sec. 10406. Motor vehicle transportation license tax records.

Govt. Code, Sec. 15619. Motor vehicle fuel license tax and insurance tax records to the extent specified in Section 15619. The section would also prohibit divulgence of other information therein specified, should such come into our custody.

The above records are confidential by law. All other records in the custody of this office are open to public inspection.

The above-cited provisions of law making the specified records confidential, do not provide for any exceptions other than for the examination of tax records by federal tax officials or other state officers as specified.

All records, other than those restricted by statute for compelling reasons, are open to public inspection.

Ralph I. McCarthy
Deputy

Commission on Judicial Qualifications

... Confidentiality has proved an essential element in the performance of this delicate and vital function. One of the reasons for such success as this plan has had has been the nonpublic character of the pending cases and deliberations. For the same reasons, the agency records and files are closed to the public until such time as a record containing a recommendation for a judge's removal is filed with the Supreme Court.

Lloyd E. Griffin
Chairman

Commission on Peace Officer Standards and Training

What agency records are presently closed to the public?

... Reports of the field representative which are classified by the commission as confidential.

Section 13512 of the Penal Code requires the commission to "... make such inquiries as may be necessary to determine whether every city, county, and city and county receiving state aid pursuant to this chapter is adhering to the standards for recruitment and training established pursuant to this chapter."

In complying with this provision, the field representative's reports cover personnel background investigations of peace officer trainees, including physical examina-

tions and other records which are privileged communications. It would be unethical and illegal for the commission to disclose such information to the general public.

These records are not open to particular sectors of the public.

Gene S. Muehleisen
Executive Officer

Commission on Voting Machines and Vote Tabulating Devices

The letter from the commission made no reference to the question on the availability of records.

Frank M. Jordan
Secretary

Treasurer

What agency records are presently closed to the public?

... None.

Bert A. Betts
State Treasurer

California Law Revision Commission

What agency records are presently closed to the public?

A few personnel records.

For what reasons are these records closed to the public? (other than by law)

Applicants for positions might not wish their applications public.

John H. DeMouilly
Executive Secretary

California Commission on Uniform State Laws

What agency records are presently closed to the public?

... None.

George H. Murphy
Secretary

APPENDIX C

Summary of State Statutes Granting a Privilege of Nondisclosure

Agricultural Code Sec. 84.2 (entries in events scheduled for future judging and for overnight entries in races on which there is parimutuel wagering prior to such events, judging times, or races are not open to inspection).

Sec. 1300.22 (director may require all processors or distributors to make records available subject to any marketing order which records shall be confidential unless open to inspection by court order).

Sec. 2091 (director's access to records for the purpose of investigating possible violations shall be confidential except when required in a judicial proceeding).

Sec. 2846 (same effect as 1300.22 above for information required under Agricultural Products Marketing Law of 1937).

Sec. 3351 (same effect as 1300.22 for information required under Agricultural Products Marketing Law of 1943).

Civil Code Sec. 79.06 (court may order hearing upon application for marriage license to be confidential and private).

Sec. 79.09 (data regarding premarital examination "confidential" and shall not be divulged).

Sec. 226m (adoption proceedings "shall be held in private").

Sec. 227 (documents in adoption proceeding "shall not be open to inspection").

Code of Civil Procedure Sec. 1747 (files of conciliatory court shall be deemed made in official confidence under Sec. 1881(5)).

Sec. 1881 (5) (information received by public officer in confidence shall be privileged).

Education Code Sec. 10751 (certain personal information concerning pupils in public schools shall not be disclosed except in a public hearing provided after final action of governing board of school district).

Sec. 14026 (data filed by members of Teacher Retirement System with retirement board confidential except to person authorized by Legislature).

Financial Code Sec. 254 (records of State Banking Department are not public documents and not open to inspection by public).

Sec. 1582 (a trust company shall not disclose information concerning the management, etc. of a private trust except under certain circumstances).

Sec. 8754 (Savings and Loan Commissioner may withhold audit or information in audit of savings and loan association for such time as in his judgment is necessary).

Fish and Game Code Sec. 7923 (licensee's record of fish taken is confidential and not a public record).

Government Code Sec. 11183 (information acquired from private records pursuant to investigating by heads of department authorized by Sec. 11180 not to be divulged except by court proceeding).

Sec. 12573 (vouchers in support of claim for secret investigation by Attorney General).

Sec. 14312 (financial statements by prospective bidders are confidential).

Sec. 15619 (certain records available to the State Board of Equalization concerning the business affairs of any company is confidential).

Sec. 18573 (employee records furnished to Personnel Board by each appointing power "not open to public inspection except under conditions prescribed by board rule except that a person may inspect any record relating to his own service and source of pay data").

Sec. 18952 (employee's appeal to State Personnel Board and any communication in connection therewith is confidential and shall not be disclosed without the consent of the employee).

Sec. 20134 (data filed with the State Retirement System is confidential).

Sec. 20137 (all records of Board of Administration, State Retirement System open to public inspection except as provided for by law).

Sec. 31532 (sworn statement of member of County Employees' Retirement System shall be confidential and shall not be disclosed).

Harbors and Navigation Code Sec. 656 (boat accident reports shall be without prejudice to the individuals reporting and shall be for confidential use of Division of Small Craft Harbors).

Health and Safety Code Section 211.5 (records of interviews in connection with morbidity and mortality studies shall be confidential insofar as identity of any persons are concerned and shall be used solely for purposes of study).

Sec. 410 (certain diagnosis of epilepsy shall be confidential and used solely to determine eligibility for driver's license).

Sec. 1416 (information and records concerning licensed hospital shall not be disclosed except for proceeding to revoke, suspend or deny).

Sec. 1515 (same effect as Sec. 1416 above regarding licensing of establishment for handicapped persons).

Insurance Code Sec. 735 (examinations by Insurance Commissioner private unless commissioner deems it necessary to publish result).

Sec. 855 (Insurance Commissioner may withhold all records relating to securities where public welfare demands that such information not be public for such time as in his judgment is necessary).

Sec. 12919 (communications to Insurance Commissioner are made in official confidence within meaning of Sec. 1881(5) of Code of Civil Procedure).

Labor Code Sec. 6319 (confidential information concerning failure to keep place of employment safe or violation of safety order shall not be divulged).

Military and Veterans Code Sec. 85 (Veteran's Board records of contract purchases not open to public inspection).

Penal Code Sec. 290 (registration data of sexual deviate "not open to inspection by public" except by law enforcement officer).

Sec. 938.1 (clerk not to divulge contents of grand jury transcript until defendant is in custody).

Sec. 3046 (statements by judge, district attorney, and sheriff to Adult Authority regarding parole of life-sentence prisoner "shall be and remain confidential").

Sec. 3107 (names and records of men granted special service paroles "shall be kept in the confidential files").

Sec. 11105 (information on file with the Bureau of Criminal Identification not to be furnished to assist "private citizens in carrying on his personal interests or in maliciously or uselessly harassing, degrading or humiliating any person").

Public Resources Code Sec. 2207 (reports of mining operations furnished to State Minerologist are confidential).

Sec. 3234 (records of active operators of an oil or gas well required by statute open to inspection by those authorized by operator, state officers and the district Board of Oil and Gas Commissioners and not evidence in any court proceeding).

Sec. 6826 (geology and geophysical survey information on state lands available to State Land Commission confidential and not open to inspection except under certain circumstances).

Public Utilities Code Sec. 583 (information furnished to the commission by a public utility may not be divulged except under certain circumstances).

Sec. 3709 (commission employee who divulges any fact or information concerning highway carriers except as authorized or directed by commission or a court or a judge is guilty of a misdemeanor).

Revenue and Taxation Code Sec. 408 (any information in assessor's office not required by law to be kept or prepared are not public documents and shall not be open to public inspection).

Sec. 451 (all information in property statements furnished to assessor by taxpayer shall be secret).

Sec. 646 (records of assessor are open to other taxing agencies within the county).

Sec. 833 (information and records regarding property of state assessees, with certain exception, are confidential).

Sec. 1820 (no appraisal data for individual properties shall be disclosed except as required by law).

Sec. 7056 (forbids disclosure of information acquired as a result of administration of Sales and Use Tax Law).

Sec. 10406 (all information acquired by Controller or Board of Equalization as a result of administration of motor transportation tax except as otherwise provided shall not be disclosed).

Sec. 14813 (all information and records required by the Controller or his subordinates relating to inheritance taxes except as otherwise provided shall not be disclosed).

Sec. 16563 (information and records acquired by Controller confidential except as necessary for enforcement of Gift Tax).

Sec. 19282 ("information as to the amount of income or any particulars set forth, or disclosed in any report or return shall not be disclosed, except under certain conditions").

Sec. 19287 (information secured from the federal government or another state shall be used solely for administering tax laws and not to be disclosed).

Sec. 26451 (amount of income or any particulars relating to business affairs of any taxpayer secured under the Bank and Corporation Tax Law shall not be disclosed except under certain circumstances).

Sec. 26453c (same effect as Sec. 19287 above).

Unemployment Insurance Code Secs. 1094 and 1095 (employment records for unemployment compensation furnished to the director not open to public or admissible as evidence except in statistical form except that the name of the employer or employee shall never be divulged or in other specified circumstances).

Sec. 2111 (except as provided in Sec. 1094 information obtained is confidential and shall not be published or open to public inspection. Any violation of this section is a misdemeanor).

Sec. 2714 (medical records are confidential except when necessary in department administration and are not admissible in evidence. Information of identity of claimant may be given to Bureau of Vocational Rehabilitation but such information shall remain confidential and not be disclosed by this bureau).

Vehicle Code Sec. 1808 (records of department relating to physical or mental condition of any person are confidential).

Secs. 16005, 20012, 20013 (accident reports without prejudice to individual reporting and for confidential use of Department of Motor Vehicles and Department of California Highway Patrol).

Secs. 20014, 20015 (all accident reports made to Department of California Highway Patrol by peace officers are for the confidential use of the department, Department of Public Works, member of California Highway Patrol, Department of Motor Vehicles, any local agency investigating accidents occurring off state highway).

Sec. 40832 (records of license suspension or revocation not admissible in any civil action).

Sec. 40833 (neither accident report nor departmental action therein evidence of negligence or due care in damage action).

Water Code Sec. 7076.1 (reports of well completion shall not be made available for public inspection).

Sec. 12516 (information and records of Colorado River Board confidential and not available to public except under authorization of board).

Welfare and Institutions Code Sec. 118 (all records concerning any individual relating to public assistance for which the state receives federal grants, Aged Aid, Aid to Needy Children, Aid to Needy Blind not open to examination).

Secs. 638, 639, 733 (certain records relating to the provisions of the Juvenile Court Law are not open to the public except by order of the court for good cause).

In addition Article 2, Sec. 5 of the California Constitution requires that secrecy in voting shall be preserved and Article 6, Sec. 10b, of the Constitution provides that "All papers filed with and proceedings before the Commission on Judicial Qualifications or masters appointed by the Supreme Court, pursuant to this section, shall be confidential, . . ."



IV. THE NEWS MEDIA



THE NEWS MEDIA

The Ralph M. Brown Act provides for the public's access to meetings of government agencies. There is no special privilege in that law for newsmen. They are granted the same legal rights as any other citizen to attend public meetings—no more, no less.

One section of the Open Meeting Law, however, does specifically refer to the news media. This is the section of the law which requires that notice of a special meeting be delivered to "each local newspaper of general circulation, radio and television station requesting notice in writing." (Gov. C. Section 54956.)

This section of the law recognizes the responsibility of the news media to the public to keep them informed about the activities of the government agencies which serve them. Clete Roberts, president of the Radio and Television News Association of Southern California, spoke to the committee about this responsibility:

MR. ROBERTS: In essence, gentlemen, our approach to the problem is this—we in the radio and television news profession are anxious to most effectively carry out our responsibilities in providing the public with information from the many governmental bodies. It is our belief that all meetings in which public business is discussed should be open to the press, both broadcast and print, as well as to the general public. On the other hand, we are also vitally concerned that the legislative or administrative process not be impeded by the mechanics of broadcast journalism.

To that end we will abide by any fair set of standards which assures the gathering of information. As you may have heard, the international body, that is the Radio and Television News Directors Association is currently in the process of drafting a code of ethics. And the organization which I represent, the Radio and Television News Association of Southern California, is reviewing and revising a general policy of radio and television coverage which concerns itself directly with the subject you are studying.

The specific bill before the committee, Assembly Bill No. 1716 by Assemblyman Tom Carrell, authorizes radio and television coverage of the meetings of government agencies provided that there is no interference from attendant broadcast equipment and lighting.

Many municipal legislative and administrative agencies opposed Assembly Bill No. 1716. The arguments against the bill are well summarized in the resolution adopted by the Oakland City Council (Resolution No. 45171, adopted December 10, 1964). The Oakland City Council argued that:

The conduct and procedure of such meetings and hearings, and specifically the decision to permit radio and television coverage thereof, is properly and should be within the control of such legis-

lative bodies, just as such control is exercised by the Legislature and the Congress and the judiciary over their hearings.

The council further argued that "the dignity and decorum of such meetings and hearings can be seriously and needlessly prejudiced, and the full and free participation by members and witnesses can be constrained and hampered, which are unreasonable results, due to television or radio coverage."

Don Mozley, director of news for KCBS in San Francisco and national vice president of the Radio and Television News Directors Association, responded to that argument:

MR. MOZLEY: Can there be, after all this time, any doubt that a public meeting means just that, and that the broadcast medium is now an accepted form of communication? Yet we in the business are continually astonished and chagrined to see intelligent people raising some doubt about it—debating with themselves what the correct course is to take. Just last week the academic senate of the University of California took it upon itself to try to decide the fate of the University, yet sought to bar the broadcast industry from this important meeting which was making such a vital decision. Reporters with paper and pencil were invited to attend.

* * * * *

CHAIRMAN MARKS: The situation where you were barred—you were not barred by the University of California, you were barred by the academic senate?

MR. MOZLEY: That's right, Mr. Marks.

CHAIRMAN MARKS: The academic senate at that time was considering the subject of free speech.

MR. MOZLEY: It's very appropriate.

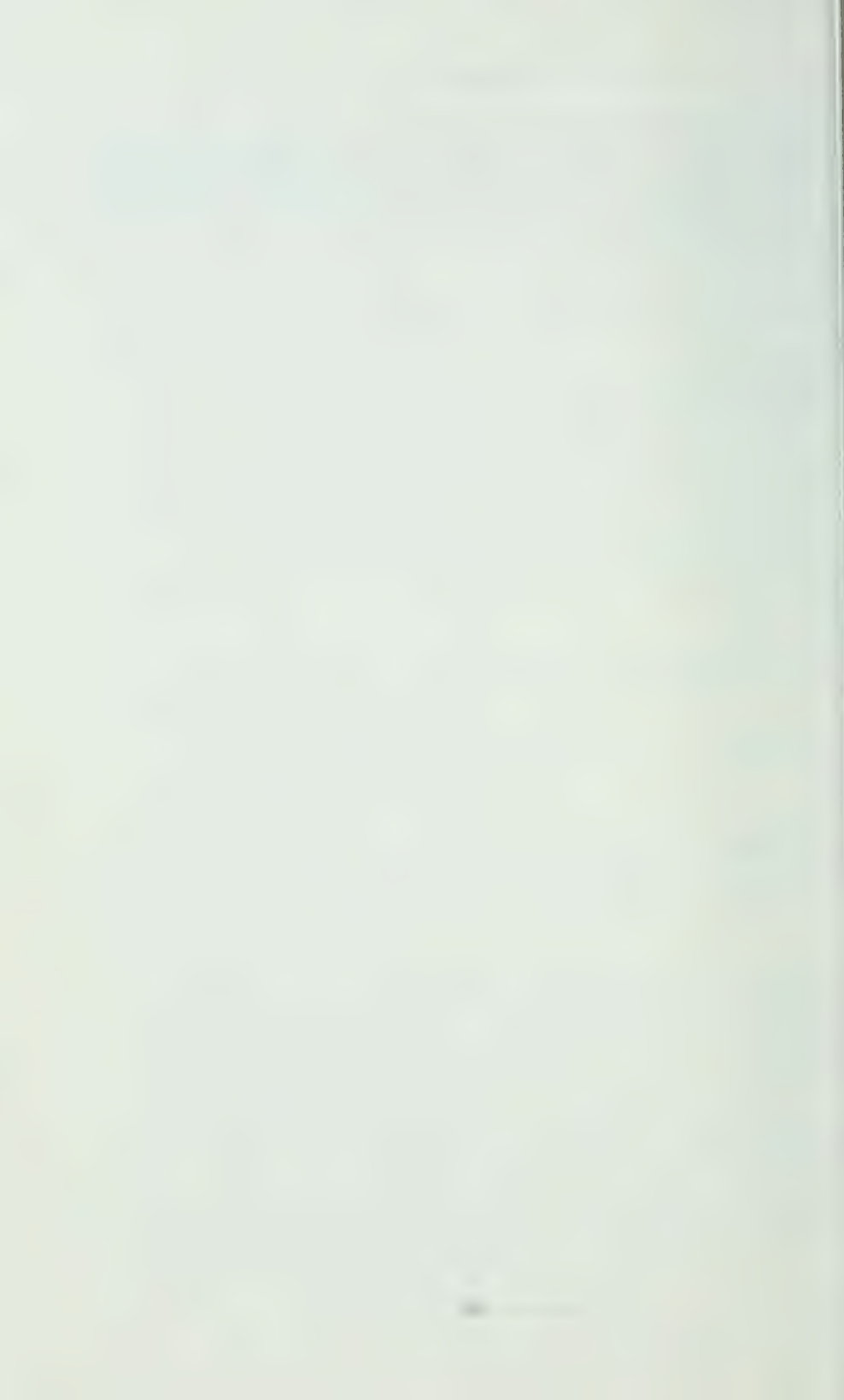
The practice of permitting reporters to attend meetings with paper and pencil while barring radio and television newsmen was discussed by Roy Heatley, news director of KNXT in Los Angeles and a member of the Freedom of Information Committee of the Radio and Television News Directors Association:

MR. HEATLEY: It is often argued that banning cameras and microphones from certain hearings is not discrimination. After all, the argument goes, radio and television newsmen can still cover with pencil and paper. I say that asking us to leave our cameras and microphones behind is like asking a police officer to leave behind his revolver, his night stick, his tear gas, but to please go ahead and quell the riot where he is outnumbered ten to one.

It is curious but true that those who object most to cameras and microphones are often those whose conduct is most subject to criticism. Where there is nothing to hide, cameras and microphones are welcome. All the legitimate objections to cameras and microphones as tools of news coverage can be overcome first by common sense, and second, sensible ground rules enforced by a code of ethics and a system of sanctions against those offenders.

The committee recognizes that members of the news media have a responsibility to the public and that this can only be fulfilled if radio and television news coverage is authorized of meetings required to be open to the public. The committee, therefore, supports legislation to accomplish this purpose.

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ASSEMBLY INTERIM COMMITTEE REPORTS
1963-1965

REPORT OF THE
ASSEMBLY INTERIM COMMITTEE ON
FINANCE AND INSURANCE

GEORGE N. ZENOVICH, *Chairman*

HALE ASHCRAFT

TOM BANE

ANTHONY C. BEILENSON

JACK T. CASEY

HOUSTON I. FLOURNOY

JOHN FRANCIS FORAN

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VICTOR V. VEYSEY

TOM WAITE

JEROME R. WALDIE

GEORGE A. WILLSON

JANUARY 1965

STANLEY EVANS, *Consultant* (July 1963-June 1964)

EDWARD LEVY, *Consultant* (September 1964-)

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Published by the

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Chief Clerk

LETTER OF TRANSMITTAL

Assembly, California Legislature
Sacramento, January 8, 1965

HONORABLE SPEAKER OF THE ASSEMBLY

HONORABLE MEMBERS OF THE ASSEMBLY

*Assembly Chambers, State Capitol
Sacramento, California*

In accordance with the provisions of House Resolution 500 (g) and House Resolution 98 of the 1963 Regular Session, your Committee on Finance and Insurance hereby submits its Final Report.

Because the Department of Employment has not completed certain of the studies directed by House Resolution 98, your Committee has not included statements concerning several areas in the field of Unemployment Insurance.

Several members of the committee have indicated an intention to file a minority report on Unemployment Insurance.

Respectfully submitted,

GEORGE N. ZENOVICH, *Chairman*

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CERTIFICATES OF CONVENIENCE

In order to insure that only qualified persons were allowed to act as insurance agents in this state, the Legislature in 1939 adopted a series of statutes which established a public policy requiring persons engaged in the selling of life and disability insurance to demonstrate, by taking and passing a qualifying examination, that they have met minimum standards of technical knowledge. The reasons for such agent's qualification laws are obvious. Insurance, whether it be life, health, or casualty is complex. The average citizen must, because of these complexities rely upon the advice of his insurance agent. One method of insuring that the agent is competent is to require that he be licensed. The agent's license, therefore, is a method of protecting the public, although it incidentally does result in limiting the entrance of persons into this field.

However, because of the economics of the insurance industry, and the time required to train prospective agents in insurance law, the Legislature also provided for the issuing of "temporary licenses," known as "certificates of convenience." Certificates are issued to prospective agents upon the application of an admitted insurer. The insurer in these cases acts, in reality, as the sponsor of the agent. Insurance Code, Section 1688, provides that the person applying for the certificate must be an applicant for a permanent license and a certificate of convenience shall only be to act in the capacity for which such license is sought. In order to avoid abusing the privilege of the certificate of convenience it was provided that no person would receive such a certificate if he had ever before been licensed or received a prior certificate of convenience (Insurance Code, Section 1690). As a further check upon abuses, the Insurance Code requires that persons issued certificates of convenience be enrolled in a course of study designed to prepare the enrollee for the taking and passing of the qualifying examination to become a fully licensed agent (Sections 1689, 1690). Such a course of study may have the prior approval of the Commissioner of Insurance. Criteria for the commissioner's approval are laid down in Insurance Code, Section 1690:

- (a) That it covers the fundamentals of the life and disability business, life business or disability business, as the case may be, and gives instruction designed to protect the insuring public.
- (b) That it includes further instruction commensurate with the type of business in which the applicant is to engage.
- (c) That it contains a system of written progress checks whereby it can be determined whether the applicant is taking the course and obtaining information or training. A record of such progress checks must be kept on file for a period of two years in this state.

If, after approval of such courses of study, the Commissioner of Insurance finds it to be inadequate to continue to meet the requirements for his approval, he may withdraw approval of such a course of study

upon notice and hearing and terminate all certificates of convenience issued to persons enrolled in such a course. In any event, the certificate of convenience expires six months after the date of its initial issuance.

Allegations have been made that some insurance companies are abusing the privilege of obtaining certificates of convenience for those employed as its agents. The charge is that a small number of disability insurance companies are appointing many hundreds of agents on certificates but qualifying only small numbers of these persons for permanent licenses.

Mr. Donald Burns representing the California Association of Life Underwriters stated that:

"These companies are incapable of using the certificate of convenience for prelicensing training as the Legislature intended. Are they intentionally operating on a formula for merchandising policies without permanently licensing agents? Here is how such a company in the latter category might operate. First, it runs advertisements promising good careers as insurance agents. Prospective agents responding simply sign the application for a certificate of convenience which is issued automatically. Given applications for health insurance policies, the agent calls on his first natural prospect, his family and acquaintances. When these run out and he arrives at the point where some training is mandatory if he is ever going to sell another policy he then is notified by the company that his contract is terminated and that it has canceled his certificate of convenience. This may take three weeks or it may take three months. In any event he is never presented for the qualifying examination."

The Department of Insurance presented the committee with exhibits showing their experience with life agent certificates of convenience issued during various periods. The figures presented by the Department of Insurance would indicate that certain companies, principally those engaged in the mass merchandising of health insurance, have been making a large scale use of the certificate of convenience to cover their salesmen. These companies which represent 50 percent of the certificates of convenience granted to potential agents have had little or no success in qualifying their agents. Only 14 percent of those who were granted certificates of convenience satisfactorily passed the Department of Insurance exams during the period of December 1959 through May 1960. The other periods covered by the report of the Department of Insurance would indicate an equally poor percentage of licenses eventually granted persons who were granted certificates of convenience when sponsored by these companies.

Although it is difficult to assess the damage done by the relatively large number of unlicensed but certificated persons who are selling insurance, one witness did state that:

"There is double harm done by such insurance practices. First, the agent may have, in good faith, given up a job to become an agent or a representative of the company. When canceled, he becomes unemployed and cannot transfer his certificate to another company and start in the insurance business over again, for the

law provides that each man is allowed *one* certificate only. He is required to take and pass a qualifying examination before engaging in the insurance business again. And, of course, this could take several months. On the other hand, there is the harm which can be done to persons who have purchased what these companies call 'mass-merchandised health insurance' from untrained agents who underexplain and oversell. When claims are rejected, the company can simply state that the policy did not cover the illness or accident. And when the policyholder protests that the agent *said* the situation would be covered when the policy was sold, it is explained that the agent is no longer with the company. And the company can't be held responsible. The person is told that he should have read his contract—his insurance policy. The legal complexities of insurance contracts and the overall lack of comprehension by the general public is really the very foundation of California's requirement that life agents be licensed. Insurance shouldn't be—and generally isn't—a 'let the buyer beware' business. Companies whose licensing statistics have given rise to this particular question today—as noted earlier—engage in the widespread marketing of low-cost medical insurance policies. This coverage is merchandised to the least sophisticated segment of our citizenry. It is merchandised to those least able to withstand the financial disaster caused when the illusion of coverage is shattered by the facts of policies."

At the hearing held by the committee, the Chief Deputy Commissioner of Insurance, Mr. Joseph Thomas, was asked what powers the Department of Insurance had to restrict the issuance of certificates. His response was:

Mr. Thomas: There is a statute (Insurance Code, Section 1691) that we felt wasn't workable from the standpoint of trying to enforce it. It says that the Commissioner may after notice and hearing disapprove the course of study that is required when they appoint one of these agents. The statute says that we can revoke the approval of the course of the study after a proceeding but that only means that the next day they could come in and file a new course asking for our approval. Apparently, if that was added, we would have to approve it again so that it wouldn't really solve much of the problem.

Chairman Knox: So it is a practical matter. You found that statute unworkable and that is the only one that would give you control over the situation. Is that right?

Mr. Thomas: That is correct.

AB 1375 introduced by Assemblyman Knox during the 1963 General Session provided that the privilege of sponsoring persons for the certificates of convenience could be suspended if $33\frac{1}{3}$ percent of the certificate of convenience holders certified by the insured during any calendar year fail for any reason to qualify for permanent licenses during a period of six months following issuance of a certificate of convenience to such holder. The bill as amended would not have applied to insurers who certified less than 25 applicants for the certificate.

CONCLUSIONS AND RECOMMENDATIONS

The committee concludes that enactment of legislation similar to AB 1395 is desirable. It is obvious that some companies are taking advantage of the privilege of the certificate of convenience by certifying extraordinary numbers of persons who later prove unqualified to continue in the insurance industry. Of 631 persons issued a certificate of convenience by one company from April through September 1961 only 94 presented themselves for the examination. Even upon reexamination a total of only 12 percent of those initially granted a certificate of convenience passed the examination. This indicates to the committee that excessive numbers of persons who were either unable to satisfy the companies or unable to master the technical information involved in insurance law are being granted the certificate of convenience.

The committee feels that the enactment of legislation which would limit the ability of a company to abuse the certificate of convenience would promote a higher standard of hiring in the insurance industry as a whole and would indirectly cause the insurance carrier to upgrade its training program so that at least one-third of the persons for whom it had obtained certificates would be able to pass the examination. The committee feels that this could only result in better insurance service to the insurance-buying public.

INTERIM STUDY REPORT ON LENDER-BORROWER RELATIONSHIP IN THE PROCUREMENT OF INSURANCE

I. INTRODUCTION

The clash on this subject has been primarily between four trade associations. On the one side are the California Association of Insurance Agents (CAIA) and the Insurance Brokers Association of California (IBAC) which have brought charges of illegal and undesirable practice in the solicitation and sale of insurance against a minority of the lending and mortgage institutions of the state, and have sponsored bills amending and changing Insurance Code Sections 770-771 in an effort to rectify such grievances. On the other side stands predominantly the California Savings and Loan League (CSLL) and, secondarily, the California Mortgage Bankers Association (CMBA) which defend the present practices of their members, urge no change in the provisions of the Insurance Code, and object to the proposed legislation.

While the bulk of the complaints by the CAIA and IBAC are primarily designed to protect the business activities of their own members agents and brokers against alleged "unfair competition" in the sale of insurance policies by some lenders and their affiliated insurance agencies, the plaintiff groups also raise the public interest in claims that some, perhaps many, policyholders have suffered "coercive pressure" from lenders regarding the placing of insurance coverage, pressure which was considered psychological and implied but nonetheless real, hence a violation of Section 770 of the Insurance Code, which prohibits such pressures in the sale of loans and insurance.

The defense by the CSLL and CMBA stresses the importance and legitimacy of "freer competition" which now exists because of the soliciting activities of lenders for insurance business, and they justify these actions as benefiting the policy-purchasing public because of the alternative insurance programs made known to it by such competition. These latter two groups consider the regulations in the code as adequate, as is code enforcement by the Insurance Commissioner. The small number of unadjustable cases are, they argue, not sufficient to warrant more legislation but, if anything, require only reforms within the business itself. As a counterclaim, the lending institutions point to certain policy-preparation and submission weaknesses by agents and brokers which have caused lenders difficulty.

An integral part of the whole question, and one which is a major feature of the proposed legislation, is the extent to which a lender may solicit and place coverage with an insurance agency in which it has a direct or indirect financial stake and hence would derive benefit. A subsidiary question deals with the reverse of this: to what extent an

insurance company, or agency with financial or directorate links to a lender may use that connection in furthering the sale of its policies to borrowers or potential borrowers.

II. CONCLUSIONS AND RECOMMENDATIONS *

After weighing the evidence in this matter, it is the belief of the Finance and Insurance Committee that no substantial public policy considerations are at issue. The overwhelming impression in this matter is of several large economic entities vying for the same business, a competitive struggle which is being carried on within the established regulatory laws. Therefore, it is an issue in which the committee does not believe it should be its proper function to interfere or to favor one side more than the other.

It is recognized that in the course of this competition some practices have developed which allegedly have worked to the detriment of some borrowers and especially to the economic detriment of those independent agents and brokers serving borrowers. On the other hand, there is evidence that the activities of lenders in the insurance field have been readily accepted by borrowers and in some instances these services have provided better insurance coverage. That the independent agents and brokers have deemed the lender-insurance agency tie "unfair competition" is no doubt a natural response, but it is one which the committee feels should be dealt with through the trade associations and the Insurance Commissioner and not by seeking legislative relief, for evidence that the Insurance Code, Section 770, is being violated is far from conclusive. Despite "grey areas" of enforcement noted by the Insurance Commissioner, the economic gains accruable to the independent agents and brokers through preventing a lender from aiding its insurance affiliate seems out of proportion to any correction thus affected. As noted by all sides, the continued effort by the trade associations to observe each other's activities plus the occasional public and administrative complaints have led to a gradual but continuing improvement of business practices. The involvement of both the Insurance Commissioner and the Savings and Loan Commissioner has been continuous and positive. It is the committee's position that these commissioners must take an even more vigorous stand in policing their respective industries through formulation of "codes of good practice" which could be recommended to their clientele groups. These industries have seemed to be highly sensitive to public criticism. This committee is loath to recommend legislative action which, no matter how restricted in its wording, might have sweeping effect, when the corrections required seem less extensive and best handled administratively or through reciprocity between the trade associations.

III. BACKGROUND

In brief, Insurance Code Section 770 now makes it unlawful for any lender to require any borrower or prospective borrower to purchase insurance from any particular agent or broker as a prerequisite to the borrowing or renewal or extension of a loan on property. The right of the borrower to refuse any designated agent is guaranteed in

Section 771 (c), however, the lender is permitted to approve or disapprove of the insurer, may recommend a specific agent or insurer to the borrower if such does not contravene Section 770, and is permitted to order its own policy to cover the loan if an approved policy from the borrower is not in the lender's possession at least 30 days before expiration of the old insurance policy. The borrower may submit his own policy at any time, but a small "substitution fee" is authorized if a policy has already been ordered by the lender.

In the first years after passage of Sections 770-771, so-called "coercive practices" by lenders respecting insurance sales were notably reduced, but the complaints of independent agents about lender activity in the insurance field began to grow with the result that efforts were made by a committee of the CAIA to work out a "code of ethics" with the CSLL regarding practices considered by the CAIA to be violations of the spirit, if not the letter, of Section 770. This effort continues.

One of the complicating factors in this dispute was that many savings and loan associations were, until mid-1960, licensed as insurance agents or brokers. In July, 1960, Attorney General Mosk gave an informal opinion to the Savings and Loan Commissioner to the effect that state-chartered savings and loan associations could not lawfully transact insurance in California because the insurance business was of a different category than a legitimate savings and loan business. Furthermore, no express permission in the Financial Code gave such authorization to savings and loan associations as was given to a few banks in certain locations.¹ Following this opinion the savings and loan associations which had insurance licenses divested themselves of them but then proceeded, quite within the law, to maintain their insurance activities in several other ways, primarily via "affiliated" insurance agencies in which there was some personnel or financial tie.

Another complicating factor is that, in contrast to the savings and loan associations, the mortgage correspondents or mortgage bankers, who usually represent out-of-state lenders, are actively in the insurance business and openly solicit for such business. The Attorney General's opinion did not concern mortgage correspondents, but CAIA/IBAC complaints were levelled against them as well as the S & L's.

In the 1963 General Session three bills were introduced with the intent of satisfying the grievances of the CAIA against lenders. One measure, AB 1974 (Miliias et al.) was specifically backed by the Farmers Insurance Group and sought amendments to Section 770 and 771 for the primary purpose of eliminating lender discrimination against certain types of insurance companies. The CAIA and IBAC were more closely identified with AB 2254 (Veneman) and AB 2333 (Veneman and Burgener). AB 2254 proposed an amendment to Section 770 to require that insurance information received by a lender from a borrower be held in a fiduciary capacity and that it should not be disclosed to the detriment of the borrower, insurance agent, or insurer, or for the direct or indirect advantage of the lender or other person.

¹ Letter from Deputy Attorney General Harold B. Haas to Savings and Loan Commissioner Frank J. Mackin, July 8, 1960.

The additions to Section 771 incorporated in AB 2333 sought to prohibit lenders from recommending to borrowers or prospective borrowers the placing of insurance with any insurer, agent, or broker with whom the lender had any financial or other valuable interest or from which the lender received any benefit directly or indirectly if the borrower placed his insurance in such company or agency pursuant to lender recommendation. Specific descriptions of such lender-agent-insurer affiliations were detailed in AB 2333, evidence of which was conclusively presumed to be a requirement on the borrower to purchase from the recommended insurer and hence a violation of Section 770.

The subject of the relationship between lender and borrower in sale and loan insurance transactions in order to determine whether or not the lender may derive benefits which would be adverse to the public interest, and whether or not the insurance information obtained from the borrower in connection with the financing of a purchase of real or personal property shall be of a confidential nature. . . .

IV. THE HEARING

The Interim Committee hearing pursuant to HR 570 was held on January 15, 1964, in Los Angeles.

The case for new legislation to correct "this major problem of coercion and pirating of (insurance) renewals" was presented by various independent agents and brokers and their association representatives. Documentary evidence included a large collection of letters sent by lenders to borrowers, as well as other "case correspondence" and copies of policies, some of which had been submitted to the committee prior to the hearing.

One form of alleged coercion occurs in the practice referred to as "pirating of renewals". ("Pirating" is described as the practice by lenders of taking information from borrowers' insurance policies, for example the expiration date and the amount and type of property coverage, and giving such information to the affiliated or "captive" agency of the lender. The lender then seeks to interest the borrower in the insurance offered by the affiliated agency hoping to get that business. The agency itself may also solicit the borrower using the information it has gained from its lender affiliate, but the former method is more typical. "Pirating" refers to the process whereby the independent agent or broker who originally sold the policy is seemingly removed from renewing "his" policy by the "unfair competition" of the lender and its agency.)

For example, another complaint of the independent agents was that while the savings and loan associations informed the original brokers that its regulations required an insurance policy with a company having a rating of A+ or better in Best's Insurance Guide, it quoted a lower premium on a policy to be furnished by its own agency, from a company with a rating less than what it nominally required.

Another qualitative factor about lender involvement in assessing insurance needs for borrowers was raised by the lender's suggesting the amount of coverage a borrower ought to have. This matter led to the following exchange:

Assemblyman John Knox: Mr. Hardinge, is it still the custom for the letter to advise them what the face amount of the policy for fire and other damage coverage should be?

Mr. Hardinge: (Exec. Vice President of the CSLL) Yes, Mr. Knox, this is a suggested amount which is based upon the lender's record; based upon the appraisal that they have to make at the time of the loan . . .

Assemblyman Knox: No, wait a minute. Suppose the loan was five years old and property values had gone up and they hadn't made a new appraisal on it; they'd be taking a chance on allowing the fellow to be under-insured by not having personal advice on how much insurance to carry?

Mr. Hardinge: Any lender knows what the trends of construction costs have been in the last five years. If they are confronted with an appraisal form made five years ago, it is relatively simple to recalculate what the insurable value might be today.

In the name of service to the borrower another disliked practice of some lending companies is to begin their notification of expiration of insurance anywhere from 60 to 120 days before policy expiration, long before the original broker would consider seeking renewal from his customer. Further, as a service, the lenders suggest that they would be glad to handle the placing of the insurance. Two ways were considered standard. One was to return a signed authorization permitting the lender to order insurance. The other method was to put the burden on the borrower to refuse the service otherwise insurance would be ordered. For example, this phrase was occasionally used: "Unless we have your personal instructions to do differently, we will order your insurance for you from the ----- Agency for the amount suggested." (The representative of the CSLL reported at the hearing that use of such a phrase had been discontinued in current S & L correspondence with borrowers. The more typical phrasing now connects the ordering with failure of the borrower to reply or to provide a policy at least 30 days before expiration; for example: "If we do not hear from you before 30 days prior to the above expiration date, we will assume you want us to order the renewal from (our designated agency).")

That such tactics are believed to be "coercive" and financially injurious to the borrower was described by Mr. Moselle as follows:

I'd like to cover some added inducements that are thrown in which are adverse to the public interest. The added inducement of installment premium payments is frequently included, a courtesy extended only if the insurance is placed with the captive agency. Many of these same lenders require a full three-year period policy from an outside agency or broker, not even permitting the

use of the annual premium installment provisions of the standard fire policy. If the borrower insists upon his free choice of agent or broker he may do so, but in such case he must advance the full three-year premium. Notice that several of the lenders in the letters just read offered to add the premium to the loan balance, and one stated that 'we can add the premium right to the loan payments'. I wonder if your borrower would accept that added service if he was aware of the interest charge involved. If the monthly payments are not increased it means the premium would have to be added to the top of the loan balance and interest charged on that balance for the entire remaining years of the mortgage. This could result in interest charges far exceeding the total premiums.

In addition to the belief that the borrower is coerced, the independent agents and brokers have felt themselves unduly harassed by certain tactics of the lenders. The supposed object of such alleged harassment was the eventual securing of the borrower's insurance for the lender's affiliate.

Mr. Fred Dupuis, Executive Secretary of the CAIA, completed the major presentations for the independent agents with a review of a number of technical points about insurance acceptance by lenders as well as a review of the major complaints and an emphasis on what corrective legislation would accomplish.

The problems, noted Dupuis, are not with the entire lending industry, but only with some 30 savings and loan associations out of about 257 in the state.

In reference to AB 2254, Mr. Dupuis felt that the fiduciary relationship between lender and borrower had to be more clearly established. The effort to keep lenders from using insurance policy information in dealing with borrowers was especially vital to the independent agents because, Dupuis believed, the lenders and their affiliated agencies were granted a competitive advantage in their solicitation of insurance as they often required a policy to be deposited with them yet did nothing to get the facts which were in the policy. Hence, he believes they gained valuable information for which they did not pay to acquire.

As for the changes proposed in AB 2333, Mr. Dupuis believed that the right of lenders to recommend an agent had to be qualified.

Mr. Dupuis: When this was brought up before, the argument against it has always been well, those agents, they're trying to build a little wall around the business they have, they're trying to stifle competition, and so on. I think all of you realize that there're varyingly estimated to be 30 to 100,000 people competing in this state in the sale of insurance. Our members compete with each other. Our members compete with the members of the brokers association to which we testified earlier. We're trying to eliminate only one type of competition and one competitor by this bill. The savings and loan institution or the lender in this right to recommend—we would ask only that it be altered in one regard; he can recommend any insurance agency or company that he

wants throughout this state, among these thousands, except the one he owns or the one from which he derives financial benefit. We feel that the profit incentive involved tempts and leads astray many persons in this business to the extent that other rather questionable tactics come into the picture.

Defending the lenders and in opposition to proposed changes were representatives of the CSLL and the CMBA. In brief, the contentions of the independent agents and brokers were denied on the grounds that (1) the present laws provided adequate protection to the borrowers; (2) far from a detrimental treatment of borrowers by lenders, insurance services furnished by lenders provided comparative policies and premiums to borrowers not otherwise aware of such, hence providing them economic savings. In addition, by assuring that the loans were adequately protected through policies placed with knowledgeable affiliated agencies, the lenders were not only providing better coverage to borrowers but also assuring the stockholders of the savings and loan association better investment protection. Thirdly, what could be healthier for business and more suitable for the insurance customer than the competition offered by lenders and their agencies to the independent agents and brokers? Lastly, the bills are, in fact, "class legislation" designed to protect one group of insurance agents against another, hence they permit a monopoly which has antitrust implications.

Frank Hardinge of the CSLL believed that lender interest in borrower's insurance was desirable because the lender had a responsibility not only in protecting his own loan but in seeing that the borrower received as good insurance as he could get. The use of a designated agency by the lender in which to place such a policy enhances this service. For one thing, many California borrowers have no insurance contacts and the lender can so provide one.

Mr. Hardinge: So long as (the borrower) is taken care of, he cares less where his insurance business goes.

The designated agency can often get coverage which an independent agency could not get, for example in brush fire areas, occasionally at more reasonable costs.

Mr. Hardinge: When we lenders are dealing with an outside agent and there is a fire claim, and it's a tough one, it's a disputed one, we have no way to go in and work with that agent in trying to get the insurance company to do the right thing. When they're dealing with a designated agency there is some bargaining power which is very important for the borrower in this connection . . . The public interest has been proven many times to be better protected by the designated agency of a lender writing insurance because they have complete facts as to the construction of square footage of the business, the building and other pertinent information which makes them better qualified to determine values and proper coverage.

Another point was the issue of competition.

Mr. Hardinge: The independent agents intend to have competition among themselves. But I find it inconsistent that they are willing to ask this committee to cut off a form of competition . . . Why is competition coming from one group of agents different from any other group? . . . I submit that no efficient agent has ever lost any business because of the activities—and *solely* because of the activities of a designated agency. (Emphasis in the original) I repeat, that in the complaints that have been registered with this committee . . . that we're dealing with about one complaint to every 100,000 loans in effect. We repeat it is not from the public that the complaints are coming, but . . . from the agents which mean competition.²

Assemblyman Knox challenged Mr. Hardinge's position by inquiring why a lending institution should write its customer a letter about insurance at all when the lender was not able to be in the insurance business himself.

Mr. Hardinge: Mr. Knox, number one, most . . . savings and loan associations feel that it is part of their service to a borrower to notify him of the impending expiration of the policy . . . Number two, whether or not there is anything in that letter, many borrowers will contact the association regarding their insurance and ask questions about it; this is why every lending institution must maintain some people on their staff who are knowledgeable in this field. Number three, I submit that the law specifically states . . . that a lender is permitted to recommend an agent. I submit further, that we see nothing where the borrowing public or the property owning public is given a disservice by having additional information about the alternate choice that he has—which he should have—is a matter of competition. Now, to the extent that there is no coercion, and the laws are perfectly clear on this, to the extent that the borrower of his own choice makes this choice as to with whom he wants to do business, I see nothing wrong with it.

Mr. Knox questioned too whether the lender was injecting himself as a noncompetitor into a real competition between insurance agencies in an effort to aid that agency with which it was affiliated by capitalizing on the special economic relationship it had with the borrower who needed insurance.

Mr. Hardinge: I think that the facts of the case will support the position that, whenever this letter of pending renewal goes out that, it typically will trigger the borrower to take . . . the steps he should to get his insurance policy written by whoever—in addition to which an efficient agent will have already been at work seeking renewal of this policy. And I think that there has been no evidence brought to this committee which indicates that

² Hardinge noted that there are over two million real estate loans outstanding in California. The S & L business has about 1,200,000 of these. He estimated the specific complaints at about 100 received by his organization from the CAIA and the IBAC.

there are a lot of policies being written by designated agencies, which, as has been used here, 'pirated' away without the free choice of the borrower involved. I think this is where the testimony this morning is trying to convey an impression that there is coercion here.

As for the agents' complaint that policies are returned for insignificant reasons or are deliberately delayed, Hardinge informed the committee that 20 percent to 30 percent of the policies received are inaccurate because of errors by the agents. These policies, he said, are promptly returned for correction. The \$5 substitution fee was considered fair not least because cost studies showed that it cost more nearly \$12 to make the actual change.

On the extent of the effect of the legislation under study, Robert DeKruif, of H. F. Ahmanson Co., raised the point that

This type of legislation not only includes savings and loans and mortgage companies, but also real estate agents, loan brokers, escrow agents, finance companies and automobile dealers. Because they all have access to information contained in the insurance policy. The statement was made at one time—and I cannot verify it—that 65 percent of the membership of these associations were engaged in other businesses. Again—class legislation—are you going to rule one group as opposed to another group when the Insurance Code specifically says who can be licensed and who can't.

As for the benefit to the public, Mr. DeKruif said,

One specific instance, that we know of, where the public has benefited recently as the result of a designated agency sold 58 homeowner policies out of a possible 72 borrowers. These homeowner policies definitely broaden the coverage and gave greater protection to the borrower. However, the existing insurance agent—or we might call it the outside agent as they have been referred to today—had not even informed his client that the policy was available. I reiterate, the public was benefited by the designated agency.

A representative of the CMBA posed the difficulty faced by mortgage correspondents in relation to the proposed ban on insurance soliciting by lenders.

Mr. John Lyman: A mortgage correspondant is not a financial institution; he is either an individual or a corporate structure. His job is primarily to represent specific lenders, usually Eastern lenders, and making mortgage loans in his geographical area. Consequently, he is actively in the insurance business; he actively solicits insurance business and he sends out letters as either a company, an individual, or a designated company in which he has an interest. There is no secret about this; this is a matter of common knowledge . . . these are licensed brokerage companies.

Mr. Lyman contended that the independent agency complaints against the CMBA members were, on investigation, unsupported by the borrowers themselves.

Mr. Lyman: When we get over into coercion, I can't follow this. They're gonna send out letters and say 'your insurance is due; we'd like to write it.' Now if that is wrong, why then this is an odd approach as to how you get business. I don't know how else you can get business without soliciting. Now, this is the position of the Mortgage Bankers; they are not prohibited by law from being in the insurance business and they are.

A compilation of the cases by type of complaint was presented to the committee by the Chief Assistant Insurance Commissioner, Joseph D. Thomas.

In commenting on the different cases received by the commissioner, Mr. Thomas made the following points:

From his experience about 90 percent of the complaints to the commissioner come from agents and brokers. Complaints from borrowers are always or nearly always professional people. "We don't ever seem to get—as far as I recall, never have gotten—a complaint from a borrower who was just the average run-of-the-mill guy, who wasn't a professional person or rather prominent."

Although Mr Thomas said that his department did not "as a department, want to take sides in this thing," in the course of explaining the "grey areas" he suggested in several instances that perhaps new rules should be made, although what was to be done he did not elucidate.

Mr. Thomas: The lender, in soliciting—or the affiliate in doing the soliciting—if you look at the letter and you look at the letterhead, you can't tell whether it's the lender that's writing the letter or whether it's the independent agent and you can't tell whether he's licensed or unlicensed. The letterhead will be the letterhead of the savings and loan association; then down at the bottom, it will say "Insurance Department". And, to me, that doesn't seem to be right. I think they ought to be truthful about this thing if they're an independent agent and not part of the savings and loan which, itself, can't be licensed. I think the way the letter is put together should properly identify who's doing the soliciting.

V. SUBSEQUENT DEVELOPMENTS

In the months following the January hearing, efforts were made to bring the four trade associations together in hopes that they could work out many of their respective differences through some kind of institutionalized liaison committee. One hoped-for result would be a "code of ethics" covering not only insurance soliciting practices by lenders but also seeking improvements in some agent and broker methods which had bothered lenders.

A "working draft" for such a "code" was prepared jointly in February 1964 by officials of the Insurance Commission and the Sav-

ings and Loan Commission. It was suggested that in its "approved" form it be issued as a joint bulletin by both commissioners. After extensive criticism of the draft, especially by the CSLL, which sought to moderate the suggested changes proposed in the draft, issuance of the joint bulletin was held in abeyance.

Meanwhile, representatives of the four associations did meet on several occasions in late spring and at the end of the summer in an effort to reach agreement on some points.

* Assemblyman John Veneman has expressed reservations about the committee's recommendations in this report.

REPORT—FINANCIAL RESPONSIBILITY LAWS FOR PRIVATE AIRCRAFT OPERATORS

HR 16

This subject, in which the State of California is being asked to foster and to enforce minimum financial responsibility standards for the owners and operators of aircraft within the state, is for several reasons one of those problems which the American system of government finds especially difficult to handle. For one thing, the air transportation field in all of its phases has been almost from the beginning centrally controlled at the federal level. State participation has been in the nature of "cooperation" but still bound by the extensive regulations maintained by the national government.

In the post-World War II period travel by air has become an increasingly popular activity as a wide range of aircraft have become available for private use, as social and economic mobility has made rapid travel by air highly desirable, and as a more affluent society has permitted many private citizens as well as business organizations to own aircraft or at least qualify to fly them. Thus private planes combined with military and commercial carriers has increased the total of airspace users to the point where the term "the crowded air" applies to more than just wireless communication.

Increasingly, therefore, the individual states have found that the exercise of their "police powers" to ensure the health, safety, and welfare of their citizens has meant having concern for the proper use of the airspace above and for the potential dangers to citizens and property below. The California Division of Aeronautics, for example, carries on a program which includes among other things the granting of state permits to airports meeting certain approved criteria, an extensive program of air safety education, and promotional activities regarding flying, as well as cooperating with federal authorities in the field and seeking coordination of state and federal laws regarding aircraft.

Despite this activity, the state has been naturally reluctant to legislate in a field so dominated by national government regulation unless permission is granted or implied to do so or some lack of action by the federal authority leaves some part of the aircraft field unregulated in the face of a call for meeting some public need. A further damper on state action has been the insistence by many state residents involved or interested in the aircraft field that the broad range of federal regulations were quite adequate, and the increased supervision by the state would only prove confusing, oppressive, and costly.

On the other hand, the states have come to have almost complete control over the regulation of minimum insurance requirements for certain activities. In the area of commercial and private aviation, however, state insurance requirements have obviously been a more

contentious matter than, for example, in the automobile field, given the federal role. For whatever reasons, the national government has not acted, except for minor exceptions, to require a national minimum standard of insurance coverage for commercial and private aircraft owners and operators. It has been assumed that aircraft owners and operators are sufficiently cognizant of the dangers of the business and of the possibilities of high loss, and were financially capable, to carry adequate personal liability and property damage insurance against aircraft accidents. Among private owners an estimated 90 percent or more do carry insurance and virtually all commercial carriers are so covered.

Despite this, uninsured loss from air accidents occasionally occurs. Because of the heavy life and property loss potential—and after several spectacular cases—California had passed by 1963 an insurance requirement for commercial air carriers operating in the state. Since 1959, several bills have been introduced to foster minimum insurance standards for private, noncommercial aircraft owners and operators as well.

The automobile insurance laws, themselves a rather late response to an overwhelming and growing need, are often used as evidence of the kind of action needed for the private aircraft field, but the analogy founders on many dissimilarities. There are 8 million private automobiles currently in California and only 14,000 private aircraft. The education, training, testing, and qualification of automobile operators holds no comparison with the rigorous checks on pilot ability, the latter a matter of clearer necessity perhaps, but which have proved themselves in the enviable proportional safety record of pilots compared to the dismal record of automobile drivers. On the whole, too, aircraft are under greater supervision than most automobiles. In general, as noted before, aircraft owners and operators are of an economic class and of a socially responsible mind which assures their compliance with rules for liability and damage. Further, the personal and legal penalties for carelessness in the air are comparatively harsh.

Despite the institutional obstacles and the relative lack of need, few if any voices have been raised against the passage of some kind of legislation in California which would seek to extend insurance coverage to *all* persons who own and operate private aircraft in California. The question in contention is how to establish and administer such requirements.

Since the problem is believed to be statewide in scope, one proposal involves a system administered centrally by the Division of Aeronautics. This is opposed because of the estimated cost to state taxpayers and the dislike of increased state bureaucracy. Instead, a system whereby local municipal airports would require aircraft insurance is proposed as most suitable.

The state program advocates a minimum public liability and property damage insurance standard in which the aircraft owners and operator is not *compelled* to buy, but failure to do so and involvement in an accident in which death, injury, or a certain dollar loss is involved would lead to state sanctions against his flying. Subsequent uninsured losses by the same person would lead to fines and imprisonment.

Opponents of this plan point out that under such a scheme those incurring loss are not compensated in the first accident at all, hence a plan for locally required insurance as a prerequisite for habitual use of the local public airport would be more protective. Further, state prohibitions against flying seem unrealistic since the license to fly is, in fact, a federal one. There appears to be no way for the state to keep an "offender" out of the air at least in the short run and possibly not at all.

The state plan counters this first by decrying any requirement for "compulsory insurance" as a prerequisite to flying. Such insurance, it is said, would make premiums far higher than is currently the case. It is granted that state sanctions might not keep flyers grounded, but in the long run the greater reporting of accidents, which would permit identification of offenders, plus the eventual fines and punishments would "cleanse" the air of "chronic offenders," persons with sub-standard aircraft, reckless natures, and fiscal irresponsibility, who should not be flying anyway regardless of their federally approved license signifying their technical ability to do so. In this connection it is argued that of some 1,830 total airfields and airstrips in California, only an estimated 200 are publicly owned facilities, hence the great majority are not covered by the "local insurance" proposal. In addition, only about 220 airports either public or private have full or part-time professional managers. Needless to say, the financially irresponsible owner and operator is more likely to base his plane and do his flying beyond local supervision, as it is quite possible to do.

It is argued that at least a dozen public airports as well as a number of private fields already have successful local insurance requirements and thus local action has a basis in good experience. In reply it is pointed out that many of these same public airport managers have found undesirable both the expense and the burden of administering insurance rules, and that they support a statewide program. This was so not least because local rules cannot be applied to "transient" aircraft using a "public use" facility since federal rules required the field to be open to all planes. The cost of administering such local rules has been estimated at \$10,000 annually for a field with 200 resident aircraft. Estimated cost of administration by the state has been placed at between \$11-15,000 annually.

This state administration would require at least some kind of registration or identification of plane owners who carried minimum public liability and property damage insurance. A sticker costing a dollar or so could be issued by the Motor Vehicles Department. Such a rule is considered a necessity and similar registration in several other states is considered neither a burden on pilots nor in conflict with federal licensing regulations. "Licensing" means basically the approval of a pilot's ability to fly, his health, and his plane's airworthiness. Even so, opponents of any statewide registration hold any such "identification" as a step toward unwanted and, as they see it, unnecessary, state interference in a federal area.

The issue of "how" is almost completely at loggerheads, yet the potential problem grows greater as the annual total of private planes in California increases by 500 and as nonowner "weekend" pilots grow

in number. California's year-round climate prompts a greater use of private aircraft than in most parts of the country—an average of 250 hours a year in the densely crowded southern third of the state. There is an expressed fear that a rash of small uninsured accidents or some major uninsured catastrophe might raise public emotion for passage of highly restrictive legislation including the generally unwanted compulsory insurance. There is desire to forestall precipitous legislation by beginning the regulation more moderately now.

Under the best of circumstances questions remain, especially about insurance coverage policies, which cast doubts on the possibility of developing as thoroughgoing a system of minimum coverage as seems necessary. For example, an aircraft insurance policy is based on highly individual factors and is shot through with exceptions and exclusions which might cause accident loss by a seemingly "covered" pilot to be, in fact, uninsured. Violations of Federal Aviation Agency rules on night flying, safe altitude, and instrument flying may serve as breaches of the policy, and no coverage is given if losses are due to racing, aerobatics, crop dusting, or hunting from the plane. Only a pilot qualified to fly that particular craft is permitted to operate it else the coverage is void. A pilot renting a plane is not generally covered unless he carries a nonowner policy. An aircraft owner is not liable for damage caused by his plane merely because he is the owner.

In light of the static condition of the debate, yet with a present and especially with a potential need looming, this committee strongly urges that new alternatives be examined by those involved in administering and participating in the air travel field. State requirement of an absolute liability on plane owners might be examined. Greater specific use of local law enforcement and tax officials as aids in the regulation of a state program might be investigated. Finding a system of identifying aircraft owners without resorting to "tagging" should be considered. Barring the possibility of getting the aircraft insurance underwriters to eliminate or to modify traditional exclusions, perhaps a state fund might be established, filled through appropriate levies, to help guarantee compensation for losses occurring under the special, excluded, circumstances. There has been no real discussion of what stand federal aviation authorities would take toward aiding implementation of state insurance requirements, or whether, in fact, the federal authorities would find state registration an imposition on their domain.

Because it is believed that national uniform insurance regulations would greatly alleviate the current dispute, with its many parochial problems, the committee recommends that the California Assembly pass a resolution urgently requesting the United States Congress to legislate such national standards for personal liability and property damage insurance for the owners and operators of private aircraft. Meanwhile, the committee calls for a renewed effort to find a suitable, statewide solution.

UNEMPLOYMENT INSURANCE

CONCLUSIONS AND RECOMMENDATIONS

1. Unemployment Insurance coverage should be extended to employees of the State of California, its political subdivisions, employees of all special districts, and employees of nonprofit employers. Such coverage should be on a merit rated basis, but it is the obligation of the state to provide the cities, counties, and special districts with additional sources of revenue so that the added cost of such coverage is not borne solely by the property taxpayer.
2. Any additional increase in the cost of providing benefits under the Unemployment Insurance program should be met by both an increase in taxable wage base and a revision of the premium schedules.
3. That the Assembly authorize a comprehensive study of the administration of the Unemployment Insurance program by the Department of Employment.

UNEMPLOYMENT INSURANCE REPORT

One of the primary objectives that the 1935 Legislature intended to achieve by the enactment of a system of unemployment insurance is set forth in Section 100 of the California Unemployment Insurance Code, to wit: to provide "... benefits for persons unemployed through no fault of their own and to reduce involuntary unemployment and the suffering caused thereby to a minimum." To achieve the purpose of the law, unemployment benefits should be high enough to provide the unemployed person with a livelihood while seeking another job, and at the same time not so large as to blunt his incentive to find new employment. The law makes the amount of benefits dependent upon the level of the claimant's past earnings and thereby establishes a formal standard against which to measure the degree of fulfillment of the law's goal.

Average and Maximum Weekly Benefit Amounts

Unemployment compensation under the original act passed in 1935 was to be 50 percent of average weekly earnings so long as these did not exceed \$30. In 1938, the first year in which unemployment benefits were paid, maximum benefits were \$15 a week and this maximum did correspond to 50 percent of *average* weekly earnings in covered employment. The average weekly payment amounted to about 34 percent of average weekly earnings in covered employment.

In December 1939, maximum benefits were raised to \$18 a week, while the minimum payments were increased from \$7 to \$10. This re-

vision in benefits considerably increased the ratio between average weekly benefits and average weekly earnings.

In 1940 the maximum benefit was 58 percent of average weekly earnings, while average weekly benefits equalled 45 percent of these earnings. These high proportions were never again reached in subsequent years. With rapidly rising earnings during World War II, the percentage shrank respectively to 41 percent and 33 percent in 1943. Since then there have been several upward provisions of the maximum benefit. These higher benefits, together with continual wage increases, held the average weekly benefit amount as a percentage of weekly earnings to a relatively stable figure during the 1950 to 1959 period.

In 1960, the average weekly benefit payments rose to about 38 percent of average weekly earnings as a result of the substantial increases in maximum benefits from \$40 to \$55, and the \$55 maximum equalled 52 percent of average weekly earnings.

The 1961 amendments did not change the \$55 maximum but did narrow the steps in the benefit formula with the result that the weekly benefit of about two-thirds of the eligible claimants was raised by \$1 to \$3. As a result, the average weekly benefit amount rose to \$42.19 in 1962. Average weekly earnings also rose, however, so that the average weekly benefit was the same percentage of average weekly earnings in 1962 as it had been in 1961—37 percent.

Monetary Eligibility Requirements

Since the law's intent is to partially compensate a worker for the wages he fails to earn while unemployed, the claimant's eligibility for benefits depends on his having a substantial attachment to the labor force. One of the methods used to measure this attachment is a minimum earnings test. This requirement denies any benefits to claimants whose earnings in a 12-month period are below a specified level, on the assumption that low earnings indicate a short or temporary attachment to the labor force.

In 1940, more than 16 percent of all monetary determinations held the claim ineligible because the claimant had not earned the statutory minimum of \$300 during the base period. The percentage of monetary determinations which declared claimants ineligible on this test alone fell rapidly during the war years and reached 5 percent in 1945. Following 1945, the percentage of claims ineligible because of low annual earning rose to 8.9 percent in 1946 and 9.3 percent in 1947. From 1947 to 1954, the percentage declared ineligible for insufficient earnings declined steadily to an alltime low of 3.7 percent.

In 1955, the Legislature raised the minimum earnings requirement from \$300 to \$600. In 1956, as a result of this revision, 9.1 percent of first determinations found claimants ineligible. From 1957 to 1962, the proportion of claimants ineligible because of insufficient earnings ranged between 6.6 percent and 8.3 percent.

An eligibility requirement of a given dollar amount of earnings becomes less effective as wages rise. Three minimum dollar amounts have been part of the California Unemployment Insurance laws at different times: \$156 from 1938 through 1939; \$300 from 1940 through 1954; and \$600 from 1955 to date.

During the first two years in which benefits were paid, 1938 and 1939, claimant could earn the amount of wages necessary to qualify for the minimum award in a little over five weeks of work at average weekly earnings. In 1940, when the minimum requirement for the base period was raised from \$156 to \$300 the number of weeks of work at the average rate needed to qualify for benefits jumped to 9.6 percent. During the period in which the minimum requirement was \$300, from 1940 to 1954, the minimum number of weeks of work at the average rate needed to qualify declines every year, and by the last year of the period was down to a low of 3.7 percent. When the wage eligibility requirement was doubled to \$600 in 1955, approximately seven weeks of work at the average rate were needed to earn that amount. With wages still rising, the number of weeks of work needed to qualify continues to decline, and in 1963 less than five weeks of work were necessary to earn enough wages to qualify for benefits.

Two other tests contained in the Unemployment Insurance Code have resulted in controversy between interested groups. These are the lag quarter provision and the 75-percent rule.

The lag period is an administrative device which gives the Department of Employment time to process the wage reports that employers submit quarterly. The lag period is time gap between: (1) the end of the four calendar quarters, the base period used in determining a claimant's right to unemployment insurance and the amount of his benefit award and (2) the date when his claim is opened; that is, the start of his benefit year. This lag period will run as high as four calendar months. The lag period provision provides that a claimant cannot qualify for two consecutive years of regular benefit payments unless he has had at least \$600 in earnings during the 52 weeks after he opens his claim. If a claimant has received disability insurance or workmen's compensation during his 52-week benefit year, however, these benefits doubled can be counted as earnings for establishing a new claim. Thus, an employee's lag period earnings cannot be counted toward his benefit award unless he has earned \$600 additionally during his benefit year.

To the extent that an employee does have substantial earnings during the lag period, he is deprived of any award for unemployment insurance based upon these earnings unless he has had post-lag period earnings in addition. To this extent, it does work to the disadvantage of persons caught up in recession unemployment or technological displacement. Although extended duration benefit payments help to alleviate such unemployment, they are available only during periods of high unemployment and do not treat the individual problems of the employee on an individual basis.

The 75 percent rule is another supplementary test of eligibility for benefits which is applicable to claimants having low base period wages who earn most of these wages in a single calendar quarter of the base period. When their entire base year wages are at least \$600, but less than \$750, claimants are not entitled to benefits if more than 75 percent of these wages were earned in one calendar quarter. This rule was devised originally to limit the number of persons in seasonal industries who could qualify for wages. Such persons generally have high weekly earnings for a short period of time, wages which would amount to \$750 during the benefit year but which would largely be

earned in one quarter. The presumption is that such a worker is not "enough of a worker" to come within the scope of unemployment insurance protection.

At the 1964 average weekly wage in insured employment of \$120 a person would only have to work 6.3 weeks in the base year to satisfy the \$750 earnings test and remove the presumption on which the 75 percent rule is based. However, at the minimum hourly wage of \$1.25 an hour, 15 weeks of work at 40 hours a week in the base year would be needed to earn more than \$750. This rule does result in arbitrary exclusions since some persons may be entitled to benefits because their working period spans parts of two calendar quarters while other persons who have the same amount of earnings are deemed ineligible by the 75 percent rule because most or all of their work occurs in a single quarter. The rule works its greatest hardship on the unskilled intermittent employee who has frequent periods of unemployment.

Unemployment Insurance Coverage

As of 1940, the unemployment insurance statute covered employment by employers having four or more employees for some portion of a day in each of 20 different weeks in a year. Excluded from coverage were agricultural labor, domestic service in a private home, government employment, work in certain types of nonprofit organizations and certain other small categories of employment. Elective coverage of exempt employment was permitted. In 1940, a little more than one-half—53 percent—of total civilian employment was covered. The percentage rose to a wartime peak of 63 percent in 1943 as the war effort resulted in concentrating employment in covered industries, and then it declined to 57 percent in 1945.

In 1946, coverage was extended to all employers with one or more employees who paid wages in excess of \$100 within a calendar quarter. As a result of the change, an additional 264,000 employees on the payroll of about 140,000 employers were brought under unemployment insurance coverage. Approximately 63 percent of all civilian employment in California was covered in 1946. With a single exception in 1955, unemployment compensation was extended to federal employees by federal legislation. No major change in coverage has been enacted since 1946. Since 1955, the proportion of civilian California workers under the protection of unemployment insurance has remained close to 70 percent.

At the request of the committee, the Department of Employment submitted a report of their experience with state and local government entities covered under the Unemployment Insurance Code. That report is partially reprinted here.

"EXPERIENCE OF STATE AND LOCAL GOVERNMENTAL ENTITIES COVERED UNDER THE UNEMPLOYMENT INSURANCE CODE IN CALENDAR YEAR 1963"¹

Introduction

Historically, three methods have been used to bring state and local government agencies under unemployment insurance coverage. One method is compulsory coverage by statute; for example Section 605

¹ Department of Employment. Report 438c No. 4 (June 1, 1964).

specifically covers public housing administrative agencies that are operated by state or local government subdivisions, and Section 605.5 specifies that the California Industries for the Blind is a subject employer with respect to certain of its employees.

In addition, governmental entities are allowed to elect coverage under either Sections 709 or 710.

An agency electing coverage under Section 709 becomes subject to the code in the same manner as other subject employers, and is subject to the same tax provisions as other subject employers.

On the other hand, an agency that elects coverage under Section 710 is not required to make regular contributions but is only required to reimburse the Unemployment Fund for the additional cost of benefits that result from its own coverage. No payments of any kind need be made under this type of coverage unless or until actual benefit cost liability is incurred.

The provisions of Sections 709 and 710 are discussed in more detail in the following paragraphs.

The additional-cost type of coverage is also used by the federal government to extend unemployment insurance to its own employees and to ex-servicemen. Under these programs the states pay benefits to former federal employees and to ex-servicemen, and are reimbursed by federal funds for the additional cost of these benefits.

Provisions of Sections 709 and 710, California Unemployment Insurance Code

Section 7.6 of the California Unemployment Insurance Act that was enacted in 1949 provided for elective coverage of governmental employment. In 1953 this provision became Section 709 of the California Unemployment Insurance Code. This section permitted the Director of the Department of Employment to grant coverage to state and, until amended in 1959, to local governmental entities, provided the government entity requested it and a majority of the affected employees voted in favor of coverage. Civil service and permanent tenure employees are excluded from coverage under this section.

When a governmental entity elects coverage under Section 709, it must agree to maintain its coverage for a minimum of two years. Any time thereafter, the governmental unit may terminate its coverage effective at the end of a year. Governmental entities subject under Section 709 are subject to the code to the same extent as other subject employers, and are experience rated and required to pay contributions in the same manner as other subject employers.

At the present time, governmental entities subject under Section 709 pay tax rates ranging from 1.7 to 3.0 percent of taxable wages, depending on the ratio of their reserve balance to base period taxable wages. In addition they pay the 0.5 percent balancing tax. Their reserve accounts are not charged for the extended duration benefits paid to former employees or for benefits paid to employees who are ruled to have voluntarily quit without good cause or to have been discharged for misconduct connected with their most recent work.

The 1959 Legislature enacted Section 710, providing for elective coverage of local government units, and amended Section 709 to exclude such entities and to apply only to the state. Governmental

entities covered under Section 709 prior to the 1959 amendment and eligible for coverage under Section 710 were given the option of either remaining subject to the provisions of Section 709 or changing their coverage to Section 710. The option can be exercised at the end of any calendar quarter. Section 710 provides for elective coverage of all employees, including civil service and tenure employees, of districts, county, and municipal governmental units. In order to be granted coverage a majority of the employees must sign a petition in favor of coverage.

Section 710 stipulates that governmental units covered under its provisions must maintain their subject status for a minimum of two calendar years, after which coverage may be terminated at the option of the entity. A governmental unit which terminates coverage remains liable for its proportionate share of the additional cost of benefits paid which are based on wages earned while coverage was in effect.

In lieu of the contributions required of private employers, governmental units subject under Section 710 reimburse the Unemployment Fund for the additional cost of all the benefits paid as a result of this coverage. Under this financing system the employers pay the full additional cost of all regular and extended duration benefits paid to their former employees. This includes the full additional cost of benefits drawn by employees who have voluntarily quit or were discharged for misconduct, since Section 710 coverage does not establish an employer reserve account and the provisions for noncharging of benefits are not applicable to government units that elect coverage under it.

Employers Covered by Section 709

During 1963 there were 70 employers paying wages to workers covered under Section 709 of the code. These employers paid almost \$37 million in total wages to their 6,111 employees.

Most of the employers subject to this section have few employees. Miscellaneous districts (which includes port and transit districts) are the largest in terms of employment with an average of 449 employees; soil conservation, reclamation, and fire districts are the smallest with an average of four employees. Most of these employers have high tax rates. There are 19 employers who contribute at the maximum rate of 3.5 percent of taxable wages, whereas there are only four that contribute at the minimum. Well over half of them (43) have tax rates of 3.0 or more. Soil conservation, reclamation, and fire districts, as a group, have the lowest average tax rate (2.7). Redevelopment agencies with an average tax rate of 2.9, is the only other group to have an average rate under 3.0. All of these tax rates include the 0.5 percent uniform balancing tax.

Within several groups there are wide spreads in the tax rates. While about half of the water districts contribute at rates above 3.0 percent, there are districts which contribute at the minimum rate. The mosquito abatement district group is the only one where all employers pay at rates higher than 3.0 percent.

Employers Covered by Section 710

On December 31, 1963, there were 40 governmental units which have been covered for at least a full year under Section 710. In addition,

there were three districts which terminated coverage but were still liable for benefits.

The only two groups characterized by a large number of employees are hospital districts with an average employment of 258 and "other districts" with an average employment of 129. (If one large employer in the "other districts" group, with 1,440 employees, is excluded, the average employment of the group drops to 10.) The employers in the other groups generally have few employees. Public utility districts have an average employment of six, water districts 19, and redevelopment agencies 13. In addition to being relatively small, most have a stable employment pattern with little seasonal fluctuations.

Of the 43 employers potentially liable for benefits, 17 incurred no benefit costs during 1963 and therefore made no remittances to the fund. The remaining 26 contributed over \$110,000 to the fund for the cost of benefits paid to their former employees during 1963.

These employers are not assigned tax rates. In order to make statistical comparisons, hypothetical rates have been computed by dividing incurred benefit costs during 1963 by the amount of their wages that are under \$3,800. Twenty-two had hypothetical tax rates below 2.2 percent, and of these, 15 had equivalent rates of 1.0 percent or less. One district had a cost liability equivalent to a 4.4 percent tax rate, and in three cases the equivalent rates ranged from 2.2 to 3.5 percent.

Since employers subject to Section 710 pay only for the additional cost of benefits their former employees draw, there can be a wide fluctuation in the percentage of wages that an employer must budget to pay for benefits. One employer had benefits amounting to .05 percent of "taxable wages" for 1963 but during 1962 benefit cost liability was 14.9 percent of "taxable wages." Under the current statute, if a claimant earned all of his base period earnings from one governmental unit, the liability for the layoff of one employee could amount to a maximum of \$2,145 including extended benefits (\$55 times 39) in one benefit year, and under special circumstances, to an additional \$2,145 in a second benefit year."

A significant portion of the committee's hearing on June 16 and 17, 1964 was devoted to the question of extending unemployment insurance coverage to employees of the state, its subdivisions, and to employees of nonprofit institutions. Although it is often claimed that employment by governmental entities is so stable that no unemployment insurance coverage is required for its employees, information presented by the Department of Employment at this hearing demonstrated that unemployment rates were comparable to those found in the more stable private employment.

Unemployment rates for civil service employees for the calendar year 1963 were as follows:

SEPARATION RATES FOR CIVIL SERVICE EMPLOYEES ^a
OF THE STATE OF CALIFORNIA
Calendar Year 1963

Month 1963	Total civil service employees ^a	Separations per 100 employees			Permanent employees separations per 100 employees ^b
		Total	Voluntary	Involuntary	
January	96,898	1.9	1.1	0.7	1.0
February	97,765	1.7	0.9	0.8	1.0
March	98,131	1.9	1.0	0.8	1.1
April	97,652	1.9	0.9	1.0	0.9
May	97,895	2.1	1.1	1.0	1.1
June	99,731	2.3	1.2	1.1	1.3
July	99,731	1.9	1.2	0.7	1.2
August	101,104	3.4	2.1	1.3	1.5
September	100,764	3.6	2.2	1.4	1.5
October	99,558	3.0	1.2	1.8	1.2
November	99,367	1.9	0.9	1.1	1.0
December	99,960	1.4	0.8	0.6	0.9
Average for calendar year 1963	99,046	2.3	1.2	1.1	1.2

^a Excluded from these figures are employees of the State Colleges, the University of California, and those in statutory and exempt classifications.

^b Monthly separation rates are estimated by Personnel Board.

SOURCE: Personnel Statistics, Table 20, compiled and released by California State Personnel Board.

Representatives of the State Employees' Association objected to coverage of their members under the Unemployment Insurance statutes. Their position was that the money that would be used to provide these benefits could better be used to provide higher wages or other fringe benefits, and that the state under a merit rating system would be paying more into the Unemployment Insurance Fund than its former employees would draw as benefits. However, these identical arguments have been made in the past by other employee and employer interests. If these were considered acceptable reasons for excluding groups from coverage under the Unemployment Insurance Act, then virtually no employer or employee group would voluntarily submit to the plan. It must be admitted, however, that the hardship experienced by an unemployed former government employee is as great as that experienced by any unemployed individual who has expenses that must be met. Similarly, if a private employer has an obligation for the payment of an unemployment insurance premium tax to provide benefits for his unemployed former employees, the state should bear a similar responsibility, it being the largest single employer in the state.

If the State of California became a subject employer on the same basis as other employers, it would be assigned a standard tax rate of 2.7 percent plus the balance tax of 0.5 percent. All new employers are unrated for a period of approximately five years during which they pay contributions at this 3.2 percent rate. At the end of this period, when it becomes a rated employer, the state will be eligible for a sub-

stantial reduction in its contribution rate. The amount of this reduction would depend on which tax schedule was in effect at that time. In a period year, the tax rate of this state as a rated employer would fall to around 1 percent, or the minimum rate of the tax schedule, whichever is the highest. In addition to this rate, it would also be required to pay the uniform balancing tax.

An alternative method of coverage would be for the state to be covered on a cost basis only; that is, it would be required to pay the additional cost of benefits that resulted from its coverage. This would include all regular benefits and extended duration benefits. For example, it would include benefits paid to a claimant who left the state's employment voluntarily and without good cause or was discharged for misconduct connected with his work. At present, the few governmental agencies who have elected coverage on an additional cost basis are billed at the end of each calendar quarter for liability incurred during that quarter. Section 710 of the Unemployment Insurance Code does, however, provide that the director may require advance payment of estimated benefit costs. If this type of coverage is extended to the state, consideration should be given to avoiding any adverse effects on private employers or on the Unemployment Fund. One such effect would be the loss of interest revenue to the fund. This could be prevented by payment in advance or minimized by a frequent billing system. Another possible adverse effect would be lowering of the solvency ratio, the ratio computed on December 31 which determines which tax schedule would be in effect during the following year. If benefit costs are not prepaid then the amount of money due or owed to the fund as of December 31 could be considered as in the fund for purposes of computing the solvency ratio. The following estimated costs of extending coverage to employees of the state computed on a merit rating basis the same as other employers was prepared by the Department of Employment.

**ESTIMATED COST OF EXTENDING COVERAGE
TO EMPLOYEES OF THE STATE**

Estimates for Year Like Calendar Year 1964

I. Unemployment Insurance

Item	Current coverage	Additional coverage of state employees	Total coverage including state employees
1. Amount of taxable wages.....	\$16,700.0 million	\$550.0 million	\$17,250.0 million
2. Amount of total employer contributions, earned.....	\$507.0 million	\$17.6 million	\$524.6 million
3. Amount of regular benefit payments.....	\$430.0 million	\$6.0 million	\$436.0 million
4. Regular benefit payments as percentage of taxable wages.....	2.57 percent	1.10 percent	2.53 percent
5. Extended duration benefits.....	\$50.0 million	\$1.0 million	\$51.0 million
6. Average employment.....	4,344,000	140,000	4,484,000

The employment figures include all employees of the state and the University of California. Estimates of employment and wages were derived from data published in the proposed State Budget for the fiscal year ending June 30, 1965.

The estimate of the cost of unemployment insurance benefits is related to actual experience under the Federal Unemployment Compensation for Federal Employees program in California, and the cost of benefits paid to state employees in New York and some other states.

Cost of mandatory coverage for employees of counties, districts and local government agencies are as follows:

ESTIMATED COST OF EXTENDING COVERAGE TO EMPLOYEES OF COUNTIES, DISTRICTS, AND LOCAL GOVERNMENT AGENCIES

Estimates for Year Like Calendar Year 1964

I. Unemployment Insurance

Item	Current coverage	Additional coverage	Total coverage including employees of local government
1. Amount of taxable wages.....	\$16,700.0 million	\$2,200.0 million	\$18,900.0 million
2. Amount of total employer contributions, earned.....	\$507.0 million	\$70.4 million	\$577.4 million
3. Amount of regular benefit payments.....	\$430.0 million	\$24.2 million	\$454.2 million
4. Regular benefit payments as a percentage of taxable wages.....	2.57 percent	1.10 percent	2.40 percent
5. Extended duration benefits.....	\$50.0 million	\$4.8 million	\$54.8 million
6. Average employment.....	4,344,000	640,000	4,984,000

The employment figures include all employees of counties, cities, and school and special districts. Wage data was derived from U.S. Department of Commerce, *Current Business*, August 1963.

About 10,000 employees of agencies which have elected voluntary coverage are excluded from the above estimates of additional coverage.

The estimate of the cost of unemployment insurance benefits is related to actual experience under the Unemployment Compensation for Federal Employees program in California, and the cost of benefits paid to state employees in New York and some other states.

Extension of coverage to employees of non-profit institutions excluding members of the clergy and religious orders, would involve the following costs:

I. Unemployment Insurance

Item	Current coverage	Additional coverage	Total coverage including employees of nonprofit agencies
1. Amount of taxable wages.....	\$16,700.0 million	\$150.0 million	\$16,850.0 million
2. Amount of employer contributions, earned.....	\$507.0 million	\$4.8 million	\$511.8 million
3. Amount of benefit payments.....	\$430.0 million	\$3.8 million	\$433.8 million
4. Benefit payments as a percentage of taxable wages.....	2.57 percent	2.50 percent	2.57 percent
5. Average employment.....	4,344,000	82,000	4,426,000

Students employed by schools or universities who are exempt under Section 645 and employees of nonprofit agencies who have already elected coverage are excluded from the additional coverage data.

The employment and earnings data are derived from the 1960 Census of Population. This additional coverage could result in the payment of about \$500,000 in extended duration benefits in a year like 1964.

The committee would recommend that unemployment insurance coverage be extended to employees of the State of California, county and city employees, and employees of all special districts. In addition, coverage should also be made available to employees of nonprofit employers. Such coverage should be on a merit rated basis the same as other covered employment. However, the Legislature should recognize that

new sources of financing such local government coverage must be found so that the full burden of financing such benefits are not passed on to the local property taxpayer.

Taxable Payrolls in Covered Employment

Over the past two decades the rapid expansion in total payrolls has occurred in California. The expansion is due to an increased number of employers, to the enlarged size of the average employing unit and to rising wage rates.

In 1936, an estimated 1.5 billion in payrolls were earned in covered employment and by 1962 taxable payrolls had increased to 15.2 billion and total wages had reached 24.2 billion. For the first four years of the program the entire payroll of covered employment was taxed, but in 1940 taxable wages were limited to \$3,000 a year earned by an employee from a single employer. During the time this ceiling was in effect, 1940 to 1959, taxable wages as a percentage of payrolls in subject employment decreased yearly from 90.2 percent in 1940 to 59.5 percent in 1959. The ceiling wage was raised to \$3,600 in 1960 and the proportionate total wages that was taxable rose to 65.1 percent. In 1962, the ceiling was raised to \$3,800 but, nevertheless, only 63 percent of total wages were taxable—less than in 1960.

In 1940, average weekly earnings were \$31.18, so that a worker earning this amount throughout the year would have about \$1,620 in annual earnings, a little more than one-half of the \$3,000 ceiling. By 1949, average earnings had risen to \$62.97 a week and 48 weeks of work at this rate would give annual earnings above the \$3,000 limit. In 1959, only 29 weeks of work at the average weekly wage were needed to earn

ESTIMATED EFFECT OF HIGHER WAGE CEILINGS IN A YEAR LIKE CALENDAR YEAR 1964

Item	\$3,800 tax ceiling	\$4,000 tax ceiling	\$4,500 tax ceiling	\$5,000 tax ceiling	\$6,000 tax ceiling
1. Estimated taxable wages, millions.....	\$16,700.0	\$17,250.0	\$18,700.0	\$20,060.0	\$22,360.0
a. Percentage increase.....	--	3.3%	11.9%	20.1%	33.8%
2. Estimated average contribution rate, as earned					
a. Regular contributions....	2.53%	2.53%	2.53%	2.53%	2.53%
b. Additional contributions..	0.50%	0.50%	0.50%	0.50%	0.50%
3. Estimated regular contributions as earned, millions...	\$423.0	\$436.9	\$473.3	\$508.0	\$566.0
a. Amount of increase.....	--	13.9	50.3	85.0	143.0
b. Percentage increase.....	--	3.3%	11.9%	20.1%	33.8%
4. Estimated additional contributions as earned, millions...	\$83.0	\$86.0	\$93.5	\$100.0	\$118.0
a. Amount of increase.....	--	3.0	10.5	17.0	29.0
b. Percentage increase.....	--	3.3%	11.9%	20.1%	33.8%
5. Taxable wages as a percentage of total wages.....	61.2%	63.2%	68.5%	73.5%	81.9%
6. Estimated total wages, millions.....	\$27,300.0	\$27,300.0	\$27,300.0	\$27,300.0	\$27,300.0

\$3,000. In 1961, when the ceiling wage was raised to \$3,600, the number of weeks of work at the average weekly wage needed to earn ceiling rose to 34. This ratio is currently less than 33 weeks under the \$3,800 ceiling.

Because only about 61 percent of total wages are taxable under the \$3,800 ceiling, proposals have been advanced which would increase the tax ceiling and yield additional funds for the fund. The following statistics demonstrate the amount of additional revenue which would be earned by the fund if other tax ceilings were in effect in a year like calendar year 1964.

Five factors determining regular tax yield would be affected, either at once or after a lapse of time, by any rise in the taxable wage limit, and the full impact of the change would not be felt until the amendment had been in effect for several years:

1. The current taxable wage figure to which each employer's tax rate is applied to determine his liability;
2. The employer's balance of reserve (Section 904);
3. The average base payroll figure (Section 905) used, together with the balance of reserve (Section 904) to determine each employer's specific reserve ratio which, in turn, determines his tax rate on the "low" or "high" tax schedules;
4. The fund balance ratio as of December 31, used to determine which of the three tax schedules in Sections 977, 978, or 979 is applicable.

Chronologically, the current taxable payroll figure would rise as soon as the new ceiling went into effect, i.e., January 1, 1964, for the purposes of this estimate. The tax rate already established on the computation date preceding the effective date of the new ceiling, would be applied to the raised taxable wage figure and would increase tax yield in about the same ratio that taxable wages rose. At present, about 95 percent of all wages paid in the first calendar quarter of a year are taxable, 80 percent of second quarter wages, 50 percent of third quarter wages, and 30 percent of fourth quarter wages. The impact of raising the taxable wage ceiling would be greatest on taxes accrued during the later quarters of a calendar year when collections are now low, and the impact would be very small in the early quarters.

As tax yield increased, employer balances of reserve as of June 30 of the first year in which the new ceiling is in effect would also rise, but by very little because by June 30 of the first year in effect only taxes for the first two quarters would have been received and, as already noted, the impact of the new ceiling would be very small for these quarters.

The aggregate taxable wage figure used to determine whether Section 977, 978, or 979 applies is wages paid in the 12 months of July through June preceding the year for which taxes are being determined. With a change operative on January 1, this figure would only partly reflect the change in the taxable wage ceiling because almost 90 percent of all wages paid from January through June are already taxable. On June 30 of the following year, however, the figure would show the full impact of the change to a higher tax ceiling.

The fund balance subsequent to the rise in the taxable wage figure would also be larger on the new than on the old ceiling assuming no changes in tax rates or benefit expenditures.

During the first few years at the new ceiling, the fund balance would rise less rapidly than taxable wages, and therefore the ratio of the fund balance to taxable wages would be lower than it would have been under the old ceiling. As a result, the return to operation of a lower schedule would probably be delayed, unless the breaking point in Section 977 were changed. The fund balance on December 31, 1963, was below the breaking point for the rate year 1964 by about \$155.6 million. It should be noted that the high tax schedule could well be in effect for several years, whether or not the ceiling were changed.

The factor slowest to rise would be the average base payroll figure of each employer, which is one-third of his taxable wages for the three completed calendar years preceding the computation date. For the second year in which the new tax ceiling was operative, all three base years would be under the \$3,800 ceiling so that a June 30 balance of reserve that includes some contributions under the higher tax ceiling could be expected to yield (in a few cases at least) a higher reserve ratio—and thus the employer would receive a reduction in tax rate. As the three-year base period moved on, however, taxable wage figures for the higher ceiling would gradually expand the average, reduce reserve ratios, and raise the tax rate. The higher tax rate would rebuild employer reserve balances and again reduce the tax rate.

The Long-run Effect on Regular Contributions

Once the fund has approximated the 5.0 ratio to taxable wages, the amount of revenue produced under the higher tax ceiling would tend to be a little larger than that under the \$3,800 ceiling, all other things being equal. This reflects some higher payments from employers with negative reserve ratios, and a somewhat heavier impact of the rising trend of wages.

A higher tax limit, however, would support the program more easily than the \$3,800 ceiling, because a greater proportion of wages paid in covered employment would become taxable. It would also afford greater flexibility to experience rating. In 1964, under the present taxable wage ceiling, about 61.2 percent of wages in covered employment are taxable. This proportion will rise to the extent that the taxable wage ceiling is raised, but will drop in future years as wage rates increase. To maintain the proportion of taxable wages at a constant level, periodic increases in the taxable ceiling would be required.

Individual Employer Regular Contributions

The distribution of the tax burden would be changed by an expansion of the tax wage limit, depending on the amount of charges of individual employers in relation to their taxable wages, and on the amount of wages falling between \$3,800 and the new ceiling for every employee on their payrolls. The contributions of some positive reserve employers would be about the same as under the \$3,800 ceiling, once their balances of reserve stabilized in relation to the raised average

base period wages; the contributions of other positive and reduced rate employers would be somewhat raised; and the contributions of negative reserve employers would be higher under an expanded tax ceiling than under the \$3,800 wage limit by the same percentage as the increase in taxable wages each employer has experienced because of the new ceiling.

CALIFORNIA SYSTEM OF EXPERIENCE RATING

Experience Rating in General

The purpose of experience rating is to relate an employer's tax rate to unemployment insurance benefits charged to his account. Employers having high benefit charges will therefore have high tax rates within the limitation of 3 percent and those having little or no labor turnover will enjoy the lowest tax rates which in California may be three-tenths of 1 percent. (Under the high rate schedule which is in effect in 1964 the minimum rate is 1.7 percent.)

All of the states, including the District of Columbia, have provisions for experience rating. The Federal Unemployment Tax Act permits the states to have experience rating.

In addition to the amount of tax determined under the experience rating provisions, every employer is required to pay five-tenths of 1 percent for the Balancing Account.

Legal Considerations in Experience Rating

The principle of experience rating has its basis in Sections 3301 to 3304 of the Internal Revenue Code. The federal laws provide for an excise tax of 3.1 percent on the first \$3,000 of wages paid by employing units who have four or more workers on some day in each of 20 weeks during a year.

The federal laws provide that an employer may offset as much as 2.7 percent (90 percent of 3 percent) if he has paid such amount to a State Unemployment Fund or if he would have paid that amount except for a reduced rate of contributions granted him under the state law. The offset credit can only be taken if the laws of the state relating to experience rating calculation have been approved by the federal government. A state law to be approved must meet certain standards. There are many general standards relating to the deposit of funds and conditions surrounding benefit payments but there is only one which specifically covers a pooled fund type of experience rating system and that is provided in Section 3303 (a)(1) of the Internal Revenue Code as follows:

"No reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risks during not less than the three consecutive years immediately preceding the computation date."

NOTE: The federal law also permits reduced contribution rates for employers newly subject after one year of employment experience. The California law has not been amended to this extent.

This standard is amplified by certain definitions contained in the Internal Revenue Code and has been further implemented by many interpretations by the Bureau of Employment Security.

In meeting this standard the California Unemployment Insurance Code provides:

"... No employer shall be eligible for a contribution rate of more nor less than 2.7 percent for any rating period unless his reserve account has been subject to benefit charges during the period of twelve complete consecutive calendar quarters ending on the computation date for that rating period and he is qualified under Section 977, 978 or 979." (Effective January 1, 1962)

Reserve Accounts

Under the California law a reserve account is established for each employer. The account is credited with contributions which the employer pays. The account is charged on a pro rata basis with benefits paid to the employer's former workers. An example of the pro rata charging is if a claimant has base period wages of \$1,000 with Employer "A" and \$1,000 with Employer "B" and had been paid \$300 in benefits, the account of "A" would be charged \$150 and the account of "B" would be charged \$150.

Provision is made in the law for the transfer of a reserve account on the request of a successor employer. When the request is made, the successor becomes entitled to the reserve account and all of the employment experience of the predecessor employer. A successor employer need not acquire the entire organization or business of his predecessor but may acquire a distinct and severable portion and be entitled to a transfer of a part of the predecessor's reserve account. Any request for transfer of reserve account made within 90 days of the date of acquisition results in the successor acquiring any reduced rate as of the date of acquisition. In the case of complete acquisitions, a request for transfer made after the 90-day period will only affect the tax rate as of the beginning of the quarter following the date of request. If there was only a partial acquisition and the predecessor remained in business, a transfer request made after 90 days cannot be allowed.

In general, reserve accounts are cancelled on the books of the department after slightly more than three years from the date the employer last had a payroll.

In a reserve account system of experience rating, an employer will never have a rate of less than 2.7 percent unless he has contributed in taxes an amount necessary to meet the cost of all benefits charged to his account plus an amount necessary to equal $5\frac{1}{2}$ percent of his average base payroll. This feature has given rise over the years to many exceptions in the charging of benefits to employers' accounts.

Noncharging of Benefits

At the present time there are several situations under which benefits paid will not be charged to the account of the base period employer

or employers. In the order of their relative magnitude, these non-charging provisions are:

Benefits paid after a ruling to a base period employer that the claimant voluntarily left his work without good cause or was discharged for misconduct in connection with his work may not be charged to the account of that employer.

Benefits paid through an error or misinterpretation of the law may not be charged to the account of any base period employer.

Benefits paid after a so-called "double affirmation" may not be charged to the account of any base period employer.

There are a few other miscellaneous categories of noncharges which do not occur, with enough frequency to discuss here.

Fund Solvency

If it were not for certain solvency safeguards provided in the law, experience rating might so reduce fund income that the ability to pay benefits would be materially impaired. These safeguards are:

1. A high rate schedule provided for by a new Section 977 effective January 1, 1962; an intermediate rate schedule provided for by Section 978; and a low rate schedule provided for by Section 979.

The ratio of the Unemployment Fund balance to taxable wages determines which one of the three rate schedules is to be used for a year. A schedule will be effective for a year whenever the balance in the Unemployment Fund as of December 31st of the preceding year produces a ratio to taxable wages paid during the 12-month period ending June 30 of that year as follows:

Less than 5 percent—the high rate schedule, Section 977.

5 percent to less than 7.5 percent—the intermediate rate schedule, Section 978.

7.5 percent or more—the low rate schedule, Section 979.

The former provision contained in Section 981 which permitted the director to suspend experience rating when the balance in the Unemployment Fund dropped to less than $1\frac{1}{2}$ times the amount of benefits paid during the preceding year was repealed by the 1961 Legislature. However, the high rate schedule, together with the five-tenths of 1 percent Balancing Account Tax, will apparently produce slightly over 3 percent average revenue and the fund is at least as well off as it was under the prior law.

2. The 1961 Session of the Legislature created a Balancing Account and a Balancing Account Tax of five-tenths of 1 percent. The Balancing Account Tax is intended to finance benefit payments which are not charged to any employers' account and to finance negative reserve accounts which exist with respect to many seasonal businesses, such as canneries, packing houses, etc.
3. The director is also authorized to accept a loan from the federal government in order that the payment of benefits may continue.

The federal loan fund was created by the diversion of a portion of the four-tenths of 1 percent tax collected by the federal government on wages subject to the Federal Unemployment Tax Act.

Representatives of the employer community urged the committee at its June hearing to consider the drafting of different tax rate schedules which would more clearly reflect the experience rating of various employers. The present high tax schedule presented in Section 977 of the Unemployment Insurance Code has narrow limits ranging from a minimum rate of 1.7 percent to a maximum rate of 3.0 percent, excluding the 0.5 percent balancing tax which must be paid by each employer in addition to the rate determined by the tax schedules. So long as merit rating is to be used as a method of encouraging stable employment in industry, the tax schedules must adequately reflect an employer's experience and provide the necessary incentive for employment stability. The present high tax schedule does not accomplish this objective. The committee would recommend the adoption of revised tax schedules which give effect to the philosophy of merit rating. However, if additional funds are required to adequately finance the fund, such additional financing should be met by both a revised tax schedule and an increase in the taxable wage base.

UNEMPLOYMENT INSURANCE PROGRAM
PRELIMINARY ESTIMATE OF THE AVERAGE TAX RATE, NUMBER OF EMPLOYERS,
AND ESTIMATED PROPORTION OF TAXABLE WAGES DISTRIBUTED BY TAX RATE
Calendar Year 1964

Item	1964 tax rate* (percent)	Employers active on computation date		Estimated percentage distribution of 1964 taxable wages
		Number	Percentage distribution	
I. Estimated average tax rate ^a as earned	3.03	--	--	--
II. Estimated employer contributions as a percent of total wages	1.84	--	--	--
III. Total, all employers	--	314,251	100.00	100.00
A. Unrated employers	3.2	108,030	34.38	8.10
B. Rated employers	3.5	71,529	22.76	28.80
	3.2	7,145	2.27	3.91
	3.1	8,419	2.68	4.86
	3.0	10,065	3.20	6.57
	2.9	12,569	4.00	8.76
	2.8	14,529	4.62	15.23
	2.7	14,764	4.70	8.30
	2.6	13,505	4.30	6.31
	2.5	11,778	3.75	4.47
	2.4	10,432	3.32	2.49
	2.3	7,921	2.52	0.80
	2.2	23,565	7.50	1.40

* Tax rates include the uniform 0.5-percent additional contribution tax.

Separate views on the unemployment insurance conclusions and recommendations of Assemblyman Houston I. Flournoy, joined by Assemblyman Hale Ashcraft, Stewart Hinckley, Robert S. Stevens, Howard J. Thelin, John G. Veneman, Victor V. Veysey:

I cannot agree with the committee's recommendation that "unemployment insurance coverage should be extended to employees of the State of California, its political subdivisions, employees of all special districts, and employees of nonprofit employers." There is relatively little need for such coverage—due to the low unemployment experience of these employers. There has been no indication of any desire for such coverage on the part of the employees. Indeed the California State Employees' Association actively opposed such a proposal in testimony before our committee.

I can only conclude that this recommendation stems from a desire on the part of the committee to avoid the serious fiscal problems which currently are affecting the solvency of the Unemployment Insurance Fund. I can only conclude that this proposal is viewed as a means of temporarily bringing additional revenue to the fund without facing the fact that the currently high rate of employer contributions is insufficient to carry the cost of the current payout of benefits with a sufficient reserve.

In short, this proposal is designed to bring at least \$50 million of net revenue to the fund in each of the next five years before the newly covered public and nonprofit employers have their contribution rates reduced upon a merit-rated basis of unemployment experience. The day of reckoning with our currently insolvent funding of unemployment insurance will merely be postponed, and perhaps aggravated by increased benefits which might be based upon the additional funds accrued by this extension of coverage.

I firmly believe that the committee should face up to the inherent problems of the present condition of the fund, and make adjustments to bring the fund back into balance. We should restore the integrity of the program which should provide unemployment insurance payments for those persons who find themselves unemployed through no fault of their own; persons who are permanently part of the labor force and who are ready, able and willing to work. At the same time, we would not be burdening the state and local taxpayers with the costs of continuing the present benefit payout under the guise of providing unwanted coverage to public and nonprofit employees.

THE LEVEL OF CONSUMER DEBT

In the period since World War II the private debt of American families has been piling up faster than personal income. The level of such private debt stood at \$378 billion in 1963 up from \$55 billion in 1945.¹

This heavy indebtedness is not spread evenly among spending units. Half of America's families have no consumer debt at all while perhaps 6 million of them (or 10 percent) have at least 40 percent of their yearly income committed to debt payments.² Since the level of consumer debt is lowest among older people and the lowest income groups, it would seem that those families most heavily in debt are found among young families with moderate incomes. In this group there is the heaviest pressure to buy all the amenities they have been taught to believe are essentials in American middle class life. Their experience of economy life has been confined to the prosperous postwar years and they optimistically expect such prosperity to continue. With their principal earning years ahead of them they are notoriously willing to take the gamble and go deeply into debt.³

Unfortunately no data is available on the role of consumer credit in California's economy. For the nation as a whole this phase of economic activity has grown so rapidly and changed so dramatically that serious investigations have just begun to ponder its implications.

It is probably correct to assume that the average California family owes installment debts considerably above the national average. Our population is young, mobile and relatively wealthy. The number of automobile purchases in California is notoriously high. One estimate places the average installment indebtedness exclusive of mortgages, for California families at \$900.⁴

IS CONSUMER DEBT AT A DANGEROUS LEVEL?

There is no general agreement as to whether this debt level constitutes a danger to our economy. A growing number of economists are beginning to express concern that the bubble may burst.

For the individual family yielding to the temptation of supereasy terms, the bubble often bursts. Illness, unemployment or other family misfortune can and do create financial havoc. The startling rise in personal bankruptcies is one symptom of this problem. Such nonbusiness bankruptcies rose in California from 3,765 in 1953 to 26,641 in 1963 placing this state fifth in the nation in number of personal bankruptcies per capita.⁵

Editorial. *Wall Street Journal* (June 29, 1964), 8.

² Alfred L. Malabre, Jr., "Worry Over Debt," *Wall Street Journal* (June 17, 1964), 1.

³ "Installment Credit Expansion," *Federal Reserve Bulletin* (May, 1963), 49, 585.

⁴ Assembly Interim Committee on Finance and Insurance hearing. Lending and Credit Problems, January 23, 24, 1964, I, 147.

⁵ Albert W. Driver, Jr., "Proposal: To Amend the Bankruptcy Act to Require That Consideration Be Given to the Use of Chapter XIII," *Personal Finance Law Quarterly Report* (Spring, 1964), 18, 43.

In the state's economy, consumption credit constitutes a large and highly unstable force. This private deficit financing does not function as a counter-cyclical force. It has a more volatile and exaggerated effect on production than does public deficit financing. A certain amount of long-term planning can accompany public deficit spending while private deficit financing through short-term loans tends to exaggerate the peaks and valleys of public demand.

Most credit purchases fall in the area of discretionary spending. The purchase of a new car or television set can be deferred by most families. A slight nervousness about their economic future will cause most families to avoid new installment contracts, especially when a mortgage hangs over them. A serious cut in federal defense spending in California could thus transform installment buying from a vital part of our present prosperity into a definite deflationary force. The more retail sales depend upon installment credit, the more vulnerable they are to crises of confidence.

Also, consumer desire for many products is highly seasonal but can be translated into immediate demand by consumer credit. Air conditioners, for example, are wanted in the summer; cameras, TV sets and fur coats in November and December; washing machines, bedding and rugs in August and September when people move, etc. Easy credit exaggerates these seasonal peaks.

Credit buying runs in spurts followed by retrenchment. Sales quotas and production schedules, however, are frequently based on the past year's performance without due consideration for the psychological fluctuations to which a debt-committed urban community may be subject.

The economic costs attendant upon short-run, wide fluctuations in demand are well known. Inventory costs accumulate throughout the productive and distributive system. Efforts to push these costs forward through so-called "dealer loader programs" not only add to the costs of goods but supply severe pressures for sharp dealing at the retail level. And finally, through its depressing effect on price competition and through the cost it adds to the distribution of goods, credit selling tends to narrow the total market over a period of time rather than expand it.

SMALL BUSINESS IN A CREDIT MARKET

Small business is at a serious disadvantage in a market heavily based on consumption debt. The inability of the small businessman-manufacturer, wholesaler or retailer—to obtain financing on equitable terms is a well-known story. In addition to this basic competitive disadvantage, the large operator has also the means for heavy promotion of credit selling which are not available to the smaller business.

A small manufacturer cannot set up his own credit corporation to finance dealers' inventories and to buy up dealers' consumer paper. Nor does he have the resources to make a deal with a sales finance company to put his retail sales on a nonrecourse basis by setting up a manufacturer-financed reserve within a large sales finance organization. Thus the extra income to be developed through credit selling as well as the close control over dealerships and outlets that credit selling makes possible, is denied the small producer.

The small bank, too, is disadvantaged. Large captive finance firms like GMAC and GECC deal with large banks and their distributors and retailers tend to do likewise. When banks decide to enter consumer lending directly by issuing bank credit cards, only the large banks have the resources to blanket a large area with promotional material and dealer tieups needed to produce consumer debt in large enough volume to justify the use of economical mechanical recordkeeping machines.

CHANGES IN CONSUMER CREDIT

Since 1950 dramatic changes have taken place in the practice of debt-financing for consumption. The most significant change has been the transmutation of this financial device into a merchandising tool.

In the first place, the concept of collateral has practically evaporated. Even in automobiles, 36-month terms taken together with rapid new car obsolescence have rendered the goods small surety for the loan. Even before the passage of the bill ending deficiency judgments under the Unruh Act, other consumer durables were not really considered as collateral. Their resale value was simply too low. Their repossession on delinquency was almost universally accompanied by a deficiency balance change which became, of course, a lien on any income or property of the debtor. This situation still applies in automobile sales.

In short, too many consumer credit extensions today are made solely against the lender's expectation of (1) the consumer's ability to maintain current income, or (2) his own (the lender's) ability to exercise command over the borrower's assets via the courts. Thus, the theorizing of the past about the functions of consumer credit based on the concept of pacing time units of consumption with payments over time in the use of durables which secure the debt fails to fit reality.

A second concept of consumer credit that has evaporated except in the case of a few of the very largest retailers, is the seller's responsibility for the loans disguised as sales. This implies the weakening of the whole basis of the "time price doctrine." The retailer today generally acts as an agent for a lender. Typically, all of the conditions attending the loan, including the forms to be filled out, have been set by the financing institution. The retailer receives a commission for his services in the form of a dealer reserve held out by the lender.

No longer does a retailer "carry the consumer" over a period of time as the general store once did the farmer between seeding and harvesting. As soon as the paper is signed it is turned over to the lending agency. Only the old style 30-day charge account offered by department stores can be called a retailer carrying service and this is the only form of consumer credit which has failed to increase. Retailers would argue that most revolving credit accounts belong in this same category.

The retail trade press has been using a term for a number of years that best expresses the meaning of consumer credit today. The speak repeatedly of "credit selling." Credit selling means two things: selling goods on credit and selling credit as well as goods.

Credit selling is generally recognized as the core of present day profitable retailing operations for four reasons: (1) The consumer buying on credit tends to buy higher priced merchandise (he is easy to "trade up"), to buy more in volume and to buy more frequently than the cash customer. (2) The credit customer does not shop around, he "marries" his seller-lender. (3) The amount of purchase per credit sale is typically enough larger than the cash sale to more than compensate for the extra overhead of credit selling. (4) Earnings on credit extensions frequently equal or better the net return on mark-ups on merchandise. This latter point seems to be most true of automobile dealers in areas of high competition although figures are difficult to obtain.

Consumer spokesmen charge that throughout retailing today there is a heavy and continuing pressure to sell debt. Salesmen in automobile showrooms and appliance stores are given larger commissions for credit sales. And, as one after another seller-lender has placed increasing promotional emphasis on loans disguised as sales, as new lending schemes tied to sales have multiplied (credit cards and bank schemes); the traditional consumer lender—the small loan company—has been forced to up its promotional efforts accordingly. Thus, the advertising of debt as a way of life has expanded into a national propaganda effort of phenomenal proportions.

This effort is backed by a record amount of funds seeking profitable investment outlets. The high level of savings does not necessarily lessen the dangers involved in the existing situation. These savings are not in the hands of the heaviest users of installment credit. Many debtors could not take much of an income decline without facing serious problems.⁶

"A related worry from the standpoint of the economy is about the deteriorating quality of debt. The degeneration shows up notably in the use of mortgage loans for nonhousing purposes like buying a car or taking a trip to Europe. Not only that; some economists fear excessive funds are pouring into real estate, bringing forth building projects completely unwarranted by demand."⁷

COMPETITION IN CONSUMER LENDING

In the sale of credit, as in the sale of most other goods and services in the post-Korean War boom, promotional rivalry has been substituted for price competition in the search for markets. Price competition is clearly inhibited by existing cost disclosure practices but the "truth in lending" approach would have a limited effect in invigorating it.⁸ There are many factors other than cost that influence the borrower to accept a particular loan arrangement. Convenience may be the most important consideration.

The present scramble to find profitable investment outlets may lead to an increase in price competition and some lowering of rates. There are signs of such a development in the field of automobile financing.⁹

⁶ Malabre, "Worry Over Debt," *op. cit.*

⁷ Editorial, *Wall Street Journal*, (June 29, 1964), 8.

⁸ More than 99 percent of the consumer loans (under \$5,000) made in California in 1962 by personal property brokers were made at the maximum legal rate. *Lending and Credit Problems Hearing*, I, 7.

⁹ "Installment Credit Expansion," *op. cit.*, 582.

Also, the large scale entry of banks into the consumer credit field has helped to widen the range of credit sources for money borrowers.

There is a kind of horizontal class or income line which cuts across the field of credit selling. The lower income buyer has been the traditional customer of the small loan and sales finance companies while the lower rates at banks were available only to the better credit risks. Banks did not begin to compete for consumer loans until the 1950's. Now they are trying to overcome their former semiaristocratic image.

At the present time the poor still pay more for credit as they frequently do for goods. The kind of merchant who solicits their business is frequently the one who is more interested in selling high cost credit than good quality merchandise at reasonable prices.¹⁰ His "easy terms" have the long range effect of increasing the gap between the standard of living of lower socio-economic groups and that of those wealthier citizens who deal with reputable merchants and lower cost lenders. The revolving credit account has been the major means through which the large retailer has sought the business of the lower income buyer. However, this is still rather high cost credit.

CONSUMER DISCONTENTS

The middle class installment debtor is probably most concerned about the state of the consumer credit market. The consumer groups which speak for such people are concerned not only with the cost of credit *per se* but with the methods by which debt as a way of life is sold.

They insist that advertising techniques and disclosure practices generally prevent the consumer from playing his proper role in the free market. They are interested in consumer education but contend that these practices make such education extremely difficult. They are apt to be critical of the entire atmosphere of credit selling and see it as a sort of conspiracy against the typical credit buyer. They point out that those people most dependent on credit are those with little economic experience or financial sophistication. When the college-educated young housewife finds that she has been talked into a bad bargain this is a blow to ego and she is apt to react in anger against the system which brought this about.

It is true that the credit industry itself is concerned with consumer education. The National Foundation for Consumer Credit publishes an impressive collection of educational materials but it is doubtful that they are reaching enough of the right people. The growth of community-sponsored credit counseling services is also to be applauded but such services reach the consumer only after he is in serious trouble.

In addition, the low income buyer faces a different set of problems. He is the classic victim of exploitive practices many of which are illegal under current statutes. He is frequently unaware of his rights and difficult to reach by ordinary education methods. Often he is unaware of such institutions as Better Business Bureaus and Small Claims Courts or can avail himself of their services only by

¹⁰ An interesting study of this matter is presented in David Caplovitz, "The Poor Pay More" (The Free Press, Glencoe, Ill., 1963).

taking time off from his job. All too often his experience with authority or bureaucratic institutions has led him to believe that they are never on his side.

The low income buyer is particularly vulnerable to the temptation to get in debt over his head. Especially if he is a member of a minority group he may be denied opportunities in jobs or housing to improve his status. A higher status can only be demonstrated by ownership of goods; a new car, a color television set, etc. Advertisements are only too ready to teach him that such things are the proper goals of first class citizens.

Some lenders are inclined to blame a general decline of moral standards among consumers for the problems of the industry. Unsound loans, mounting personal bankruptcies are looked upon as symptoms of this. Business as well as the consumer, they insist, needs greater protection against sharp practices.¹¹

Undoubtedly, there are many instances of irresponsible and dishonest consumer behavior. But often the debtor who would like to pay his bills is driven into bankruptcy by rough collection practices and threats of wage attachments. Also, the buyer who finds that he has been sold shoddy merchandise on questionable terms may skip payments simply as a gesture of revenge. He sees himself as justifiably cheating the system which cheated him. The morality of the market place may be set more by the seller than the buyer.

DISCLOSURE OF CREDIT COSTS

It is difficult to argue against the use of a standard form for stating the price of credit.

"No one will dispute the proposition that all parties to a transaction should know what the transaction is all about. A regulation that requires that finance charges be stated in a standard and reasonably straightforward way makes it possible for the buyer of consumer loan services to understand what he is doing and to compare available alternatives, including the alternative of saving now and buying later. Hence such a regulation improves the functioning of markets and this improves our enterprise system."¹²

Defenders of the status quo argue that the consumer who truly desires to shop for credit can now gain the information he needs in terms he can easily understand.

"The important point in connection with transactions of this kind is that comparative shopping can be done on a dollar cost basis easier than on an annual rate basis, and the comparison is more meaningful to the buyer. In doing his shopping the buyer might go to the bank, to a small loan company or a credit union . . . or he may consider whether to draw the money from a savings account. In any borrowing transaction the measuring stick would be 'what is the difference in dollars?' "¹³

¹¹ Hearing on Lending and Credit Problems, II, 96-97.

¹² Hearing on Lending and Credit Problems, II, 24,

¹³ *Ibid* I, 75-6.

This is probably true if the individual is seeking a direct loan for a specific amount. If he wants to buy an item such as a television set, the problem is not so simple. The increasing use of forms for open-end credit (revolving credit and add-on contracts) adds one complication. The retailer offering such credit cannot tell the customer in advance of the purchase what the dollar cost of credit will be. He can tell him the rate at which a service charge will be assessed, but he cannot predict in what amounts and when the customer will make his payments. It might also be pointed out that, under such an arrangement, the retailer cannot predict the actual yield from the service charges as a percentage rate on the declining balance.

Moreover, those lenders who seek to expand their consumer lending business usually do not approach potential customers with advertising featuring the dollar cost of the credit they offer. Insofar as they engage in price competition, they find some statement of finance rate makes a simple and striking message.

A consumer shopping for credit is apt to be influenced by such advertisements. It would be a rare shopper who visited each potential source of credit and demanded to see the terms of a contract spelled out on paper from each one before making his decision.

In advertising credit the lender or retailer frequently seems to recognize that the consumer understands or is familiar with credit rates stated as percentages. The typical middle class consumer has encountered interest rates in dealing with his own savings or with mortgage financing. Banks and automobile dealers all too often seek to exploit this experience by advertising 3 percent, $3\frac{1}{2}$ percent or 4 percent auto loans when they are actually offering add-on rates of \$3, \$3.50 or \$4 per \$100. Such advertising has long been held deceptive by the Federal Trade Commission.¹⁴

The consumer shopping for credit is faced with inadequate information as well as deliberate attempts at deception.

" . . . These four ads were all in one issue of one Los Angeles newspaper. You can borrow \$1,000 and repay at \$1.92 a week. Now that's all the information one of the ads gives you. Another one, you can borrow extra fast anywhere in California, and you can borrow \$1,000 and you pay back \$15 a month. You can call collect. In some cases they will send a man out to your home. This other one, you borrow \$1,000 and pay only \$6.67 a month. Now that's all of the information that you have there. Which one are you going to borrow your money from, and are you going to borrow from this kind of a loan, or are you going to the bank, or going to the personal property broker? You need \$1,000. How are you going to decide what to do? This is the kind of invitation to borrow, and this is the lack of information on which people are borrowing today." ¹⁵

Section 30004 of AB 2288 would require that any creditor that advertises the extension of credit in any media and stating a finance rate must state that rate as a simple annual rate on the outstanding balance of a prospective obligation. Such a requirement could be of

¹⁴ General Motors Corp., *et al.* V. Federal Trade Commission, 114 F 2d 33 (2 d. Cir. 1940).

¹⁵ Hearing on Lending and Credit Problems, II, 112-13.

doubtful utility to the consumer. It would discourage one kind of deception but certainly would not guarantee the consumer the information he needs to shop intelligently for credit.

It has been argued that if a standard form stating credit rates is desired, the dollars per hundred is preferable in that it is easier for the customer to understand and easier for the ordinary clerk to handle. While it may be relatively simple to explain such rates to the customer it is also too simple to deceive him into believing that they are equivalent to simple annual rates on the declining balance which are likely to be more familiar to him.

The argument that the simple annual rate is difficult if not impossible to determine accurately cannot be taken very seriously. It is true that the ordinary clerk probably cannot determine the simple annual rate given a certain schedule of payments. The fact of the matter is that the ordinary clerk rarely, if ever, makes the calculations on which installment contracts are based. Banks and finance companies as well as the credit departments of large stores provide charts which take care of this problem.

Lenders also insist that the variety of installment contracts actually written is so great that a serious burden would be placed on the small retailer by the passage of AB 2288. Unusual or unequal payment terms are customarily offered only by larger establishments equipped with enough credit personnel to handle special terms. Even the small retailer is not necessarily without assistance. He frequently has the services of the bank or finance company which handles his paper and provides him with the contract forms used in his store.

At the Los Angeles hearing, Mr. John A. Metzler, Supervising Deputy Commissioner of Corporations stated:

"It is my belief that under legislation which gives a sufficient leeway to the statement of a rate per annum, and perhaps gives the administrator regulatory powers to act within the area, that satisfactory tables can be prepared which would give the consumer adequate information as to that matter, within the limits of accuracy, which would permit an intelligent comparison, even in the case of these irregular payments."¹⁶

Contracts calling for "balloon" payments are used primarily in automobile retailing and do create some special problems. However, such contracts are often of doubtful utility to most buyers and a measure which discouraged their use might have a salutary effect on the industry. Open-end credit arrangements of various kinds present the most serious difficulties and will be discussed separately.

The passage of AB 2288 would require lenders and retailers to adopt new rate charts and make some important changes in their business practices. A certain amount of expense and inconvenience would be involved but, except in the case of those offering open-end credit, the mechanical problems should not be serious.

¹⁶ *Ibid.*, I, 140.

TIME PRICE AND INTEREST

The most serious objection to requiring a uniform statement of finance rates in percentage terms is that such a statement constituted an implied denial of the "time price doctrine."¹⁷

Opponents of the bill insist that a service charge in connection with the sale of goods is not interest. California courts, along with those of most other states have long held that a retailer may offer his goods at a cash price and a higher price, or "time price," for the customer who wished to buy on credit. The finance charge added to the cash price has been held to be a charge for credit service and not interest.¹⁸

It is held that to compute a service charge or finance rate on an installment purchase in percentage terms as though it were interest constitutes an implicit denial of the validity of the "time price doctrine." This doctrine is a venerable one but originated in selling practices which have changed rather drastically. Traditionally, the merchant offering credit carried the customer's amount himself and the service charge he assessed was clearly a payment for this service. No loan was involved in the customary sense of the term. The installment seller today usually acts as the agent for a bank or consumer finance company which discounts his contracts and provides the contract forms and charts he uses. The buyer makes his payments to the lender not to the retailer and, from his point of view, the transaction involves a loan.

This development in modern installment selling does threaten the legal foundations of the "time price doctrine." The Nebraska Supreme Court recently ruled that "regardless of the term used" the difference between a time-sale price and a cash price "is a charge for the loan money or for forbearance of a debt," and therefore, "disguise it as we will, it is and remains interest."¹⁹ This same court has recently declared unconstitutional a third attempt by the Nebraska State Legislature to provide statutory exemption from the state's constitutional usury clause for installment sales.²⁰

California law differs from that of Nebraska in that the Nebraska Constitution specifically forbids "special" laws setting interest rates above the constitutional usury limit for classes of transactions.²¹ The California Constitution (Article XX, Section 22), limits interest to 10 percent per annum but proceeds to except savings and loan associations, industrial loan companies, credit unions, pawn brokers and personal property brokers from this limitation. The Legislature is authorized to regulate by statute the excepted persons or firms. However, no specific mention is made of installment purchases and it is feared that if statutes treat such purchases as loans they could be declared subject to the constitutional usury clause.

¹⁷ *Ibid.* I, 82-85.

¹⁸ *Ibid.* I, 83.

¹⁹ *Wall Street Journal* (October 23, 1963), p. 1.

²⁰ *Los Angeles Times* (June 8, 1964), III, 7.

²¹ *Wall Street Journal*, *op. cit.*

OPEN-END CREDIT

Open-end credit arrangements take various forms, the add-on contract, check credit and, by far, the most common, revolving credit. Add-on contracts have long been employed by mailorder houses and some retail stores. Although no figures are available, it seems that such credit devices are being replaced in many cases by revolving accounts, now available for larger amounts. Retailers using add-on contracts could comply with the provisions of AB 2288 but the procedure would be somewhat complicated. Large mailorder houses with fully equipped credit offices would have to make some changes in their operations. The adoption of such a measure would probably accelerate the shift to revolving credit plans.

Retailers employing the latter have serious objections to stating the $1\frac{1}{2}$ percent monthly service charge as an 18 percent simple annual rate. Such a statement can describe the price of credit with reasonable accuracy when applied to an installment contract for a given balance with the dates and amount of the payments set forth. Under a revolving account the customer's balance is constantly changing; he adds to it at irregular intervals and makes payments of varying amounts subject to only a stated minimum. The cost to him of such credit will depend on how he spaces his purchases.

It is argued that, under such an arrangement, the statement of a simple annual rate is meaningless. The $1\frac{1}{2}$ percent monthly service charge assess would not equal 18 percent simple annual rate except under the most ideal conditions.²²

It is insisted that to demand that the retailer quote the customer an unrealistic and seemingly high annual rate for credit is to ask that he damage his customer relations without reasonable cause. The revolving credit customer needs to understand how the system works, and how he can reduce the service charge through careful handling of his account. He is not assisted by being told those charges in terms of a purely theoretical annual rate.

Revolving account service charges are generally what the name implies. The retailer can make a good case for not lumping them with other forms of finance charges which are interest in a legal sense or something closely resembling interest. However, consumer groups would argue that, from the point of view of the buyer, the revolving credit account is one of a number of alternative means of financing his purchases. If he is to shop for credit he needs a standard form for stating rates which will permit him to compare this type of credit arrangement with others available to him.

On this point, consumer finance companies might be expected to agree with consumer representatives. If the retailer is to be allowed to state his revolving credit charge as a monthly rate, he will gain a serious competitive advantage. The consumer, they feel, would respond to the $1\frac{1}{2}$ percent figure and look upon the 18 percent simple annual rate quoted him by the finance company as outrageous.²³

²² Los Angeles hearing, I, 86-92.

²³ Office of the Consumer Counsel. *Survey of Interest Rate Knowledge* (January-March, 1964). In this survey 20 percent of the respondents did appear to confuse the monthly with the annual rate on revolving accounts.

EFFECT ON CONSUMER BEHAVIOR

Actually, no one can state with confidence just how the consumer would react to the disclosure of all finance charges as a simple annual rate. Fears are sometimes expressed that such disclosure would have an extremely depressing effect on credit buying and thus, on California's economy as a whole.

"Regarding the proposed requirements that consumers be informed regarding the true simple annual credit charge rates however, the result could be different. Lenders and retailers have always felt that telling a customer that "up to" 18 percent simple interest will be added to his purchase or his loan, or his account, every time he buys so much as a pair of socks, will deaden his desire to buy or finance anything; the results, we feel, will be very depressing to business."²⁴

At the other extreme, it is frequently claimed that the credit buyer does not care what he pays for credit or even what the total cost of his purchase may be. He is concerned only with the amount of the monthly payment. Thus his buying habits would be effected only slightly by uniform disclosure of credit costs as a simple annual rate. This issue was explored at the Los Angeles hearing.²⁵

Assemblyman Foran: . . . "If the percentages of the credit were set forth, you said that some people would invest rather than buy now and pay later. In your analysis, have you made any projections in this field, or has anyone, any economist, made any projections?"

Professor Minsky: . . . "Frankly, I think that the consumer credit field, what would happen in California with such a law, is I think, some rate competition. Price competition is good and the rates would come down. I think that what the effect would be in switching people to low-interest rate and buying later would be all to the good. I doubt if it would have much impact. As I pointed out, there is no data that I could find on the amount of consumer credit outstanding in California. It would be interesting to try to compare the amount of consumer credit outstanding in California with the amount outstanding in New York State, or in other parts of the country where you have less of a growth situation, lower interest rates in general and competition among lenders in general. But, as I said, this is a field in which we know too little, and I appealed to you earlier to try to investigate this in greater detail than we have been able to today."

REVOLVING CREDIT: BALANCE ON WHICH SERVICE CHARGE IS TO BE ASSESSED

The Unruh Retail Credit Sales Act sets a maximum rate on revolving charge accounts at $1\frac{1}{2}$ percent per month on the outstanding balance.²⁶ Legislation was referred to this committee for interim study which was designed to assure that this legal maximum was never exceeded, that no service charge was assessed on the amount of any purchase until at least 30 days had passed.

²⁴ *Ibid.*, II, p. 14.

²⁵ Testimony of Hyman Minsky, Associate Professor of Economics, University of California, Berkeley, *Ibid.*, II, p. 40-41.

²⁶ A.B. 2865 (Unruh).

Proponents of this legislation claim that ambiguities in the existing law permit charges far in excess of the legal maximum.

"The way it actually works out, the retailer and only the retailer, defines outstanding balances, and that's a pretty broad term to leave undefined in a private contracting relationship. As Mr. Kaiser pointed out, the practices of the stores by and large are pretty good, average experience varies from here to there, and so forth. Well, averages don't apply in this kind of a situation. We are talking about one particular contract between one person and a store, and it can be enforced by the courts, or it can't be enforced; and that service charge can be collected, or it can't be collected. And so it should be defined so that both parties know whether it is collectable or not. And in the present circumstance, it is not."²⁷

The legislation presented to meet this problem encountered serious drafting problems. Some opponents have insisted upon interpreting it as requiring that each purchase on a revolving amount be dated and dealt with as a separate item in the assessment of service charges or that an average balance be determined and used as the basis of the service charge. This was not the intent of the bill. An understanding of this intent depends upon an understanding of customary billing procedures. The vast majority of stores offering revolving credit fix service charges as $1\frac{1}{2}$ percent of the balance at the beginning of the month (billing period). The customer's bill then lists any payments or returns (credit) for the period, purchases made during the period and the balance due. If this entire balance is paid by the customer after receiving the bill the account is treated as a 30-day account and no service charge is assessed. A large majority of the store's customers either pay off the entire balance or make the minimum payment required by the account.

When an individual pays the entire balance there is no credit charge; the service is free. If he pays less than the total balance, he ordinarily gets more than 30 days credit before any service charge is added.²⁸ This results simply from the mechanics of the billing procedures.

A service charge equalling an extremely high simple annual rate can result under certain circumstances. Suppose a customer, perhaps before Christmas, makes a large number of purchases and a minimum payment upon receipt of her bill during January when a number of other bills fall due. At the beginning of the next billing period she has a large balance but, being in better financial condition she pays most, but not all of this balance. Nevertheless, the service charge is assessed on this large beginning-of-the-month balance and does not take into account the fact that during the month, before the billing date she paid most of this balance.

The irate customer then sees that, had she paid the entire beginning of the month balance, she would have no service charge at all but when she pays *most* of it she is charged a service charge on the entire amount. In her view, she is being charged "interest" on money she does not owe.

²⁷ Los Angeles Hearing II, 117.

²⁸ *Ibid.*, II, 106-107.

At one time some stores offering revolving credit computed the service charge on the end of the month (billing period) balance, a practice which could result in an extremely high yield on some purchases. For example, a large purchase made just before the billing date was included in the "outstanding balance" and the customer was billed for $1\frac{1}{2}$ percent of this amount even though she used this credit for only a few days.

Most stores seem to have abandoned the latter practice. At least, no complaints based on it have come to the attention of the committee.

Many retailers try to deal with the problem of a large repayment by instructing credit clerks to watch for such situations and deduct payments of say, 50 percent from the balance due figuring the service charge. Others have no such established policy but make the deduction as a matter of policy if the customer complains after receiving her bill.

Both these methods have been adopted for the sake of customer relations, and because the retailer feels the Unruh Act requires such a policy. It is true that the law does not now define the outstanding balance on which the service charge is based.

The proposed legislation would require that all credits (payments and returns) on the customer's account be deducted from the beginning of the month balance before the service charge is determined. This would prevent the customer ever being charged more than the maximum rate allowed by the Unruh Act. In fact, the actual rate would never equal the maximum except under the most ideal circumstances. Compliance would require that credit personnel introduce an additional operation into the billing process, the subtraction of any payments the customer made during the billing period.

Retailers oppose this measure on the grounds that it would add greatly to the cost of operating a revolving credit system. This cost would have to be absorbed by raising the prices of their merchandise. In other words, cash customers would have to bear a greater portion of the cost of credit operations.

Retailers contend that under the present system service charge income does not cover the cost of maintaining revolving credit.

"This year the difference between our service charge income and our credit department expense is $\frac{3}{4}$ of a percent. That is, our service charge income falls short of our credit expense. Now the credit department expense figure that I am using does not include any charge for rental, utilities, floor space, equipment depreciation, or anything of that type. The figures in our expense which are included in NRMA accounting practices for our type and volume store are salaries and fringe benefits, supplies, credit reports, collection commissions, unclassified postage on our statements and bad debts. Just those items. No charge for any office space or advertising or anything like that, and we will fall short in our service charge income of our credit department expense by almost $\frac{3}{4}$ of a percent of credit sales." ²⁹

²⁹ Los Angeles Hearing, II, 18-19.

Actually, the question as to the profitability of revolving credit operations does not admit of a simple answer.

"Many students have produced accounting studies which purport to prove that revolving credit *per se* is a losing proposition under existing finance charges. Others disagree, and submit accounting data as evidence of the large profits earned from the financing of revolving accounts. . . . Arguments on both sides rely on cost-accounting data to add credence to their respective positions. The accounting studies are very useful for developing productive efficiency data, but, in order to prove that finance ceilings are too restrictive (or loose), it would have to be discovered what would happen to the store's profit (as a return on investment) if revolving credit were not offered, or offered at a different price. This information is largely speculative, and the answer would vary from community to community and from store to store within a given community." ³⁰

No major legislative intervention would seem to be required in the field of revolving credit. Situations do arise in which the retailer gains a very high rate of yield on service charges. These instances, however, are infrequent and the amounts involved are ordinarily small. It would not seem advisable that the Legislature require retailers to make extensive changes in their billing practices.

It would seem that stores offering revolving credit ought to give serious consideration to meeting the problem of large payments for the sake of their customer relations. If they wait until the irate customer comes to complain and then, tacitly admit they have been unfair by refunding the service charge, they are perhaps compounding their problems rather than preventing them.

From the point of view of consumer protection, the important thing is that the customer understand the nature of the contract she enters when she establishes a revolving account. With such an understanding, she should be able to utilize such an account so as to minimize its cost.

The vast majority of retailers appear to do a good job in providing the customer with explanatory literature when the agreement is signed. However, the committee might consider legislation requiring a standard explanatory statement to be printed on each bill. Such a statement should make clear to customers how the balance due is determined. Again, the performance of most stores is good in this regard but there are exceptions.

CONDITIONAL SALES OF AUTOMOBILES

The committee also gave some consideration to the subject matter of AB 2502 (Zenovich and Beilenson). This measure would amend the Rees-Levering Act to set a maximum finance charge on automobile contracts of from \$7 to \$12 per \$100 per year depending on the age of the car. At present, the legal maximum on such contracts is 1 percent per month on the contract balance. The bill would make some change in the provision governing the retention of finance charges upon prepayment of a contract.

³⁰ Barrie Richardson, "State Regulation of Retail Revolving Credit", *State Government* (Summer, 1963), 175.

Auto dealers support the *status quo* insisting that the profit of the average members is already at a dangerously low point, $2\frac{1}{2}$ percent before taxes,³¹ and thus finance rates are a crucial segment of that profit.

"Many dealers today, for your information, truly, who have what we call an operating profit, operate actually at a loss. The insurance premium and the finance price differential, that portion of it that the bank lets the dealer retain, comes in under what is called, 'miscellaneous income' and in many, many instances the miscellaneous income itself is the difference between whether for the year that operation is either in the red or the black. Many automobile dealers actually operate month in and month out with an operating deficit."³²

It is also contended any lowering of the maximum rates would force a denial of credit and, therefore, of adequate transportation to large numbers of people without established credit.

Other states operated successfully with laws similar to AB 2502 setting different maximums depending on the age of the car. However, in California some disillusionment seems to be developing with the whole approach of setting varying legal maximums for different kinds of credit transactions.

"... I would like to make one comment on the statement of Governor Brown's which was read by Mrs. Nelson in which he refers to the large volume of money loaned by personal loan companies and the fact that they were all at the maximum rate, and I call attention to the fact that if by law you set a maximum rate, that's what you are going to have. Most people will tend to pick on the maximum and once it is there, it doesn't go down. So, when you regulate, I am afraid that is what you are going to get."³³

A good case can be made for opposing any piecemeal amending of the Rees-Levering Act. The legislation now governing consumer credit transactions is complex and well may give undue advantage to certain types of credit grantors. In any case, greater simplicity and uniformity of law in this field is desirable.

The Legislature may prefer to delay any major study of the laws governing consumer credit until the National Conference of Commissioners on Uniform State Laws completes its study and makes recommendations. Whatever is done should certainly be based on far more data on the role of consumer credit in California's economy than is presently available.

³¹ Los Angeles Hearing, II, 79.

³² *Ibid.*, II, 93.

³³ *Ibid.*, I, 69.

CONCLUSIONS *

1. There are some dangers to the stability of California's economy in the large and growing burden of consumer debt. Because of its dependence upon defense production, our economy is particularly vulnerable to deflationary potential in this situation.
2. A far more intensive study than this of California's status as a capital-deficit area and consumer debt in this state is sorely needed if any serious changes in the laws governing credit selling are contemplated. There is a deplorable lack of information in this area.
3. It would be worthwhile if such a study could be the basis for a wholesale revision and simplification of the laws governing installment selling.
4. If the National Counsel of Commissioners on Uniform State Laws does recommend—as they seem about to³⁴—the repeal of state usury law and the enactment of a uniform maximum rate for all consumer credit transactions, such a proposal should not be adopted without very serious study. Unless such a measure were supplemented by rather rigid disclosure requirements the consumer's task in shopping intelligently for credit could be made far more difficult than at present, in fact, nearly impossible.
5. Without such information the effects of such a measure as the Truth in Lending Bill on the existing system cannot be predicted with any real confidence.
6. There are now sufficient powers in the hands of the Attorney General's Office and the members of the Board of Investments to deal with the most serious problems of deceptive advertising in the field of credit selling. These powers need to be employed with greater vigor.
7. The appropriate committee of the Assembly should undertake a serious study of the laws governing wage attachments to determine what contribution they make to the bankruptcy rate and how much they encourage unsound loans promoted by "hard sell" methods.
8. The committee should consider recommending legislation to require a uniform explanatory statement to be printed on all bills for revolving credit purchases.

³⁴ *Personal Finance Law Quarterly Report*, (Spring, 1964), 40.

* Assemblyman Stewart Hinckley has indicated that he has reservations about the conclusions stated in the committee's report.

REPORT—REGULATION OF HEALTH PLANS

During the 1961-63 interim, this committee conducted an extensive investigation into the legal status and activities of prepaid health plans. The results of that study are extensively set forth in this committee's final report for that interim.¹

To review briefly, a decision of the California Supreme Court in 1946² held that health plans were not insurance, their principle purpose was "service" and not "indemnity". The court said:

"The business of (CPS) lacks one essential element necessary to bring it within the scope of the insurance laws for clearly it assumes no risk. Under the provisions of the contracts or group agreements, it is a mere agent of distributor of funds. It does not promise the beneficiary members that it will provide medical care, on the contrary, "the services which are offered to . . . beneficiary members of CPS are offered personally to said members by the professional members of CPS . . .". The professional member is compensated for his services solely from the fund created by the monthly dues of the beneficiary members . . . stated in terms of insurance, all risk is assumed by the physicians not by the corporation. Hence, the only affect of requiring compliance with regulatory statutes would be to compel the acquisition of reserves contrary to the established method of operation.³

Therefore, these direct service pre-paid health plans such as CPS, Blue Shield, or Kaiser were immune from regulations from the Department of Insurance, or for that matter, by any other state, county, or city agency.

The former interim committee found many abuses among some recently formed health plans which catered largely to the elderly. Among those abuses were misleading claims by salesmen, failure to pay benefits because of bankruptcy, and arbitrary changes in fee schedules.

The report of this committee filed in 1963 recommended that legislation be adopted which would, for the first time, bring direct service health plans under regulation. Although some objections developed to designating the Department of Public Health as a regulatory agency, agreement was reached that AB 2291 of the 1963 session, authored by Assemblyman Knox, was a suitable approach to the problem. This bill provided for policing of health plans by the Attorney General. It set forth a mechanism whereby the Attorney General would be able to identify all health plans in the state by requiring that they be registered, and empowered the Attorney General to take immediate administrative action against a plan which could not, or did not, intend to live up to the commitments made to its members. Under

¹ Vol. 15, No. 26, Assembly Committee Reports.

² *California Physician's Service, v. Garrison*, 28 C 2nd, 801.

³ *Ibid.*, page 805.

its provisions, the Attorney General could take action including dissolution of the plan upon a finding of verbal or written misrepresentation in advertising or in misleading contracts.

The primary virtue of the bill lay in the fact that the Attorney General could do all the things that he cannot do under the statute governing fraud, but could act through an administrative tribunal without awaiting a formal court proceedings. Under Section 17500 of the Business and Professions Code and Section 3369 of the Civil Code, the Attorney General possesses substantial powers for acting against fraud, but it must be borne in mind that the test of fraud almost invariably requires surveillance of an operation over an extended period of time to determine that a pattern and design exist. From such a pattern proof of intent not to live up to the representations made can be shown. Clearly, if such a pattern had to be shown before a health plan could be restrained, a bogus plan could take a good deal of money from desperate and unknowledgeable elderly persons in the space of two years. It hardly serves society's interest to fine a devious or merely incompetent plan operator after he has taken a great deal of money from the public.

AB 2291 failed of passage when agreement could not be reached concerning the exemption from regulation of certain health and welfare plans. The exemption sought for health and welfare plans rested on the theory, at least in the case of negotiated plans, that sophisticated parties act as "watchdogs" and that the opportunity for fraud is inconsequential if not nonexistent. This is probably true, but it is not outright fraud or the ability to deliver on commitments which alone concerns us.

No doubt there would be far fewer complaints in those cases where a plan member was also a union member. Through his union local he could express his grievance and, presumably, a union official would intercede in his behalf. But what of the case where benefits are sought for an illness incurred before the claimant left his job. Who will press his case for him? Facing facts, it should be obvious that the union is going to be more solicitous in behalf of the voting member. It goes without saying that in those cases where a union is not party to a plan, the member has no one to intercede for him and no independent public agency to which he can appeal.

Some question has also been raised as to the method of financing the regulatory activities that the Attorney General would have to engage in. Sentiment is about equally divided between requiring a general fund appropriation or a registration fee or assessment. This fee would amount to approximately 6 cents per family unit with a minimum of \$200. Since it was estimated it would cost the Department of Justice an additional \$87,000 to administer the bill, the per family unit registration fee would raise sufficient funds.

It is admitted that assessments on management and labor management plans would be disproportionate to the amount of trouble they would occasion the Attorney General. But with regard to this point, it is not sound logic to exempt from registration fees those whose

records are clean. If this were carried out certainly CPS or Blue Shield or Kaiser, who between them would pay for the principal cost of regulation, should be exempt.

Although a general fund appropriation seems preferable since the purpose of this legislation would be to protect the general public from unscrupulous health plans, financial realities may dictate that the registration fee approach would be more practical. However, the dispute over financing is probably all out of proportion to the significance of the issue. An initial crackdown under a program such as set forth in AB 2291 would almost certainly eliminate 80 percent of the problem. In subsequent years, the number of Justice Department attorneys assigned to this responsibility would diminish and the cost and the concomitant registration fee would significantly drop.

The committee concludes that legislation on the registration of health plans such as that set forth in AB 2291 is long overdue. No significant reason exists why such legislation should not now be adopted.

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FINAL REPORT OF THE
**ASSEMBLY INTERIM COMMITTEE ON PUBLIC
UTILITIES AND CORPORATIONS**

TO THE CALIFORNIA LEGISLATURE
(House Resolutions No. 500(n) and (s), 1963)

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January 11, 1965



Published by the
ASSEMBLY

OF THE STATE OF CALIFORNIA

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Majority Floor Leader

HON. CARLOS BEE
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Minority Floor Leader

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Chief Clerk of the Assembly



LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON
PUBLIC UTILITIES AND CORPORATIONS

Sacramento, January 11, 1965

HON. JESSE M. UNRUH
*Speaker of the Assembly
and Honorable Members*

Dear Speaker Unruh and Members:

Pursuant to House Resolution No. 500 sections (n) and (s) of the 1963 California Legislature, your Assembly Interim Committee on Public Utilities and Corporations submits its report of functions and activities during the 1963-65 interim.

Shortly after the close of the 1963 Extraordinary Session, I assumed the chairmanship of the committee from Assemblyman John C. Williamson. Concurrently, the Committee on Public Utilities and Corporations assumed the interim assignments from the Manufacturing, Oil, and Mining Industry Committee of which I had been chairman.

Several subject matters were studied by subcommittees, but the findings and recommendations reported herein are the responsibilities of the full committee with Mr. Greene, Mr. Holmes, Mr. Stanton and Mr. Whetmore holding partial reservations.

Respectfully submitted,

JOSEPH M. KENNICK
Chairman

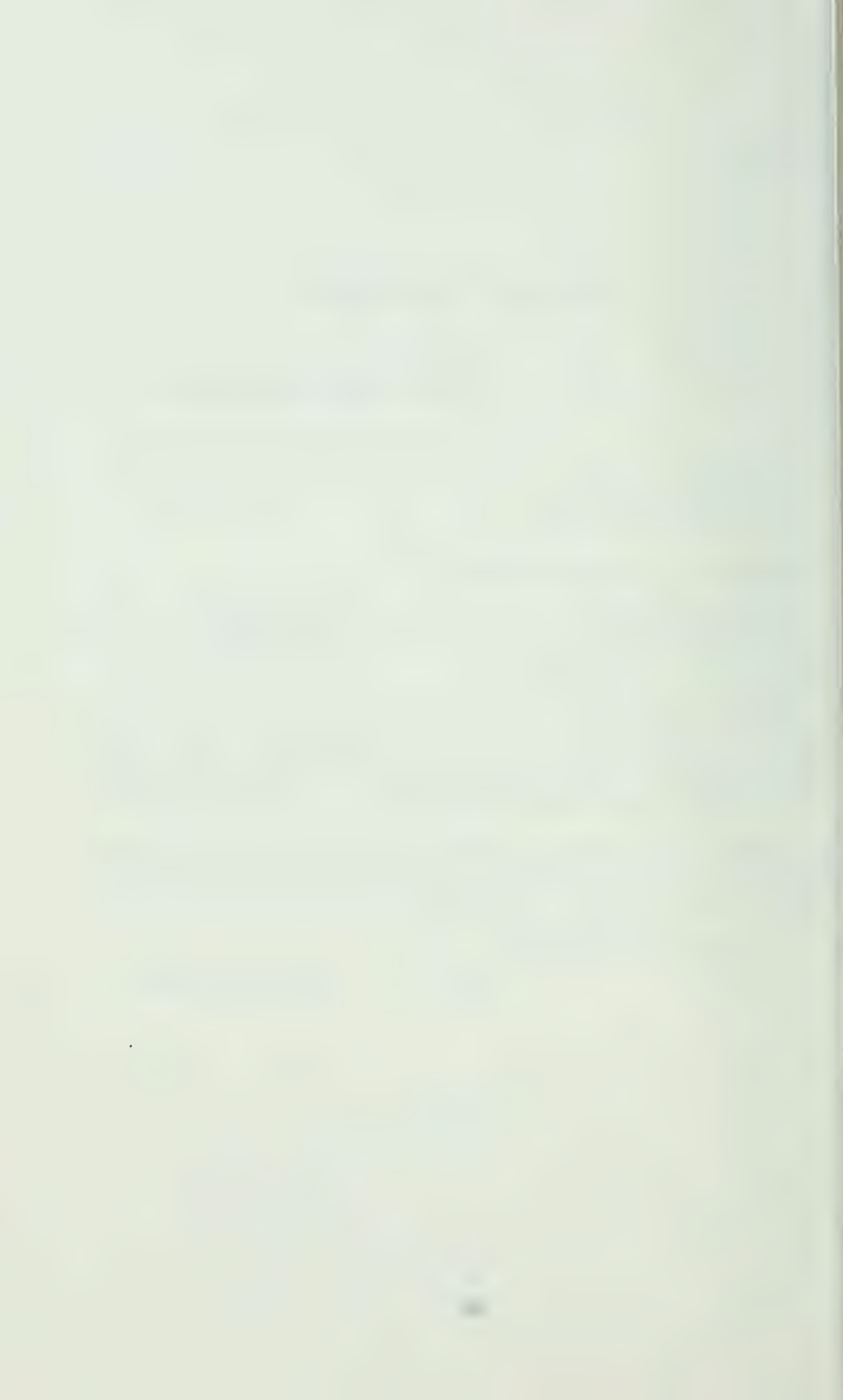
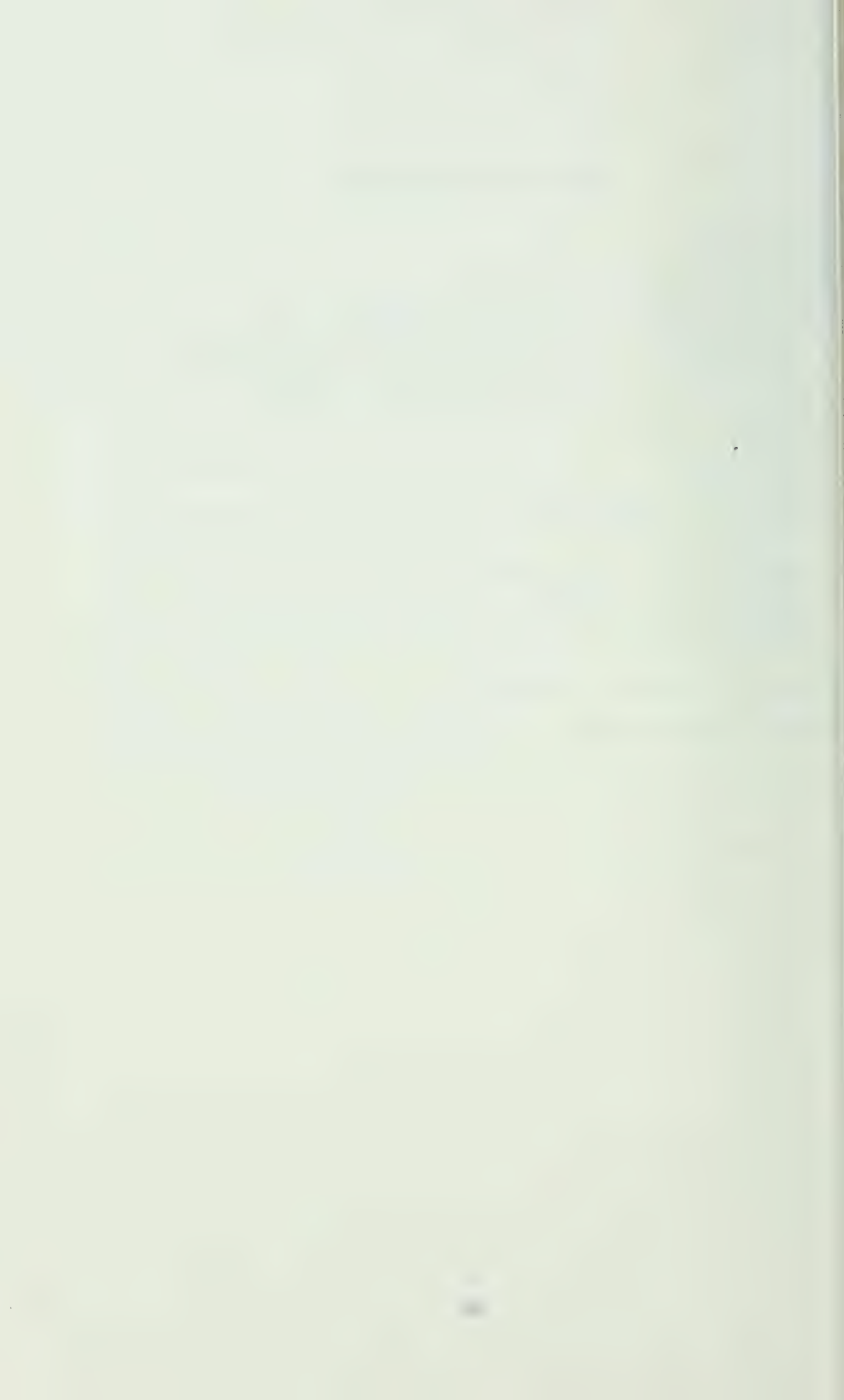


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RECOMMENDATIONS OF THE COMMITTEE

A total of 17 subject matter assignments were assumed by the full committee, which included the assignments of both the Public Utilities and Corporations and the Manufacturing, Oil, and Mining Industry Committees.

Of these, five are reported upon without hearing, in the light of information before the chairman which dictated that disposition.

A.B. 1394 and A.C.A. 28—"Allocation of tidelands funds." Conferences with the author, Mr. Lanterman, and with Mr. Charles Baldwin, Consultant to the Joint Committee on Tidelands, concluded that this subject should receive attention during the 1965 session for possible study during the next interim.

A.B. 1612—"PUC procedures on the setting of rates for sightseeing buses." This proposal, if adopted, would prove unconstitutional. The committee received a legislative counsel's opinion to this effect and concludes that only a constitutional amendment would achieve the desired ends. The sponsoring industry was so informed and the author, Mr. Porter, made no request for hearing.

H.R. 607—"Abolition of minimum trucking rates." The author, Mr. Zenovich, informed the committee that the sponsor of this legislation withdrew his request in light of developments that erased the need for the changes proposed.

H.R. 450—"Pay television." In view of the November ballot Proposition 15, the committee concluded that any action would have been superfluous. The author, Mr. Williamson, concurred.

H.R. 452—"Location and relocation of utility facilities." Staff negotiations with the major utility companies disclosed that any need for legislative action has been eliminated by joint agreements between utilities and state or local agencies. The author, Mr. Williamson did not request a hearing.

Within the range of the additional referrals, there are 12 issues which have been studied by the committee and have been resolved for purposes of the final report. Five of these require legislation and are treated individually, along with accompanying legislative proposals. The other seven, listed below, are reported upon without legislation.

H.R. 451 (Williamson)—"Operations and practices of the PUC." Mr. Greene suggested at a hearing, in May of 1964, that, in the distribution of their directories, telephone companies provide the necessary copies of directories to cover all phones within a "toll-free" calling zone. The need for this arises whenever two or more contiguous areas with different directories include a common "toll-free" calling zone.

Staff for the commission explained that present authority of the PUC is adequate and that costs of a "blanket" proposal of this nature would work a financial hardship on ratepayers. A change was suggested in the wording which appears at the front of all directories advising users of the availability of extra copies. The statement employed at the time of the hearing read:

"Directories of other cities are available at a reasonable charge. Just call our Business Office (XXX-0000). If you just want to look up a number, drop in at our office at 0000 X Street, Your Town, where we keep directories for the principal cities in the Western U.S."

The Pacific Telephone and Telegraph Company proposed the following change and has since instituted same:

"If your telephone needs require that you frequently use a directory for a calling area other than your own, out-of-town directories are available through our business office. Some may be had without additional cost, others may be obtained for a reasonable charge. For information, just call our business office."

The committee recommends that all telephone companies voluntarily adopt the above change in wording, but does not support legislation requiring "blanket" distribution.

H.R. 586 (Williamson)—"Ratefixing procedures of the PUC." Assemblyman Greene proposed at the same hearing in May of 1964, that law be enacted requiring utilities to notify—by mail—all ratepayers likely to be affected by rate or service changes, the applications for which are pending before the PUC.

Staff for the PUC explained that this procedure would be sufficiently difficult and costly so as to make it a hardship on ratepayers. They added that existing constitutional authority of the commission empowers it to so require notification if, in its discretion, it is warranted.

The committee recommends no legislative action.

H.R. 560 (Williamson) and A.B. 1988 (Bagley)—"Private contractor competition with utilities." Testimony on this subject was received on September 16, 1964, in Newport Beach. Arguments were presented on behalf of contractor groups which sought to place utilities and private contractors under a universal workmanship code. Their objective is to place utility companies on a safety factor and pricing level competitive with electrical contractors. More specifically, it was proposed that competitive bidding requirements be promulgated for utility work done underground, as opposed to overhead lines since this is more properly the domain of the private contractor.

Opposition statements of utility companies and electrical workers' unions pointed out that the PUC has existing authority to adopt workmanship standards of any nature suiting their discretion; that legislation is not necessary; that there is no evidence to compel any changes in present standards; and, that the PUC recently ruled that existing practices of utilities ensures an adequate level of competitive bidding arrangements, beyond which the financial interests of the ratepayers may become jeopardized.

It was also stated that neither legally nor operationally is there a logical basis to distinguish any difference in "domain" between utility easements overhead or underground.

The committee recommends no legislative action.

H.R. 97 (1964) (Young)—"Underground utility wiring." On the same day, September 16, the committee received extensive testimony on the subject of underground wiring. The transcript of those proceedings constitutes a meaningful source document on a subject into which the Legislature has heretofore never delved.

No legislation is recommended by the committee. However, mention was made of a possible need for permissive legislation to make it legally clear that special assessment districts can be formed for the purpose of converting existing overhead utility networks to underground. If and when such a proposal is submitted to the Legislature, favorable action is recommended.

H.R. 537 (Williamson)—"Competitive gasoline sales." Testimony received on July 22 urged legislative action to prevent gasoline price wars. It was pointed out that this competitive marketing device works undue burdens on gasoline retail dealers and, in total economic view, does not benefit the consumer. Neither staff negotiations, testimony, nor industry proposals resulted in the development of meaningful legislation that would both ensure fair treatment of retail dealers and, at the same time, guarantee marketplace safeguards to the consuming public.

It is recommended that the committee recognize the dilemma in attempting to solve the inequities which apparently result from gasoline price wars and support continued study into ways and means of correcting bad practices in retail petroleum marketing.

H.R. 376 (Kennick)—Four separate hearings were conducted on the subject of "zoning of rock, sand and gravel deposits and the establishment of reasonable and uniform limitations, safeguards and controls over future production" (October 25, November 16, and December 16 of 1963 and January 30 of 1964).

Testimony from industry representatives explained that the interests of quarry operators and those of urban planners are occasionally in conflict. Costs of aggregate (the state buys 35 percent of the annual sales) increase almost geometrically with the distance of the quarry from the construction site. However, quarries located on prime real estate present difficulties (e.g. noise, dust, unsightliness) in the orderly development of urban areas. The multitudes of local planning authorities exercise various standards in adjusting zoning regulations for quarries. According to some representatives, the aggregate industry, the state, and the general economy are at the mercy of planning agents whose notions of proper land utilization may fail to recognize the economic impact of quarry relocations.

Testimony from planning authorities noted that zoning has always been a local prerogative and that state intervention, as suggested by certain segments of the industry would be unacceptable.

The committee found that the "aggregate industry *versus* local planning" issue should be resolved, but was unable to extract from the

testimony any single, workable solution. The committee therefore recommends the adoption of and assignment to the Assembly Committee on Public Utilities and Corporations a House Resolution that enables the Assembly to create and pay the necessary expenses for a "study group" to recommend specific legislative action. The "study group's" composition and appointment should be at the committee chairman's discretion. This recommendation acknowledges the need for action, but concedes that testimony before committee is not likely to produce meaningful results until the interested parties have resolved their differences and can report, before the 1967 Legislative Session, its consolidated suggestions for changes in the law, if any.

H.R. 97 (Pattee), H.R. 449 (Williamson), H.R. 625 (Kennick); A.B. 3125 (Pattee), A.B. 3126 (Pattee)—"Natural Gas." Hearings were conducted on September 17-18, October 22, November 19-20, and December 3-4 of 1963 and January 7-8, 1964.

The resolutions and bills referred to committee under the heading of "natural gas" called for various approaches to interim investigation, all of which were covered in a study based on two basic questions previously raised by the California Public Utilities Commission (Case 7132), the Governor's Task Force on Natural Gas and by a number of other legislative proposals in recent years:

- (1) Is there a need for legislative action to bring the field price of natural gas produced in California under direct, wellhead, cost-type regulation by the California PUC?
- (2) Is there a need for legislative action to amend the California Public Utilities Code to require regulatory approval for all direct sales or service of gas to customers within market areas already covered by certificated gas utilities?

The committee employed the professional advisory services of a natural gas expert, Dr. Edward J. Neuner of San Diego State College, who presented an introductory paper at the initial hearing. He followed the three subsequent meetings and formalized a summary report with legislative alternatives and predictions as to their consequences, which he presented at the final meeting.

The committee report is presented in two separate sections.

SECTION I—REGULATION OF WELLHEAD PRICES

Then president of the State PUC, William M. Bennett, has been the key voice in the support of regulating the well-head price of natural gas produced within California on a utility, cost-type basis. His testimony pointed out that 75 percent of the state's gas supply comes from out-of-state sources, selling at an average border price of 30¢ per thousand cubic feet (Mcf). The Federal Power Commission regulates the wholesale price of gas sold for export to other states, at an average price of about 14¢/Mcf at the point of production. The added 16¢ reflects transportation costs. California-produced gas, selling inside the state, has no such transportation cost tied to it; yet, it sells at the border price, 30¢/Mcf. The difference, according to Bennett, constitutes an undue profit of 16¢ over and above normal production costs.

There are, according to Mr. Bennett, two reasons for regulating gas prices:

- (a) It is marketed through a regulated monopoly and its wholesale regulation is a necessary step in the direction of full control of monopolistic activity, and;
- (b) The consumer, because of his investment in gas-operated fixtures (stoves, household furnaces, water heaters, etc.) is completely wedded to natural gas and is at the mercy of the economic whim of the gas marketplace.

While the State Supreme Court has held that the commission has no authority to regulate wholesale prices, Bennett interprets the general language of Section 216(c) of the Public Utilities Code as a grant of this power, an opinion which differs from that of the other four commissioners who declined to suggest a specific program of intrastate wellhead regulation in their decision on Case No. 7132. The Governor's Natural Gas Task Force did not recommend wholesale price control.

Spokesmen for the Western Oil and Gas Association, the Gas Producers Association of California, the Oil Producers Association of California, Pacific Gas and Electric Company, the Pacific Lighting Companies, the Southern California Edison Company, the California Farm Bureau Federation and others made statements in opposition to wellhead regulation proposals by pointing out the following:

- (a) None of the 50 states regulates gas prices, intrastate.
- (b) Among the cities of the nation, San Francisco has the 5th and Los Angeles the 13th lowest domestic gas rates;
- (c) California gas enjoys special value, both as a reserve supply for peak loads and as a nearby, easily marketed product; any commodity tends to level out at a price close to the nearest alternative; the FPC, for example, recognized values in resource proximity to market, by allowing gas in West Virginia transported for sale in New York to sell at a higher price than similarly destined gas in Texas;
- (d) Even if gas prices were regulated, the effect would be on the order of 1¢ on the customer's dollar for every 4¢ reduction in field price;
- (e) There is no evidence that gas producers are enjoying excessive profits and the existing market price is not overly encouraging to speculators—the exploration success ratio is 17 to 1;
- (f) Unlike the case in all other fields of utility regulation, the state could not offer any sort of guarantee for production success and profit as the "quid pro quo" in return for the imposition of price controls.

The committee found no conclusive evidence, either in fact or in economic rationale, to support legislative action to subject California gas producers to wholesale price regulation. Testimony did, in fact, indicate that wellhead price controls might work a hardship on the public interest by further extending the state's dependence on out-of-state supplies of natural gas.

The committee recommends that no legislative action be taken which would authorize state regulation of wellhead gas prices. Furthermore,

the committee recommends that the future Legislatures take diligent care to examine the possible impact should the Public Utilities Commission propose to implement the provisions of Section 216(c) of the Public Utilities Code and thereby carry out wellhead price regulation through administrative action.

SECTION II—UNREGULATED ENTRY

The second natural gas issue relates to direct sales of gas by nonutility corporations within the market area of certificated gas utilities to customers normally served by those utilities.

In 1960, the State Supreme Court ruled that a direct sale of natural gas by the Richfield Corporation to the Southern California Edison Co., normally the customer of the Pacific Lighting Companies, was not subject to the jurisdiction of the Public Utilities Commission, since that sale, in the court's view, did not constitute a utility-type "dedication" of Richfield's services.

Gas companies maintain low rates for nonindustrial users by "load-balancing" their pipeline deliveries thus enabling them to serve *all* household or firm users on the coldest day of the year. This technique enables gas utilities to ease the cost burdens of the pipelines by also selling to industrial users during the offpeak, summer months when household demands fall off, leaving a surplus of gas. These latter buyers enjoy rates as low as one-third that which the standard customers pay, in return for which they must accept periodic curtailments when the pipeline system is called upon in full for peak demands of the household consumers.

Testimony of the major gas sellers in southern California, the Pacific Lighting Companies, expressed concern that continued sales to large, industrial buyers within their market territory would work hardships upon household or "firm" users.

It is the gas company position that the loss of load-balancing, "interruptible" customers, and the related loss of revenue, must be met by increased rates among the firm, household users. They urged that legislation be adopted requiring that all direct, nonregulated sales, such as in the Richfield Edison case, come under the scrutiny of the Public Utilities Commission and that such a sale be certificated only upon a showing that its effects would not bear adversely on the general public.

The Southern California Edison Co. and a number of oil and gas production industry spokesmen opposed regulation of direct sales.

As a purchaser, the Edison company stated that an electric utility, with obligations to meet the public demand, has the right to contract for uninterrupted, long-term fuel supplies to operate its generating plants. They contend that the present service arrangement with the certificated gas utility is expensive and contrary to regulations that forbid the burning of fuel oil in the Los Angeles Basin. (When the gas companies curtail deliveries to interruptible users, the only feasible fuel alternative is oil.)

Edison further pointed out that the gas companies would not suffer from any loss of industrial market, that their system is already overbuilt for firm customer requirements and that firm demands can be met with minor adjustments, in the event of interruptible loss.

Oil and gas industry spokesmen expressed concern that the precluding of direct sales would leave gas producers with no alternative markets and they would be placed at the bargaining whim of the only two remaining purchasers, the Pacific Lighting Companies in the south and Pacific Gas and Electric in the north.

The issue of direct sales of gas within a certificated market area has presented the committee with the task of determining whether the benefits and market advantages which would thereby accrue to the gas and oil sellers and to industrial buyers of gas and their customers outweigh the possible disadvantages that may befall the gas utility industry and its customers. The testimony heard by the committee has not included sufficient factual data to lead to a positive conclusion.

The committee recommends that there be introduced a House Resolution calling for concentrated interim study on the subject of unregulated, direct sales of natural gas within already certificated market territories and the relative effects of such entries upon the public interest. Moreover, it is recommended that such study be conducted by the Assembly Interim Committee on Public Utilities and Corporations.

Finally there are five subject areas in which the committee endorses specific legislation. Each of these is treated as a separate item:

1. Emergency Telephone System (H.R. 473)
2. Charter Bus Operations (H.R. 447)
3. Gasoline Temperature Correction (A.B. 1320)
4. Corporations (H.R. 448, H.R. 70 1st Ex. 1964)
5. Water Companies (H.R. 451)

H.R. 473 (UNRUH)

"Emergency Telephone System"

Hearings were conducted as follows:

November 5, 1963, Full Committee in Los Angeles	} Members, Subcommittee on Emergency Telephone System
July 9, 1964, Assemblyman Soto in La Puente	
July 10, 1964, Assemblyman Ashcraft in San Diego	
July 14, 1964, Assemblyman Booth in Chico	
July 16, 1964, Assemblyman Casey in Bakersfield	
July 17, 1964, Assemblyman Britschgi in San Mateo	
July 22, 1964, Assemblyman Pattee in Monterey	
July 24, 1964, Assemblyman Dills in Los Angeles	
July 29, 1964, Subcommittee of the above-named members in San Francisco	
September 22, 1964, Subcommittee in San Diego	

SCOPE

H.R. 473 called for legislative study to determine the feasibility of establishing "regional switchboards to receive incoming emergency telephone calls and to relay such calls to the proper organization."

The need for state action, as expressed in newspaper articles and among police and fire officials, results from the fact that standard telephones, under today's systems, are not interconnected in any geographic pattern that relates to the multitude of police, fire, ambulance, and other local jurisdictions. Also, the everchanging complex of city, county, and other boundaries throughout the state render it highly unlikely that the average citizen knows which jurisdiction or service to call upon in a given emergency. It is even more unlikely that he would know the appropriate seven-digit telephone number to dial.

Over the years, cases have been reported in which emergency services have not responded in sufficient time to save lives or prevent injuries. These are few and far between. In some cases, the breakdown is simply jurisdictional—in others, a result of poor communications. The intent of H.R. 473 was to bring about investigation of ways and means to improve the speed and precision of transmitting distress calls from the general public to emergency services.

POSITIONS

At its first meeting on this subject, the full committee received ample testimony bearing out the fact implied in H.R. 473—that the general public is not capable of making the most expeditious contact with the proper emergency service. Equally evident to the committee at this early stage, was the concern of local fire and police officials that any action on the part of the state in the field of emergency communications would ultimately diminish control over their local agency operations. That is, the state might strip cities and counties of their autonomy by introducing itself as a third party in the relationship between the citizen and the responsible safety organization.

Cognizant of this apprehension on the part of fire and police chiefs, the committee chairman created a subcommittee consisting of himself, as chairman, and seven members selected on the basis of geographic spread. During a period of three weeks in July of 1964, the seven subcommittee members held separate seminar meetings in their respective territories, each of which was attended by the committee consultant and the member. With the assistance of the League of California Cities, invitations were sent to a sampling of fire and police departments and sheriff's offices asking them to send representatives to whichever one of the seven seminars was most convenient.

In all, there were approximately 115 people in attendance with average group sizes of 15 to 20. The purpose of the local gatherings was singular—to determine, at the local level, and from professional field men, precisely *what* should be done and *how* it should be achieved. These subcommittee seminars produced two specific results:

- (1) A consensus of two-thirds of the participants expressed a belief that a need does, in fact, exist for improving communication between distressed callers and responding agencies; and
- (2) more than two-thirds of those attending the conferences indicated they would approve of a "pilot study project" designed to test the concept of a universal emergency telephone system.

With the benefit of the opinions gathered from the seminar participants and with the committee consultant providing for continuity between the seven meetings, the subcommittee met in San Francisco on July 29 and directed staff to draft a "pilot project" for proposal to the Legislature. This proposal, along with enabling legislation, constitutes the essence of the full committee's recommendation on HR 473.

Also at the July 29 meeting, testimony was presented by a communications firm which manufactures a device known as the "call diverter." The Marcom company suggested that the "call diverter" could serve the purposes of an emergency phone network as follows:

- (A) Throughout the state, emergency callers would dial the AREA CODE digits applicable to the telephone in use.
- (B) The call would be diverted once it reached the telephone company central office building and would automatically ring in the assigned emergency service headquarters.
- (C) In the event that two or more emergency agencies serve a common telephone service area, the diverted call would ring in each separate headquarters, simultaneously, and the conversation would be monitored.

Subsequent to the July 29 meeting Marcom representatives advised the committee that further research had disclosed other, more direct channels for automatic distress call transmission.

The representatives were advised by the chairman that their proposals and research would be incorporated in the final "pilot project" so as to give ample opportunity to examine feasibility.

ANALYSIS

Committee investigations clearly disclosed the desirability of developing a statewide system for the routing of all emergency calls placed through a simplified, universal telephone number provided, however, that such system preserves the responsibilities and authorities of local agencies. Certain unanswered questions remain (e.g. costs, public acceptance, etc.) which compel the committee to undertake a short-term "pilot study" approach before recommending a full-scale program.

The committee's action, it should be noted, has been facilitated by the cooperative efforts of those involved throughout the interim, especially the Pacific Telephone and Telegraph Company, the General Telephone Company, the Los Angeles Voluntary Intergovernmental Cooperation Committee, the League of California Cities, the State Fire Chief's Association, the California Peace Officers Association, the California Association of County Supervisors, the Santa Clara County Department of Communications, the Los Angeles County Department of Communications, and the Marcom Corporation.

RECOMMENDATION

The committee recommends the adoption of legislation and the appropriation of state moneys for purposes of conducting a one-year pilot project for an emergency telephone system in accordance with the following outline:

A. The California Disaster Office shall coordinate the pilot project, beginning operations on October 1, 1965, and terminating on September 30, 1966. A total of \$150,000 shall be appropriated to cover related expenses. The Disaster Office shall submit to the Legislature its report and any attendant legislative proposals no later than December 1, 1966.

B. The project shall be conducted within the geographic boundaries of the Compton exchange of the Pacific Telephone and Telegraph Company and the Redondo exchange of the General Telephone Company.

These districts comprise a total area within Los Angeles County containing over 500,000 people in all or parts of the following territories: Bellflower, Compton, Downey, El Nido, El Segundo, Gardena, Harbor City, Hawthorne, Hermosa Beach, Lakewood, Lawndale, Los Angeles (city), Los Angeles County, Lynwood, Manhattan Beach, North Long Beach, Paramount, Palos Verdes, Palos Verdes Estates, Redondo Beach, Rolling Hills, Rolling Hills Estates, Torrance, South Gate, and Wilmington-San Pedro.

C. For those telephone operators receiving "0" calls from within the area incorporated in the project, the following procedure shall apply:

- (a) If the caller specifies the agency to be contacted, the operator shall make the appropriate connection.
- (b) If the caller is unable to specify which agency is to be contacted, the operator shall immediately connect the caller to an "emergency relay center."

* The use of the digit "0" was selected on the well-corroborated assumption that it would cause the least confusion in the minds of persons both inside and outside the pilot territory. Answering time on the "0" dial has been statistically shown not to exceed 10 seconds for over 95 percent of all trials. It is the existing practice of persons calling for emergency aid to use the "0" digit on 75 to 80 percent of all occasions.

(c) At the emergency relay center, trained personnel will:

1. Determine which *type* of service is required (fire, police, ambulance, etc.).
2. Locate the jurisdiction in which the emergency exists.
3. Contact the headquarters of the agency that is *jurisdictionally* responsible for emergency service, passing on all pertinent information.
4. Hold the caller on the line as long as possible in the event that the responding unit requests direct communication.

D. There will be an 11-member advisory body consisting of 2 members of the general public, 3 mayors or city council members from cities in Los Angeles County, 1 member of the Los Angeles County Board of Supervisors, 1 member of the Los Angeles City Council and 4 members of the State Legislature.

It shall be the function of this body to observe and review the operations of the pilot study, to provide advice and counsel to the California Disaster Office, and to report to the Legislature by the fifth legislative day of 1967 Regular Session any facts or findings it may desire to add as supplements to the final report submitted by the California Disaster Office.

E. In conjunction with the operation of the emergency relay center the California Disaster Office shall conduct whatever programs it deems necessary to test proposed techniques for the routing of emergency calls. (This should include, but by no means be limited to, experimentation with the Marcom "call diverter").

F. In addition to the \$150,000 budget for conducting the operational pilot study, there shall be appropriated \$50,000 for expenditure by the California Disaster Office for an engineering study. Such study should conclusively determine the feasibility and estimated costs of programming (such as by electronic processing) emergency calls in order to reduce to a minimum the time and complication in the processing of such calls and at the same time employ a simple, universal telephone number, regardless of locale.

G. In accordance with agreements reached between the two major telephone companies (Pacific and General) and the committee, every public-use telephone booth in the state shall henceforth be clearly marked if appropriate, with a notice which identifies its location as to the city or town in which it is situated and as to the names of the nearest intersecting streets. (This is designed to assist distressed callers in giving directions to the responding agency. It requires no legislation.)

An act to provide for an emergency telephone system pilot project, and making an appropriation therefor.

The people of the State of California do enact as follows:

SECTION 1. The California Disaster Office shall coordinate a one-year emergency telephone system pilot project in cooperation with an advisory body herein created, commencing October 1, 1965, and terminating September 30, 1966.

1 "Emergency," as used in this section, means a situation in wh
2 property or human life is in jeopardy and the prompt summoning
3 aid is essential.

4 SEC. 2. An advisory body is hereby created to observe and revi
5 the operations of the emergency telephone system pilot project a
6 to provide advice and counsel to the California Disaster Office w
7 respect to its activities under this act. The advisory body shall cons
8 of the following:

9 (a) Two members of the State Senate appointed by the Preside
10 pro Tempore of the Senate and two members of the Assembly appoint
11 by the Speaker of the Assembly.

12 These members shall serve at the pleasure of the appointing pow
13 and shall participate in the activities of the advisory body to the exte
14 that such participation is not incompatible with their respective po
15 tions as members of the Legislature. For the purposes of this act, t
16 members of the Legislature so serving shall constitute a joint inter
17 investigating committee on the subject of this act, and as such sh
18 have the powers and duties conferred and imposed upon such a co
19 mittee by the Joint Rules of the Senate and Assembly.

20 (b) One member of the Los Angeles County Board of Supervise
21 appointed by the Governor upon the advice of the chairman of th
22 board.

23 (c) One member of the Los Angeles City Council appointed by t
24 Governor upon the advice of the president of that council.

25 (d) Three city council members or mayors from three different cit
26 within Los Angeles County, other than the City of Los Angeles, a
27 pointed by the Governor upon the advice of the President of the Sout
28 ern California Division of the League of California Cities.

29 (e) Two members of the general public appointed by the Govern
30 The Governor shall select from among the members of the adviso
31 body a chairman, who shall serve as the executive officer of the adviso
32 body.

33 SEC. 3. The members of the advisory body shall serve without co
34 mpensation but shall be reimbursed for all necessary expenses incurr
35 in the performance of their duties.

36 SEC. 4. The first meeting of the advisory body shall be on Octob
37 1, 1965, at a time and place designated by the Governor.

38 SEC. 5. The project shall be conducted within the geographic boun
39 aries of the Compton exchange of the Pacific Telephone and Telegrap
40 Company and the Redondo exchange of the General Telephone Co.
41 pany.

42 The director of the disaster office may, with the concurrence of t
43 advisory body, extend the project to other areas within Los Angel
44 County.

45 SEC. 6. For those telephone operators receiving "0" calls fro
46 within the area in which the project is to be conducted, the followi
47 procedure shall apply:

48 (a) If the caller specifies which agency is to be contacted, the ope
49 ator shall make the appropriate connection;

50 (b) If the caller is unable to specify which agency is to be co
51 tacted, the operator shall immediately connect the caller to an "eme

agency relay center" to be coordinated by the California Disaster Office;

(c) At the emergency relay center, trained personnel shall:

(1) Determine the type of service which is required to render the necessary assistance.

(2) Determine the agency which is responsible for rendering the service in the area where the emergency exists.

(3) Contact the headquarters of the agency which is responsible for rendering the service and pass along to it all pertinent information regarding the emergency.

(4) Keep the caller on the line as long as possible so that he will be available if the unit responding to the emergency requests further information or direct communication with him.

SEC. 7. In conjunction with the operation of the emergency relay center the California Disaster Office shall conduct whatever programs it deems necessary to test proposed techniques for the routing of emergency telephone calls.

SEC. 8. The California Disaster Office shall also cause an engineering study to be undertaken to determine the feasibility and estimated costs of programming emergency telephone calls in order to reduce to a minimum the time and complications in the procedure required to process such calls and, at the same time, provide for the use of a simple, universal telephone number for reporting emergencies regardless of the location of the emergency.

SEC. 9. The California Disaster Office shall submit a report regarding its activities under this act, together with any proposals for legislation regarding emergency telephone service, to the Legislature no later than December 1, 1966. The advisory body may, in addition make such report to the Legislature, not later than the fifth legislative day of the 1967 Regular Session, regarding the activities of the California Disaster Office under this act or regarding emergency telephone service, as it may deem desirable.

SEC. 10. The sum of two hundred thousand dollars (\$200,000) is hereby appropriated from the General Fund to the California Disaster Office for expenditure in accordance with the following schedule.

Schedule:

(a) Conducting emergency telephone system pilot project, including expenses of members of advisory body and preparation of reports to the Legislature	\$150,000
(b) Engineering study of feasibility and estimated costs of programming emergency calls	50,000
Total of schedule	<u>\$200,000</u>

At any point during the conduct of the pilot project, the director of the disaster office may, upon his own discretion, terminate the project and, thereafter, explain the reasons for the termination in his report to the Legislature as required herein.

SEC. 11. This act shall remain effective until the 91st day after the final adjournment of the 1967 Regular Session of the Legislature, and shall have no force and effect after that date.

H.R. 447 (WILLIAMSON)

"Charter Bus Operations"

The committee held one hearing on HR 447, on September 30, 1964, in San Francisco.

SCOPE

H.R. 447 developed out of a series of legislative encounters with the question of competition between publicly owned and privately owned bus companies in the field of charter service.

In 1961, amendments were added to the Los Angeles Metropolitan Transit Act of 1957 which specified that the LA MTA could no longer offer charter bus service, since private bus lines in the area were ready, willing and able to do so. The MTA was permitted to lease its equipment to other parties for charter purposes, however. These amendments were perpetuated when, in 1964, the MTA was statutorily transformed into the Southern California Rapid Transit District.

In the meantime, during the 1963 Session, AB 889 passed both houses of the Legislature. It would have done to the Alameda-Contra Costa Transit District that which the 1961 amendments did to the Los Angeles system. The Governor vetoed the measure, and the Legislature found itself with conflicting positions on the matter.

H.R. 447 directed the Legislature to look into the State's policy and determine answers to "the problems connected with the competition of public and private entities in this field."

POSITIONS

Testimony was overwhelming in its opposition to furthering State policy that limits publicly owned bus companies in the charter business.

Spokesmen for the public-district-ownership and municipal companies stated that the revenue produced from charter operations is an integral part of the balanced budget in most bus firms and that to some, it constitutes the difference between deficit and operating in the black.

Furthermore, it was pointed out that public transit systems, when they are formed, usually buy out the equipment and facilities of an existing private operator. As part of the "package," districts often acquire charter service obligations and develop significant revenue sources using otherwise idle buses for charter parties. It was argued that the state should recognize the disservice it would render the public in prohibiting transit systems from offering charter service, since the loss of charter revenue would work toward increased transit fares.

The major testimony forthcoming from the private ownership sector conceded that prohibitions against public transit system charter operations are inadvisable. The spokesman for East-Shore Lines, Inc., suggested that charter privileges be restored to the Southern California Rapid Transit District under controlled conditions.

Statements filed by representatives of privately owned bus firms, subsequent to the hearing, suggested that the Legislature explore ways and means to reduce the tax burdens of private bus enterprises that are in charter bus competition with public ownership companies, whose tax obligations are minimal.

ANALYSIS

Since charter operations appear to be a significant element in an economically integrated bus system, there would appear to be little ground for denying privileges to operate charter services to the public ownership portion of the bus industry and not treating the private groups alike. Since the Los Angeles Southern California Rapid Transit District is the *only* operating transit system in the U.S. and Canada that is denied, by law, the right to charter its buses in competition with private carriers, amendments should be introduced that would enable this agency to reenter the charter field.

Also, since the 1961 MTA amendments, the legislature has created two transit districts in Marin and San Mateo Counties, neither of which is at this time operational. The legislation by which these districts were formed includes prohibitions against charter bus activity. While the testimony did not bear directly on circumstances within these districts the committee believes that the legislature should direct its attention to the question of whether or not charter bus privileges should be written into the Marin and San Mateo district statutes.

RECOMMENDATIONS

The committee recommends adoption of legislation restoring charter bus operation rights to the Southern California Rapid Transit District. It is further recommended that the legislature review its previous policy in prohibiting the San Mateo and Marin Counties transit districts from engaging in charter bus operations. This same policy question should be raised in the consideration of any future legislative proposals to create public transit systems.

An act to amend Section 30005 of the Public Utilities Code, relating to the Southern California Rapid Transit District.

The people of the State of California do enact as follows:

SECTION 1. Section 30005 of the Public Utilities Code is amended to read:

30005. "Rapid transit," as used in this part, means the transportation of passengers only and their incidental baggage by means other than by chartered bus, sightseeing bus, or taxi, or any other motor vehicle not on an individual passenger fare paying basis. Nothing in this section shall be construed to prohibit the district from leasing its busses to private certified public carriers or to prohibit the district from providing chartered bus service and schoolbus service for the transportation of pupils between their homes and schools.

A.B. 1320 (WILLIAMSON)

"Gasoline Temperature Corrections"

One hearing was conducted on July 22, 1964 in Long Beach.

SCOPE

A.B. 1320, 1963, would have required gasoline deliveries to retailers to be corrected for temperature expansion. Gasoline is expanded by heat and contracted by cold so that fuel purchased at one temperature and resold at a higher temperature will amount to more gallons resold than originally purchased, while fuel resold at a lower temperature will amount to fewer gallons.

The relationship between the atmospheric temperature at which the retail gasoline dealer purchases gasoline and ground temperature at which gasoline for resale is stored has the effect of accentuating this problem for the retail dealer. Scientific evidence has established that underground storage tank temperatures are ubiquitously and seasonally constant.

The problems raised by the foregoing are complicated by the dealer whose gasoline expands or contracts not only by gains or losses on the price, but also on state and federal taxes, totaling 11 cents per gallon. This is because taxes are paid to the producer or distributor on the basis of gallonage purchased and must be recovered by collection from retail customers on the basis of the gallons sold, which will most often amount to less than the purchased gallonage.

POSITIONS

Spokesmen for the gasoline retail industry testified that the State Legislature, at the time the Motor Vehicle Fuel License Tax Law was enacted, did not fully define "gallon." Although the law has been amended in many ways since that time, they pointed out that no precise definition of the word "gallon" has ever been made part of the law. Since 1961, however, state law has provided that whenever gasoline is sold in lots of 5,000 or more gallons, the state tax may be measured either by metered gallons or gallons as corrected to 60 degrees, as long as one or the other method is consistently followed for 12 consecutive months in sales to the retailer. (Revenue and Taxation Code, Section 7355) Thus state policy gives recognition to the generally accepted industry practice of temperature correction, a practice employed at all levels of petroleum transfers up to, but not including all deliveries to the retailer. The retail dealers took note of the fact that the distributor is allowed, but not required, to sell on a temperature corrected basis, and that many dealers are either unaware of any option they may have to obtain corrections or are reluctant to attempt bargaining with distributors.

Testimony from the petroleum producer and distributor industry indicated that some companies make standard practice of offering tem-

perature corrections on deliveries of 5,000 or more gallons; that others leave the initiative to the dealer; and that some do not correct deliveries. The belief was expressed that such sales arrangements should remain on the basis of arms-length bargaining, and should not be made a part of the law.

ANALYSIS

The committee found that correction of gasoline deliveries is a matter of considerable concern to retail dealers, and that the petroleum industry practice is not consistent; that is, gallonage is corrected in all transfers from refinery to retail dealer, but is frequently not executed at that final point. Moreover, the committee found that the nature of the retail petroleum market makes for the possibility that gasoline dealers be treated differently by the various distributors; that many dealers may either be unaware of the potential savings available through temperature correction, or may be led to believe that requests for corrections will result in breakdowns in distributor relations. The committee found no reasonable basis for setting minimum gallonage standards, since testimony indicated that sales to retailers by distributors and producers are rarely, if ever, of volumes so small as to not warrant temperature correction and the contraction or expansion of gasoline takes place, irrespective of that volume.

RECOMMENDATIONS

In view of the existing state policy that takes partial cognizance of the issue by allowing temperature corrections in the levying of state gas taxes, the committee is compelled to extend the law to a point of consistency and recommend passage of law requiring temperature correction on all deliveries of gasoline by distributors to retail dealers. Moreover, the committee recommends amendments to the Motor Vehicle Fuel License Tax Law (Revenue and Taxation Code, Section 7355) to take account of the proposed change in law affecting distributor sales to retailers.

An act to add Article 7.5 (commencing with Section 20870) to Chapter 7, Division 8 of the Business and Professions Code, and to amend Section 7355 of the Revenue and Taxation Code, relating to fuel.

The people of the State of California do enact as follows:

SECTION 1. Article 7.5 (commencing with Section 20870) is added to Chapter 7, Division 8 of the Business and Professions Code, to read:

Article 7.5. Basis of Settlement

20870. As used in this article, "gallon" means the United States gallon of 231 cubic inches as provided in Section 12302 of this code.

20871. It is unlawful for any distributor to sell any product to a retailer as, or purporting to be, gasoline, unless the basis of settlement is a temperature corrected gallonage to 60 degrees Fahrenheit.

In computing the net gallonage which shall be used as the basis of settlement, the distributor of such product shall add to or subtract from the gross gallonage delivered that number of gallons necessary

1 to so correct the volume delivered and to be found by computing si
2 tenths of 1 percent of the gross volume delivered for each 10 degree
3 Fahrenheit or major fraction thereof difference between the temper
4 ture of the gasoline taken at the time of delivery and 60 degree
5 Fahrenheit.

6 SEC. 2. Section 7355 of the Revenue and Taxation Code is amende
7 to read:

8 7355. "Gallon" means the United States gallon of 231 cubic inch
9 as provided in Section 12302 of the Business and Professions Cod
10 ~~without~~ with adjustment of the volumetric gallonage for temperatu
11 correction of the fuel distributed; ~~except that temperature correct~~
12 ~~gallonage to 60 degrees Fahrenheit. as invoiced to the purchaser w~~
13 ~~be accepted as the gallonage distributed with respect to the followin~~
14 ~~distributions:~~

15 (a) To a distributor licensed under this part.

16 (b) To any person ~~when~~ the distribution is exempt from tax
17 provided in Section 7401 of this part.

18 (c) To a purchaser who uses the fuel exclusively for a purpose oth
19 than in motor vehicles operated upon the public highways of this Sta
20 entitling him to a refund of the tax.

21 (d) To the United States government or any agency or instrume
22 tality thereof pursuant to a contract of sale requiring application
23 temperature correction.

24 (e) To any person when the quantity distributed in any sing
25 delivery is 5,000 or more gallons and temperature correction is co
26 sistently applied to all such deliveries to the purchaser over a period
27 12 or more consecutive months.

H.R. 448 (WILLIAMSON) AND H.R. 70 (1ST EX. STANTON)

"Corporations"

Hearings on H.R. 448 and H.R. 70 (1st Ex.) were conducted on July 7, August 4, and September 23, 1964, in Sacramento, San Francisco and San Diego, respectively.

SCOPE

Both resolutions, H.R. 448 and H.R. 70 called for legislative inquiry into corporations, generally, though the latter was aimed more directly at uncovering weaknesses in the separate functions of:

The Secretary of State—"The chartering of corporations," and
The Corporations Commissioner—"The issuance of permits to solicit capital."

The committee hired a special consultant, Sheldon H. Grossfield of Sacramento, to direct its investigation into the division of agency functions and to help in determining whether or not the public interest suffers as a result thereof.

POSITIONS

The findings of the special consultant's report pointed conclusively to the following:

- (a) Existing statutes technically grant certain immunities and privileges to a corporation in return for the mere action of filing articles of incorporation.
- (b) Existing statutes in no way require incorporators, after the filing of articles with the Secretary of State, to proceed with application for a permit from the Corporations Commissioner to issue securities.
- (c) The courts, in settling suits against the persons on behalf of whom corporations are formed, do not, in practice, recognize corporate immunities if the incorporators did not seek to issue securities.

It was concluded by the special consultant that legislation would be in order that requires incorporators not only to file articles of incorporation, but also to apply for a permit to issue securities, to then obtain that permit and, furthermore, to issue the securities, all of this within a reasonable period of time following the filing of articles. Thus, the statutes would be brought into focus with the practice of the courts.

The consultant's report urged consolidation of these two functions—filing of articles and issuance of stock permits—under one roof. Since the latter step of issuing permits as performed by the Corporations Commissioner, is the more complex, it was suggested that the corporate functions of the Secretary of State be transferred to the Division of Corporations.

Finally, a third recommendation was offered by the staff of the Secretary of State—that corporations be made responsible for keeping the public informed of any changes in their officers or addresses. The consultant drafted legislation which requires timely notice of such changes and empowers the Secretary of State to serve valid court process at the last known address of corporations if parties attempting to serve such process attest to their inability to locate the corporation or its officers due to the corporation's failure to comply with such law.

ANALYSIS

In view of the independent position of the special consultant, who is a practicing attorney, a judge of a judicial district, and a professor of law, the committee concluded that the substantive recommendations in his report are sound. No opposition arguments were stated before the committee, with the exception of the Secretary of State's rejection of the proposal to transfer his corporate functions to the Division of Corporations. The office of the Attorney General vigorously supported all three of the consultant's suggestions. The Corporation Commissioner took no official position on the matter of transferring functions, but agreed with the objectives contained in the balanced recommendations of the report's recommendations.

RECOMMENDATION

The committee recommends that legislation be adopted which embraces the two substantive recommendations contained in the consultant's report relating to conformity with the corporate securities laws of the state and to the notification of changes in corporate officers and addresses. The committee does not, at this time, find compelling the reasons for consolidating the corporate functions of the Secretary of State and Commissioner of Corporations and recommends that any proposal for such consolidation await sufficient time for analysis of the procedural difficulties that might arise as a result of the above recommended legislative actions.

An act to add Sections 102.1, 308.1, 3301.1 of the Corporations Code, to amend Section 338 of the Code of Civil Procedure and Section 3301 of the Corporations Code, and to repeal Sections 3302 and 3303 of the Corporations Code.

The people of the State of California do enact as follows:

- 1 **Add Sec. 102.1, Corp. C.**
- 2 102.1. "Commissioner" means the Commissioner of Corporations.
- 3
- 4 **Add Sec. 308.1, Corp. C.**
- 5 308.1. A corporation shall apply to the commissioner for a permit
- 6 to issue securities in accordance with the Corporate Securities Law
- 7 (commencing with Section 25000), within 90 days of having filed its
- 8 articles pursuant to Section 308, or prior to January 1, 1966, whichever
- 9 ever is later. In addition, a corporation shall secure such a permit
- 10 and issue its securities in compliance therewith within one year from

the date of filing of its articles, or prior to October 1, 1966, whichever is later, or any extension of such one-year period as may be granted by the commissioner within his discretion.

In the event a corporation fails to make application for a permit to issue its securities, or fails to secure such a permit, or fails to issue its securities in compliance therewith, within the prescribed periods its corporate existence shall be deemed never to have commenced, and its directors and officers shall be deemed to have been engaged in a partnership and shall be individually liable for all debts and obligations incurred from the date of filing the articles of incorporation.

Nothing stated in Section 308.1 shall be construed to preclude the application of the judicially developed doctrine which permits "piercing of the corporate veil" to those corporations which do comply with Section 308.1.

This section shall not apply to any corporations exempted from compliance with the Corporate Securities Law (commencing with Section 25000).

Amend Sec. 388, C.C.P.

388. When two or more persons, associated in any business, transact such business, under a common name, whether it comprises the names of such persons or not, *or as a corporation deemed never to have existed pursuant to Section 308.1 of the Corporations Code*, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates; *or in the case of the indicated corporate association, as provided in Sections 3301 or 3301.5 of the Corporations Code* and the judgment in the action shall bind the joint property of all the associates, and the individual property of the party or parties served with process, in the same manner as if all had been named defendants and had been sued upon their joint liability.

Amend Sec. 3301, Corp. C.

3301. Every domestic corporation shall file within 30 days after filing articles of incorporation with the Secretary of State a statement of the names of its president or other head, its secretary, its treasurer (if any), and any other officers desired to be named, together with a statement of the location and address of its principal office. If desired, the statement may designate, as the agent of such corporation for the purpose of service of process, any natural person residing in this state or any corporation which has complied with Section 3301.5 or Section 6403.5 and whose capacity to act as such agent has not terminated. If a natural person be designated, the statement shall set forth his complete business or residence address. If a corporate agent be designated, the statement shall set forth the state or place under the laws of which such agent was incorporated and the name of the city, town or village wherein it has the office at which the corporation designating it as such agent may be served, as set forth in the certificate filed by such corporate agent pursuant to Section 3301.5, 3301.6, 6403.5 or 6403.6.

In the event of any change in the officers of the corporation, named in the statement required by this section, or in the location or address of its principal office or the stated address of a natural person whom it

1 has designated as such agent or the city, town or village wherein it
2 be served by delivery of a copy of any process to a corporate agent.
3 domestic corporation shall file with the Secretary of State within
4 days of the effective date of said change a statement of such
5 officers, or new location or address or such new city, town or village
6 which statement shall also, in any case, include the names of the
7 officers, the names of whom are required above to be stated whose names
8 are required by this section to be stated.

9 A corporation may at any time file a new designation of agent for
10 the purpose of service of process and such filing shall be deemed
11 to revoke any prior designation of agent.

12 Delivery by hand of a copy of any process against the corporation
13 (a) to any natural person designated by it as agent, or (b), if the
14 corporation has designated a corporate agent, at the office of such
15 corporate agent in the city, town or village named in the statement
16 filed by the corporation pursuant to this section to any person at such
17 office named in the certificate of such corporate agent filed pursuant
18 to Section 3301.5 or 6403.5, if such certificate has not been superseded
19 or otherwise to any person at such office named in the last certificate
20 filed pursuant to Section 3301.6 or 6403.6, shall constitute valid service
21 on the corporation.

22
23 **Add Sec. 3301.1, Corp. C.**

24 3301.1. If a corporation fails to file any statement required by
25 Section 3301, at the time required thereby or by July 1, 1966 when
26 ever date later occurs, then the Secretary of State shall be deemed
27 to have been designated an agent of the corporation for service of process.
28

29 Service of process on the corporation pursuant to this section shall
30 be accomplished by delivering personally to the Secretary of State at
31 his office in Sacramento, an affidavit affirming that the corporate
32 defendant has failed to comply with Section 3301, and two copies of
33 the process. Such service may also be accomplished by mailing, by
34 certified or registered mail addressed to the Secretary of State in
35 Sacramento, the affidavit and two copies of the process.

36 On receipt, by personal delivery or mail, of the affidavit and process
37 the Secretary of State shall mail, by certified or registered mail, to the
38 corporation's last address of record of its principal office in this state,
39 one copy each of the summons and complaint. If the only address re-
40 corded by the records of the Secretary of State for the principal office
41 is the county in which it is located, then the process shall be mailed
42 to the county seat addressed to the corporation in care of the county
43 clerk. The county clerk who shall promptly send it to the corporation
44 at its address within the county, if known to him, and if unknown,
45 shall cause the process to be posted at the courthouse of the county
46 within 30 days. At the time of such mailing, the Secretary of State shall send
47 by certified or registered mail a statement to the plaintiff acknowledging
48 receipt of the affidavit and process, and stating that he has mailed
49 a copy of the summons and complaint to the defendant, stating the
50 address to which it was mailed and affirming that it is the last address
51 of record of the defendant corporation's principal office in this state.

The plaintiff shall forward five dollars (\$5) with the affidavit and process, for each party to be served, and the Secretary of State shall have no obligation to act upon the process unless accompanied by the proper fee.

The defendant shall appear within 30 days after mailing of the process by the Secretary of State.

If a corporation had failed to comply with Section 3301 and subsequently does comply, service of process may be effected as provided in this section for a period of 30 days following the date of such compliance. Thereafter, for so long as the corporation remains in compliance with Section 3301, process may not be effected pursuant to this section.

Repeal Sec. 3302 and 3303, Corp. C.

3302. If designation of an agent for the purpose of service of process has not been filed with the Secretary of State, or if the agent designated cannot with due diligence be found at the address designated for personal delivery of the process, and it is shown by affidavit to the satisfaction of a court or judge that personal service of process against a domestic corporation cannot be made with the exercise of due diligence upon the designated agent or in any other manner provided by law the court or judge may make an order that the service be made upon the corporation by delivering by hand to the Secretary of State, or to any person employed in his office in the capacity of assistant or deputy, one copy of the process for each defendant to be served, together with a copy of the order authorizing such service. Service in this manner constitutes personal service upon the corporation.

3303. Upon the receipt of any such copy of process, the Secretary of State shall give notice of the service of the process to the corporation at its principal office in this State, by forwarding to such office, by registered mail with request for return receipt, the copy of the process. If the only address disclosed by the records of the Secretary of State for the principal office is the county in which it is located, then the process shall be mailed to the county seat addressed to the corporation in care of the county clerk, or it may be mailed to any address for the corporation specified in the court order. If the process is mailed in care of the county clerk, the county clerk shall promptly send it to the corporation at its address within the county, if known to him, and if unknown, he shall cause the process to be posted at the courthouse of the county for 30 days. The defendant shall appear within 30 days after delivery of the process to the Secretary of State.

The Secretary of State shall keep a record of all process served upon him under this division, and shall record therein the time of service and his action with reference thereto.

H.R. 451 (WILLIAMSON)

"Operations and Practices of the Public Utilities Commission" (As related to privately owned water companies)

SCOPE

Under the authorization of H.R. 451—"operations and practices of the Public Utilities Commission"—the committee investigated and discovered certain breakdowns in the commission's authority to regulate water service utilities.

Testimony received on June 8, 1964, in Seaside, California, brought forth certain inconsistencies in the state's regulatory law. Regardless of the type of utility in question, the Public Utilities Commission has limited power to bring into being the effects of orders that it imposes on regulated utilities. The commission occasionally finds that its directions, aimed at providing equitable service to ratepayers, go unheeded. In such event, its only available recourses are: a contempt ruling and subsequent criminal prosecution of the operators, or; revocation of the utility's certificate of convenience and necessity. Neither of these alternatives works to improve service.

POSITIONS

Testimony was presented in evidence that utility operators do, in fact, ignore commission orders. The staff of the Public Utilities Commission provided a list of 34 water companies whose operations continually frustrate the commission. The California Water Association, representing the bulk of the state's privately owned water service companies, explained the causative factors:

Water companies are often created to serve immediate limited needs and may not have begun as true business ventures. Growth in population often places pressures on such companies for service to which their financial and managerial resources are unable to respond. The result is a dissatisfied group of rate payers and a sincere, but ill-equipped water company management.

The California Water Association and the staff of the Public Utilities Commission urged the adoption of legislation that would give the commission added authority to bring about water service on par with state-wide standards. They did so, however, with reservations about the possibility of placing the state in the water business, and with the recommendation that an effort be made to insure that ownership of water utilities remains in the hands of investors.

ANALYSIS

The subcommittee found conclusive arguments in support of remedial legislation. A draft bill, presented at the hearing has since been reworked to accommodate reservations of the California Water Association and the Public Utilities Commission staff. It is necessary to promote this legislation in order to enable the Public Utilities Com-

mission to bring about fair treatment from *all* water utilities. A portion of its design is intended to encourage investor-ownership of water utilities by providing a step in between private ownership and public acquisition through formation of assessment districts.

RECOMMENDATION

Legislation is recommended that would:

1. Enable the Public Utilities Commission to review service standards of water companies, and have the power, upon full hearing, to declare a service deficient water utility "inadequate," or "adequate." There would be procedure established for public petition of the Public Utilities Commission and subsequent investigation of service adequacy.
2. Grant to the Public Utilities Commission the power of receivership over "inadequate" water companies. The trustee appointed by the commission would be expected to make every attempt to bring service up to statewide standards by management correction and whatever financial adjustments that neither work undue hardships on ratepayers nor confiscate property from the owners. The trustee would not be able to incur any debts or obligations beyond that which the rate structure of the utility could support.
3. After a reasonable period of receivership (e.g. one-year), the Public Utilities Commission would return ownership to the company if operations were deemed acceptable. If the PUC should determine that receivership, even if continued beyond one year, is is not likely to correct inadequacies, the commission would return ownership to the original owners, so notify the customers, and advise the customers of their legal recourse via formation of public ownership district.

A draft of appropriate legislation is appended hereto. Legislative Counsel has advised the committee that the powers this legislation confers upon the PUC fall within the constitutionality test of maintaining the public health and safety.

An act to add Chapter 2.5 (commencing with Section 2715) to Part 2, Division 1 of the Public Utilities Code, relating to public utility water companies.

The people of the State of California do enact as follows:

SECTION 1. Chapter 2.5 (commencing with Section 2715) is added to Part 2, Division 1 of the Public Utilities Code, to read:

CHAPTER 2.5. PUBLIC UTILITY WATER COMPANIES

2715. As used in this chapter:

- (a) "Commission" means the Public Utilities Commission.
- (b) "Public utility water company" means any water corporation or water company which is a public utility within the meaning of Section 216 or 2701 of this code.

2716. The commission shall review the standards of performance of all public utility water companies serving and providing water to the public in the State of California. Such review shall be made at the discretion of the commission or upon receipt of a written petition signed by not less than 25 persons who are served by the public utility setting forth the reason or reasons that, in the judgment of those signing the petition, justify a change in the classification of the public utility. On the basis of such review the commission shall rate each such public utility water company as to its adequacy in providing for the health, safety and needs of its customers. Such adequacy shall be determined by the dependability of the water supply to all areas served by it and the quality of the water supplied as measured by the following factors:

(a) Maintenance of adequate safety standards in the operation of its water system.

(b) Maintenance of its equipment to insure continued and proper operation.

(c) Provision of emergency supplies, such as for fire or sanitation where required.

(d) Purity and freedom from foreign matter of water supplies furnished to the public.

(e) Degree of cooperation in furnishing water supplies to new areas desiring or requesting such supplies.

2717. Upon making the review and rating required by Section 2716 the commission may place a public utility water company in either of the following classifications:

(a) Acceptable. This classification means that the public utility water company has provided a dependable and adequate water supply.

Such a classification shall be applicable for not less than one year from and after the date it is made, and shall continue until changed by action of the commission initiated either on its own motion or upon the filing of a written petition signed by not less than 25 persons who are served by the public utility, setting forth the reason or reasons that in the judgment of those signing the petition, justify a change in the classification of the public utility. No change in classification to "unacceptable" shall be ordered by the commission until after a public hearing conducted by it at which the public utility water company shall be entitled to be heard and produce evidence.

(b) Unacceptable. This classification means that the public utility water company has not provided a dependable and adequate water supply.

2718. Whenever the commission shall have determined that the facilities or service of any public utility water corporation are unacceptable, the commission shall by order or rule, fix the rules, practice, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed. Such order or rule shall afford said water corporation not less than 90 days from the effective date of said order or rule within which to comply with the provisions of such order or rule. The commission may in its discretion extend the time for compliance. The order shall bear the date of service and shall state the effective date thereof, which shall be not less than 20 days after the date of service.

2719. If the water corporation shall fail to comply with the provisions of any effective order or rule made pursuant to Section 2718 within the time fixed by the commission, the commission may appoint a trustee to assume management of and operate any public utility water company which is determined to be "unacceptable." The trustee shall continue in control until the utility is classed as "acceptable" or until a period of one year elapses, whichever occurs first. The trustee shall be, at all times, responsible to the commission for his actions.

All costs of receivership shall be supported from operating receipts of the utility and shall, in no way, be met through state moneys.

If the trustee deems that additional revenues are necessary in order to secure compliance with the order of the commission made pursuant to Section 774, he shall promptly apply to the commission for authority to raise the rates or to alter any classification, contract, practice or rule so as to secure the increase in revenues as may be necessary in the circumstances. Hearing on the application shall be given precedence by the commission and shall be heard and decided at the earliest practicable time after the applicant is ready to proceed.

The trustee may obtain the process of a court to assist him in exercising his functions under this section.

The trustee may exercise his discretion in the operation of the utility during such time as the utility is under his management and control.

The trustee shall, in his discretion, pay out of receipts, moneys to the owner(s) of the utility an amount which is reasonable for his (their) livelihood and which does not impair the trustee in his efforts to restore service.

After a reasonable period of management by the trustee, which shall not exceed one year, the commission shall determine whether to return the utility's management to the owners, or to continue trusteeship for an additional year.

HEARINGS COMPLETED

Organization and Natural Gas—September 16 and 17, 1963	Newport Beach
Organization, Manufacturing, Oil and Mining Industry—September 27, 1963	
Natural Gas—October 22, 1963	San Francisco
Rock, Sand and Gravel—October 25, 1963	San Francisco
* Emergency Telephone—November 5, 1963	Pasadena
Natural Gas—November 19 and 20, 1963	Los Angeles
Rock, Sand and Gravel—November 26, 1963	Sacramento
Natural Gas—December 3 and 4, 1963	San Diego
Rock, Sand and Gravel—December 13, 1963	Long Beach
Natural Gas and Organizational—January 7 and 8, 1964	San Francisco
Rock, Sand and Gravel—January 30, 1964	San Francisco
Telephone Ratefixing and Directory Service—May 5, 1964	Los Angeles
Private Water Companies—June 8, 1964	Sacramento
Corporations—July 7, 1964	Seaside
Gasoline—July 22, 1964	Sacramento
Emergency Telephone—July 29, 1964	Long Beach
Corporations—August 3, 1964	San Francisco
Private Contractors and Underground Wiring—September 16, 1964	Sacramento
Corporations and Organization of Subcommittees—September 22 and 23, 1964	Newport Beach
Charter Buses—September 30, 1964	San Diego
Organization meeting to adopt final report December 17 and 18, 1964	San Francisco
	Sacramento

* All meetings conducted subsequent to October 31, 1963 were under the auspices of the full Committee on Public Utilities and Corporations.

LETTERS OF NONCONCURRENCE

Relative to A.B. 1320

Gasoline Temperature Correction

Gentlemen :

The wide variations in climate throughout California render it impractical to require temperature corrections on *all* distributor-to-retailer deliveries of gasoline. In the colder parts of the state, temperature correction is not of sufficient concern to warrant the administrative and procedural detailing that would be mandatory under the proposed legislation.

Existing practices of several gasoline distributors conform to the intent of the recommended legislation. Temperature correction should remain as it is, on a voluntary basis unless further hearings show more conclusive evidence of the need for this legislation.

Sincerely yours,

(signed) JAMES E. WHETMORE

Relative to H.R. 97, H.R. 449, H.R. 625, AB. 3125 and A.B. 3126

Natural Gas

Dear Mr. Chairman :

Kindly let the report show that on the subjects of the regulations of well head prices and direct sales not subject to Public Utilities Commission regulations, I share the views of Public Utilities Commissioner William M. Bennett. It is my belief that the total demand and total supply of natural gas must be part of a single system of regulation. Major elements of the supply and major elements of demand cannot be left unregulated since their size alone affects market conditions.

Sincerely,

(signed) WM. F. STANTON

Relative to H.R. 536

Rate Fixing Procedures of the P.U.C.

Dear Mr. Chairman :

Prime consideration is due the general public. There are any number of incidents wherein the public has no knowledge of an impending hearing. It is futile to describe legal notices in a newspaper as adequate public information.

There is no convincing evidence that suggests any significant cost in enclosing with a billing a notice of a hearing before Public Utilities Commission.

It is difficult to believe that the general public would not overwhelmingly support H.R. 586.

(signed) LEROY F. GREENE

Assemblyman James L. Holmes did not concur in the committee recommendations on A.B. 1320 and HR 447. He did not submit letters of nonconcurrence.

C

ASSEMBLY INTERIM COMMITTEE ON AGRICULTURE



FINAL REPORT

(House Resolution 500.1, 1963)



HON. JESSE M. UNRUH
Speaker

HON. JEROME R. WALDIE
Majority Floor Leader

HON. CARLOS BEE
Speaker pro Tempore

ROBERT MONAGAN
Minority Floor Leader

JAMES D. DRISCOLL
Chief Clerk

RELATIVE TO PACKAGING OF CONSUMER FOOD PRODUCTS.

WHEREAS, It appears to be a common practice for competitive food products to be packaged in a great variety of containers of different sizes; and

WHEREAS, This practice makes it difficult for the consumer to reasonably compare the prices of competitive food products; and

WHEREAS, The benefits of a competitive market are dependent, in large measure, upon informed consumers who are able to judge the relative price of similar products; now, therefore, be it

Resolved by the Assembly of the State of California, That the Assembly Rules Committee is directed to assign to the appropriate interim committee for study the subject of retail food packaging practices and the need of legislation to require retailers who sell food products to either sell such product packaged in standardized sizes or quantities or to publish the price per unit of such products offered for retail sale; and be it further

Resolved, That the Assembly Rules Committee direct such interim committee to report its findings on the subject matter of this resolution, together with its suggestions for proposed legislation, to the Assembly not later than the fifth legislative day of the 1965 Regular Session of the Legislature.

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LETTER OF TRANSMITTAL



Assembly Interim Committee on Agriculture

January 15, 1965

ION. JESSE M. UNRUH

Speaker of the Assembly; and

ION. MEMBERS OF THE ASSEMBLY

State Capitol, Sacramento, California

Gentlemen: In accordance with the provisions of House Resolution 500 of the 1963 General Session, the Assembly Interim Committee on Agriculture herewith submits that portion of the Committee's final report relating to House Resolution 219 on the subject of Consumer Food Packaging.

Respectfully submitted,

JOHN C. WILLIAMSON, *Chairman*
Harold E. Booth, *Vice Chairman*
Hale Ashcraft (with reservations)
William T. Bagley (with reservations)
Anthony C. Beilenson
Frank P. Belotti
Carl A. Britschgi
Gordon Cologne
Myron H. Frew
Charles B. Garrigus
Joe A. Gonsalves
Stewart Hinckley
Harvey Johnson
Alan G. Patee (with reservations)
Carley V. Porter
Walter W. Powers
John G. Veneman
Victor V. Veysey

MEMBERS OF THE COMMITTEE

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Harold E. Booth,

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Alan G. Pattee
Carley V. Porter
Walter W. Powers
John G. Veneman
Victor V. Veysey

Hazel Lombardo
Secretary

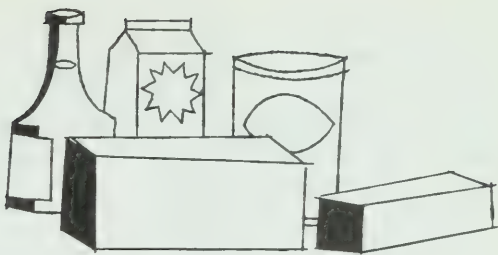
William H. Geyer
Consultant

George Robbins
Intern

Roger McNitt
Research Assistant



ART 1. INTRODUCTION



The California Legislature and the federal government long ago recognized the value and the contributions of the free enterprise system to California and the union, and they have continually followed courses of action dedicated to the preservation of such a system. As former President Kennedy said:

"I regard the preservation and strengthening of the free market as a cardinal objective of this or any administration's policies. It is well to remind ourselves from time to time of the benefits we derive from the maintenance of a free market system. The system rests on freedom of consumer choice, the profit motive, and vigorous competition for the buyer's dollar. By relying on these spontaneous economic forces, we secure these benefits."

"Our system tends automatically to produce the kinds of goods that consumers want in the relative quantities in which people want them. The system tends automatically to minimize waste. If one producer is making a product efficiently, another will see an opportunity for profit by making the product at a lower cost. The system encourages innovation and technological change. Profits are the reward of the innovator but competitors will soon adopt the new techniques, thus forcing the innovator to continue to push ahead."

*"The free market is a decentralized regulator of our economic system. The free market is not only a more efficient decision maker than even the wisest central management body but even more important, the free market keeps economic power widely dispersed. It does this as a vital underpinning of our democratic system."*¹

Dr. Irston Barnes, professor of political economy at the Columbia Graduate School of Business, further explains the free enterprise market system: *"Integrity of markets cannot be preserved unless all buyers and all sellers have a right of equal access to the market. Equal access to the market means a full knowledge of all relevant facts with respect to price, quality, and other significant dimensions of market transactions."*² Concerning the right of persons to have access to relevant facts ex-President Kennedy said: *"These rights include . . . the right to be informed—to be protected against fraudulent, deceitful, or grossly misleading information, advertising, labeling, or other practices, and to be given the facts (needed) to make an informed choice."*³

The California Legislature and the federal government are fully cognizant that the grocery industry in the past 20 years has grown fabulously with annual sales having increased from 16 billion dollars to 80 billion dollars⁴; that, whereas the average supermarket 10 years ago stocked some 1,500 items, today stocks 7,500, and in the not too far distant future supermarkets will carry

¹Quoted by Paul S. Willis, president, Grocery Manufacturers of America, Inc., New York, N.Y., in testimony before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, United States Senate (hereinafter cited as the Hart Subcommittee) 88th Congress. *Hearings on S. 387, Part I*, p. 234.

²*Ibid.*, p. 371.

³Message from the President relative to the Consumers' Protection and Interest Program. Reprinted in *ibid.*, p. 465.

⁴Testimony of Paul S. Willis, *ibid.*, p. 232.

upwards of 20,000 items⁵; that unfortunately there remain in our country 22 million persons who have less than an eighth grade education and who therefore, may have difficulty comparing prices no matter how simple such comparison is made for them⁶; that approximately 50 percent of the annual food dollar expenditures are for packaged groceries⁷; that retailers have reduced their operating margins 30 percent in the past three decades; that Americans spend 19 percent of their after-tax income for food, compared with 26 percent in 1949; and that an examination of 1949 kinds and quality of food will reveal that to get the same food today would take but 14 percent of post-tax income⁸; and that as L. Y. Ballentine, North Carolina Commissioner of Agriculture, so aptly states, "*Packaging should be the means for getting a commodity to the consumer in an attractive, efficient way—not to cover up anything that the consumer wants to know.*"⁹

The Legislature has constantly sought to protect the public and the honest entrepreneur from unscrupulous businessmen, and it has attempted (often with the instigation of or with the commendable assistance of the industries involved) to do all that it can to assist the consumer in obtaining the knowledge necessary to make the rational purchases which our free enterprise system thrives upon. Examples of the latter include efforts beginning in 1957 which led to the tentative adoption of specific tolerances and finally to the approval of the statutory quality control method of sampling packages by lot for inaccurate weight, final studies conducted on this topic and preliminary exploration of price-per-unit legislation by the Assembly Interim Committee on Agriculture in the 1961-62 interim, and passage of S.B. 378 (Rattigan) on package labeling in 1962. The Department of Agriculture has promulgated final regulations concerning quantity declarations on packaged commodities under S.B. 378.¹⁰ These regulations are designed to benefit the consumer without placing an unjust burden on the producer, who would, of course, ultimately have to pass on at least a substantial portion of any such encumbrance to the consumer. House Resolution 219 (1963) (Gonsalves) directed a study of "*the subject of retail food packaging and the need of legislation to require retailers who sell food products either sell such products packaged in standardized sizes or quantities or publish the price per unit of such products offered for retail sale.*"

It should be emphasized that H.R. 219 specifically designates food products sold at retail and that therefore this study is limited to such. It should also be noted at the outset that there are a great number of food commodities which for various reasons must, by law or regulation, be sold in California by specific quantities or sizes. Among these are the following:¹¹

- | | |
|--------------------------------|--------------------------------|
| 1. Bread | 7. Potatoes in containers |
| 2. Berries in containers | 8. Honey |
| 3. Butter in containers | 9. Eggs |
| 4. Oleomargarine in containers | 10. Dairy products |
| 5. Milk products | 11. Canned olives |
| 6. Onions in containers | 12. Some fruits and vegetables |

⁵ Statement submitted by Senator Edmund S. Muskie, Maine, *ibid.*, p. 533.

⁶ Statement of Wilber J. Cohen, Assistant Secretary for Legislation, Department of Health, Education and Welfare, *ibid.*, p. 360.

⁷ Helen Nelson, California Consumer Counsel, testimony before the California State Assembly Interim Committee on Agriculture, *Hearings on H.R. 219*, Norwalk, June 12, 1964 (hereinafter cited as *Hearings on H.R. 219*).

⁸ Statement of Clarence J. Adamy, Executive Vice President, National Association of Food Chains, Washington, D.C., before the Committee on Commerce of the United States Senate, *Hearings on S.J. Res. 71*, as amended (Food Marketing Study), p. 272.

⁹ Statement before the Hart Subcommittee, *Hearings on S. 387*, p. 204.

¹⁰ The California Department of Agriculture conducted hearings pursuant to the proposed regulations in Sacramento on August 18 and 19, 1964, at which time it heard representatives of the packaging industry and consumers. These regulations were made effective December 1, 1964.

¹¹ Testimony of Don Weinland, California Department of Agriculture, before the Assembly Interim Committee on Agriculture, *Hearings on H.R. 219*.

PART 2. THE PROBLEM



The impetus for this study came from the proliferation of package sizes (often in fractional ounces) which makes it virtually impossible to compare some products by price and even at times difficult to compare prices of the same product in various size containers.

Consumer groups have testified that they would not criticize the food industry if they believed the consumer had an alternative available—if the consumer could buy another product without experiencing the same difficulty—and if the industry would properly police itself.¹² It appears that this proliferation of packages is the result of what for want of a better term might be called ‘Gresham’s law of the marketplace.’¹³ Simply stated, the principle of ‘Gresham’s law’ is that the more honest operator is forced to the level of the less trustworthy in order to remain solvent. In the words of Dr. Barnes:

“Competitors cannot, as we know from experience, discipline the rival who engages in unfair and deceptive acts and practices or even in false and misleading advertising. Oblique statements calling attention to the merits of one product may carry implications with respect to the characteristics or advertising of another product, but these oblique statements are seldom very effective in influencing buyer responses. And any direct attack upon a competitor or his product is likely to be challenged as disparaging the competitor or the product. Disparaging a competitor or his product is, and long has been, treated as an unfair method of competition. Since consumers in substantial numbers do not recognize promptly any departure from good packaging standards and react decisively against those manufacturers who use deceptive packaging, there is little likelihood that competition can eliminate deceptive packaging when this practice is advantageous to some competitors. Consequently, we are forced to the conclusion that competitive morals in packaging are likely to be set by the least moral and the less scrupulous, rather than by those competitors who are sensitive to the importance of straightforward dealings with consumers. This last statement must be modified to recognize that where a firm establishes a dominant position in the market, either by reason of its size or by reason of its capacity to engage in intensive advertising and promotion, that dominant firm may be able to maintain high and scrupulous standards in packaging simply because it has established such strong consumer loyalty.”¹⁴

Dr. Barnes does admit that consumers may ultimately recognize deceptive practices perpetrated by the less scrupulous, but he contends that by the time the public becomes fully cognizant of the situation the highly honest businessman may be out of business, or if not, he has probably experienced a loss in sales.¹⁵ Of course, the harder it is for the consumer to discern the true price, the longer it will take the free enterprise system to eliminate the less scrupulous.

Mrs. Sarah H. Newman, General Secretary, National Consumers League, Washington, D.C.

Testimony before the Hart Subcommittee, *Hearings on S. 387*, pp. 160–61.

Testimony of Caroline F. Ware, consultant on consumer problems, Washington, D.C., *ibid.*, p. 193.

Barnes, *ibid.*, p. 380.

Ibid., p. 376.

That there has been a plethora of new packages, many in nonstandard sizes in the food industry is obvious and only a few examples need be cited. The office of the Consumer Counsel has brought some of these to the attention of the committee. In 1961 there were 17 items of oil on the market, one of which was in a nonstandard size, 24 ounces. By 1964 there were 39 different items of oil, 21 of which were nonstandard. None of the 21, however, contained fractional ounces.¹⁶ The Consumer Counsel has also pointed out some erosion of standard quantity sizes in the following commodities: cheese, dried apricots, salad dressing, rice, crackers, spaghetti, beer, canned kidney beans, wine vinegar, hotdog raisins, soft drinks, mayonnaise, olive oil, apple juice, evaporated milk, jam, syrup, egg noodles, instant coffee, and ketchup. (See Appendix A.)

It appears that consumers are painfully unaware of the exact price of many items whether they are packed in standard or nonstandard weight packages.¹⁷ A trade study made by the magazine *Progressive Grocers* shows that although 78 percent of the customers had shopped at the same store for more than two years, more than one-half of these consumers were able to name the exact price of only one item (a six-pack of Coca-Cola) in a survey of 60 fast-moving products. There appears to be no absolute relationship between rank in price recognition and standard or nonstandard weight packages. Many nonstandard weight commodities ranked ahead in price recognition of a standard one-pound can of coffee. On the other hand, there were many standard-weight items which ranked higher than some nonstandard weight containers.¹⁸

It has been contended that the aforementioned proliferation of packages, especially those with nonstandard or random weights, has made it difficult and confusing, if not impossible to ascertain price per unit without some type of hand computer.

Mrs. John Freeman, the representative of the Manhattan Beach Branch of the American Association of University Women underscored this contention and explained the mathematics involved in the calculation of price per unit and presented charts designed to show the difficulty involved in attempting to calculate price per unit. (See Appendix B)

The result is consumer confusion, accompanied by widely and often irrationally varying prices for what is basically the same product. In testimony before the committee, the representative of the California Federation of Women Clubs gave this example: "In one market, five similar varieties of packaged ham in 3-, 4-, 5-, 6-, and 7-ounce quantities, ranged in price from \$0.39 to \$0.59. In terms of a pound, the cost varied from \$1.31 to \$2.20."¹⁹ Mrs. James C. Goodwin, the representative of the Association of California Consumers pointed out that there were 153 different packages of cereal and cereal products in a grocery store but that only 30 are in standard sizes, there being 26 odd weights under one pound.²⁰ To test the ability of the consumer to solve such problems, the office of the Consumer Counsel conducted an experiment in an attempt to ascertain if five college trained women could compare prices of 14 products and buy the cheapest brand in a grocery store regardless of quality. Of the 70 attempts (5×14) to get the cheapest product, barely half (36) were successful.²¹

¹⁶ Testimony of Helen Nelson before the Assembly Interim Committee on Agriculture, *Hearings on H.R. 219*.

¹⁷ Testimony of Mrs. Sarah H. Newman, Hart Subcommittee, *Hearings on S. 387*, p. 157.

¹⁸ *Progressive Grocer*, "Colonial Study: A Report on Supermarket Operations and Consumer Habits," p. C105.

¹⁹ Testimony of Mrs. Robert Kidd, consumer interest chairman, California Federation of Women Clubs, before the Assembly Interim Committee on Agriculture, *Hearings on H.R. 219*.

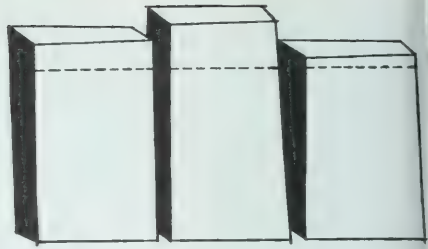
²⁰ Mrs. James C. Goodwin, *ibid*.

²¹ "Packages and Prices"—A report transmitted to Governor Brown, 1963, p. 4.

Finally, though it is generally expected that the larger size of a given commodity will cost less per unit than a smaller size because of economies gained in reduced handling costs, sometimes this is not the case. In such instances the consumer can get more for her money by purchasing two or more of the smaller item. There are five possible explanations of this phenomenon. It may be that the retailer wants to push the smaller package at the expense of the larger one, and thus makes it a better buy. It may also be that the retailer believes the consumer either does not care to or is unable to compare prices and that the retailer can, therefore, increase his profits by duping the consumer. It is equally conceivable that the retail grocer himself fails to determine the price per unit, and by guessing what the public will pay, occasionally inadvertently charges more for the larger size. Fourthly, it may be an error in marking by the clerk, and lastly, a new shipment may be placed on the shelf at a lower price than the earlier one, which was not marked down at the time the new shipment was placed on the shelf. In addition, the use of the words "economy size," "giant size," "king size," "family size," etc., sometimes deceive the consumer, and possibly the retailer, as to the relative size of packages.²²



It is interesting to note that a food and drug magazine commissioned the Institute for Design Analysis, Pier 5 North, San Francisco, to conduct a study of "Consumer Attitudes Toward Deceptive Packaging," published in July 1963. A major conclusion of this study was that "deceptive packaging is apparently not a paramount public issue now" (p. 9). However, this survey also reported that 42 percent of the total sample (34 percent of the women) felt that the term "economy size" was "not at all useful," 52 percent (49 percent of the women) opined that the words "giant size" were "not at all useful," and 54 percent (49 percent of the women) believed the term "king size" was "not at all useful." In each of these three cases less than 20 percent of the sample felt the terms were "very useful," the remainder falling into the category of "somewhat useful." Nonetheless, undue weight should not be placed on this preliminary study, for it was limited to the bay area and was conducted by telephone. A followup study is now being conducted by the Institute for Design Analysis. The institute expects to complete this survey by January 1965.



PART 3. CAUSES OF PROLIFERATION

Because of these problems, consumer groups suggest that either a standardized quantities (rather than standardized packages) law or a price per unit law similar to the Model State Law on Weights and Measures adopted by the 45th National Conference on Weights and Measures, be enacted.²³ Before an investigation into such proposed laws, it is necessary to ascertain the various reasons for proliferation of package sizes and the tendency towards the reduction of net contents accompanying such proliferation. These reasons fall into five categories:

- A. Consumer's desire for different size packages,
- B. New products or new formulas,
- C. Manufacturers' desire to increase profit,
- D. Packaging to price,
- E. Standardized containers for products with different densities,

and may profitably be discussed at greater length.

A. *"The consumers themselves have more and more expressed a desire to buy commodities in a variety of quantities, forms, shapes, and sizes,"* said Robert E. Graham to the Senate Antitrust and Monopoly Subcommittee.²⁴ Many of these desires stem from storage problems. As more Americans moved into smaller houses and apartments, they demanded smaller packages.²⁵ Special mixes, such as cake mixes, are oftentimes attendant with fractional weights, for they are designed to fill specific-size pans. When a manufacturer determines how much ingredient he must put into his package to make a good eight-inch cake, he places that amount in his package, no more or no less. In comparing prices of cake mixes the consumer must consider more than sales price and quality. She must consider also the recipe if she is to compare actual prices, for one may call for more additional ingredients than another.²⁶

Along the same lines consumers are often more interested in the number of servings they can get from a package rather than that the package contain an even pound or fraction thereof. Testimony at Norwalk pursuant to H.R. 219 brought out that this is the case in baby foods and tuna.²⁷ Quality must be considered heavily when purchasing food commodities, especially mixes. Many consumers prefer to buy a certain quality and do not compare prices after having first tested different products to ascertain which one they prefer. In the words of Merle Goddard, *"Most people buy by brand name and not by weight."*²⁸

²³ Testimony of Helen Nelson, *Hearings on H.R. 219*.
²⁴ Testimony of R. E. Graham, Executive Vice President, Owens-Illinois Glass Co., Hart Subcommittee, *Hearings on S. 387*, p. 401.
²⁵ Testimony of Esther Peterson, Assistant Secretary of Labor, *ibid.*, p. 126.
²⁶ Testimony of R. Alan Hickman, *ibid.*, p. 139.
²⁷ Testimony of R. J. Marsh and Charles Carry, *Hearings on H.R. 219*.
²⁸ Testimony of Merle Goddard before California State Department of Agriculture hearing considering labeling regulations, Sacramento, August 19, 1964.

B. From time to time, a manufacturer may alter the quality of his product in such a way as to justify either a price or package change, or both. Occasionally a manufacturer will develop an improved formula for which less total ingredients are needed to equal the performance of the earlier product. Consequently he may reduce the contents of his package without a proportional decrease in selling price. The same may be true of a new product which is similar to an established one. Whether there is deception involved in these cases is dependent on several factors, including whether the lesser volume does an equal or better job than the greater and whether the cost of the ingredients is greater. The prepared mix problem mentioned in the discussion of consumer desires is applicable here also. A new cake mix may make a seven-inch cake with a lesser number of ounces than another.

C. A decrease in net contents without an equally proportional diminution in price is a price increase which is much more likely not to be discerned by the consumer than a simple increase in the price of a given volume of a commodity. In the words of Professor Barnes, "*Temptations to reduce quantity while maintaining package size need not necessarily arise from the necessity of meeting an increase in costs of production or distribution; it may be a device to widen margins; either to increase profits, to provide for a larger advertising budget, or to compensate for a failure to achieve competitive standards of efficiency in some phase of the firm's operations.*"²⁹ Mrs. Goodwin, of the Association of California Consumers, presented an example of this. A 12-biscuit package weighed 9 ounces and sold for \$0.25, or \$0.45 per pound. The new, better labeled package still contained 12 biscuits, but it weighed 8 ounces and cost \$0.27, or \$0.54 per pound. Said Mrs. Goodwin, "*It is difficult to believe that this increase of 9 cents is merely a reflection of the additional costs of the new, taller, thinner package.*"³⁰

Against the assumption that such practices represent an arbitrary or totally unchecked consumer victimization by retailers, it should be noted that profits of supermarkets as a percentage of sales are low. Again quoting Professor Barnes, "*Competition among supermarkets limits the markup which supermarkets can take on the products which they offer for sale.*"³¹ Supermarket profits range between 1 and 2 percent of sales, and in 1963 the net income to net worth ratio of two large supermarket firms, Safeway and A&E, was 13.9 and 9.3, respectively.³²

D. Producers prefer to package some products by weight and others by price. In the first instance, the package weight remains constant and the price changes. In the second, weight is the variable factor. In the words of Alan Hickman, "*Variations in weight are usually not deceptive and not employed with the intent to confuse or hoodwink the public. Varying the weight is a legitimate and proper marketing method which benefits the consumer.*"³³ It appears that there are three separate but often interrelated reasons for a reduction in weight rather than a reduction in price other than the desire to increase profits. One is the desire to retain markets and quality in a time of rising or varying costs. The second is consumer preference for certain prices, and the third is the problem of vending machines.

²⁹ Barnes, statement before the Hart Subcommittee, *Hearings on S. 387*, p. 377.

³⁰ *Hearings on H.R. 219*.

³¹ Barnes, *op. cit.*, p. 373.

³² Statement of Angus McDonald, Associate Director of Legislative Services, National Farmers Union, before the House Committee on Agriculture, *Hearings on H.J. Res. 977*, pp. 62-67.

³³ Alan Hickman, Vice Chairman, All-Industry Packaging Advisory Committee, Dow Chemical Co., testimony before the Hart Subcommittee, *Hearings on S. 387*, p. 141.

Fluctuations in the price of chocolate and other candy ingredients mean that to keep the candy bar price level constant at 5 cents the manufacturer must vary the net weight or lower the quality of the bar. Since most producers are reluctant to decrease quality, they vary weight. If the costs of production rise the net weight of the candy bar falls and vice versa. With a volatile chocolate market, it can be expected that such changes will occur. Variations in net weight for a given price of a specific commodity are often found regionally because raw material and other prices vary. Since potatoes cost 20 percent more in Los Angeles than they do in Madison, Wisconsin, there is less weight in a 49-cent package of potato chips in Los Angeles than in Madison.³⁴ The same phenomenon holds for varying labor rates and packaging materials. Thus a nickel bag of potato chips may weigh one-half ounce in one city and five-eighths ounce in another.

Increased costs may not be passed on to the consumer by increases in the listed price in many instances, for the consumer finds a substitute product rather than pay more for the original one. In one case a producer had virtually no competition for his 4-ounce chipped beef package which he sold for 39 cents. For various reasons his costs increased and he tried to pass these increases on to the consumer by raising his price to 43 cents. Sales dropped 40 percent. The producer now was faced with a choice. He could suffer a loss at 43 cents, reduce quality but not quantity and charge 39 cents, or reduce quantity, and maintain quality, at 39 cents. He took the third alternative and regained his sales.³⁵

Psychological values of various amounts of money play an important role in pricing. A consumer may, even knowingly, be more willing to pay \$0.39 for less than to pay 43 cents for the original contents, even though price per unit is equal. Everyone knows that a great many products have prices ending in nine. Though this seems to defy rational explanation, it exists and must be seriously considered by the retailer. That these psychological values are important is seen in the fact that a package of a product of superior quality may be reduced in weight so that its price is equivalent to that of a brand of lesser quality.³⁶

Vending machines are an ever increasing vehicle for the sale of packaged food products. They are geared to accept certain coins. A good example again is the five-cent candy bar. It is self-evident that it is cheaper to adjust the contents of the candy bar than to be constantly adjusting machines to accept odd cents.

E. A major cause of odd-weight packages, ironically enough, is standardization of containers, especially in the canning industry. Such standardization creates economies for the canner which he can pass on in the form of lower prices. A Caroline Ware, consultant on consumer problems, said, "*Industries have found that such simplification and standardization permits more efficient management.*"³⁷ Such economies accrue to production, warehousing, distributing, and breakage.

Economies in production stem from the fact that fewer packaging machines are needed with standardization. Volume purchasing of standard size packages reduces cost per package. Additional buildings to house machines needed in quantity standardization is to be adhered to are unnecessary as are other costs attendant with additional machinery (taxes, labor, repair, depreciation, start-up cost, etc.). Lee Bickmore of the National Biscuit Company puts it this way:

³⁴ James W. Gee, *Hearings on H.R. 219*.

³⁵ Testimony of Merle Goddard and Leo Cohen, *ibid*.

³⁶ Testimony of Lloyd E. Skinner, President, Skinner Macaroni Co., and President, National Small Business Association, Hart Subcommittee, *Hearings on S. 387*, p. 737.

³⁷ *Ibid.*, p. 191.

"Suppose we were required to pack each of our four varieties to a standard weight of eight ounces. We would need three additional sizes of packages. Each different size would require a separate line of packaging equipment * * * it would cost us over \$1 million for each set of packaging machines to handle these four varieties * * * packaged as full as practicable to a standard of eight ounces.

"What would happen to our costs? They would go way up. If we had four packaging machines, only 25 percent of our total packaging equipment and plant would be productive at any one time. Because of the time involved in shifting our employees from one to another, our costs would be further increased by additional startup and shutdown expense.

"All of these added costs have to be reflected in higher prices. If consumers refused to buy the products at the higher prices, we would have to stop producing them. As a result, both the freedom of choice and the production output would have been curtailed. This could become a widespread curtailment among manufacturers resulting in increased unemployment, lower earnings, and reduced tax payments to the government."³⁸

Palletized loading or unit-load shipping of standardized cartons reduces warehousing and distributing cost. Likewise standardized containers lessen the chance of breakage.³⁹

The simple fact that the specific densities of various products differ means that fractional ounces will occur if the different products are put into standardized cans, if the containers are filled to the top.⁴⁰ Spices provide one example. In the words of Harrison F. Dunning, president, Scott Paper Company, "*The housewife wants a neat little rack of six kinds of spices, and she wants them all to look good in her kitchen, so, she wants them all the same size. They have different specific gravities, so to fill the bottle you have got to have 2¼ ounces of one, 3½ of another, 4½ of a third, and that is what the housewife wants.*"⁴¹ Vegetables are another example. One standardized container may hold 5 ounces of spinach, 5¼ ounces of peas, and 4¾ ounces of carrots. Even the same product may yield different densities. No one would claim that a standard 303 can would contain equal weights of sliced and chunk pineapple.

The tuna industry researched industriously for 10 years, often in cooperation with the government, before the Standards of Identity and Fill of Container regulations were promulgated by the Food and Drug Administration. The standard establishes two types of tuna—light and white—and four styles of pack—solid, chunk, flake, and grated. Each of these styles has a different density. A standard can (307 x 113) will hold 7 ounces of solid pack tuna, ½ ounces of chunk-style tuna, and 6¼ ounces of grated or flaked tuna. Thus industry and government, working together, achieved standardization in the tuna industry to a degree unknown to all but a very few industries.⁴² Yet, the consumers' complaint still remains that there is an unnecessary multiplicity of tuna can sizes and that the fractional ounces deceive the average consumer.



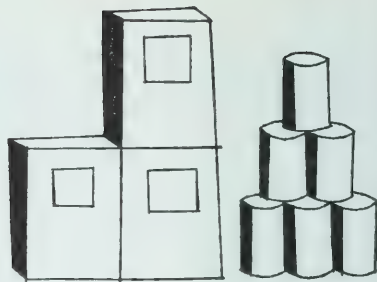
Testimony of Paul Willis, quoting Lee Bickmore of the National Biscuit Company, *ibid.*, p. 232. Lloyd E. Skinner, *ibid.*, pp. 738-740.

F. T. Dierson, *Hearings on H.R. 219*.

Testimony before the Hart Committee, *op. cit.*, p. 323.

Testimony of Chas. R. Carry, Executive Director, California Fish Cannery Association, *Hearings on H.R. 219*.

PART 4. STANDARDIZATION



Consumer groups request that legislation for standardization of quantities be enacted. For the reasons discussed above, it is obvious that some commodities offer a better opportunity for standard quantity packaging than others. The Consumer Counsel suggests that British law gives us a good starting point for reasonable variations. British law requires that certain staple foods, particularly those in dried or processed form, be packaged in any or all of the following quantities:

2, 4, 6, 8 and 12 ounces; 1 pound; $1\frac{1}{4}$, $1\frac{1}{2}$, $1\frac{3}{4}$, 2, $2\frac{1}{2}$, 3, $3\frac{1}{2}$, 4, and 5 pound or any multiple of a pound. (Appendix C.)

Testimony at the Norwalk hearing brought out that U.S. companies doing business in Great Britain adhere to these regulations and still make a profit.⁴³ It should also be noted that relatively few products customarily sold in cans are on the British list, and that therefore nonstandard quantity cans are being sold in Great Britain, seemingly with no handicap to the consumer.

Manufacturers and retailers reply that quantity standardization:

- A. Will not eliminate fractions for the consumer who desires to know the price per pound,
- B. May stifle packaging initiative,
- C. Might well increase the cost to consumer, not decrease it.

A. Fractions will remain in the calculation of price even if standardized quantity laws are promulgated in most cases.⁴⁴ Two one-pound containers of product which sell for two for \$0.69 will cost $2\frac{5}{32}$ cents (69 divided by 32) per ounce. Thus, at most, such laws would but reduce somewhat the amount of work in calculating. However, such laws might make it easier in that consumers could compare total prices for one-pound cans of competing brands. The word "MIGHT" is used herein because the following hypothetical situation could arise.

"Let us assume regulations were adopted strictly limiting the quantities of a given product to 8- and 12-ounce sizes. Let us further assume that brand A is packed in the 8-ounce size and brand B in the 12-ounce size. Having freedom to price as he pleases, the retailer decides to sell the 8-ounce size of brand A at 3 for 79 cents and brand B in the 12-ounce size at 3 for \$1.17.

*"Would anyone seriously suggest that the average housewife could without pencil and paper, quickly determine which brand and size offered the lowest price per ounce? The fact is, dividing whole pennies by whole ounces seldom results in whole pennies per ounce."*⁴⁵

⁴³ Questioning of Mr. Dierson by Mr. Williamson, *ibid.*

⁴⁴ Statement of Gilbert H. Weil, general counsel, Association of National Advertisers, New York to the Hart Subcommittee, *Hearings on S. 387*, p. 653.

⁴⁵ Statement of R. L. Cheney, executive director and marketing manager, Glass Container Manufacturers Institute, *ibid.*, p. 427.

B. F. T. Dierson put the problem of stifling initiative this way:

*"As regards product quality, compulsory quantity standardization threatens an adverse effect because its preoccupation with price comparisons may, for example, be expected to block the development of new products with greater ingredient value which involve a necessary reduction in weight or bulk. Packaging improvements will also be discouraged, for a compulsory standard would outlaw any variation from the prescribed standard and render impracticable any attempt to experiment for a determination of consumer preferences for the sizes that best suit their individual needs."*⁴⁶

With regard to a manufacturer of tissue who had continually reduced his package size until he found that he could sell a package of 50 tissues, Dierson continued:

"The likely prospect would be that you would have a count of 200, 400, or 800, with no provision being made for the 50. The question is, how does a man who wants to experiment with the 50 get in? He can't. Maybe the law will provide that if he conducts this experiment, he can come back at a further hearing and obtain special permission for the use of this product. However, experience with administrative procedure indicates that this is a very difficult process."

*"Furthermore, it points this out. The big fellow can take care of himself, but let us suppose it is the small manufacturer, whether of food or paper or anything else, who is the one with enough initiative and creative imagination to discover that this is what the consumer wants. He is blocked. Let us say he survives and finally gets it before a commission. When he does, he has to lay the whole thing out before his competitors. Instead of getting the greatly increased production that otherwise is justified by his innovation, he just doesn't get the rewards. Since everybody knows about it, perhaps the big fellow has it on the market even earlier. These are the consequences which we regard as inevitable."*⁴⁷

C. That standard quantity regulations might yield an increase in costs in the form of more packaging machines, etc., was seen in the previous discussion of standardized container sizes and different product densities. Thus, it appears that standard container sizes eliminate standard quantities, if the packages are fully filled. On the other hand, standard quantity regulations seem to dictate a proliferation of container sizes. The cost of such a proliferation, most of which would ultimately be borne by the consumer, could be substantial. The Kellogg Company has estimated its costs for quantity standardization, and the probable effects:

*"Some quick calculations indicate that if we were required to pack our products to standardized sizes, it would cost us between \$3 and \$6 million to produce the same volume of cereals which we now produce, depending on the standardized weights or volumes prescribed by the regulations. However, if we were compelled to standardize our packages, we would probably lose some volume due to our inability to give the consumer the sizes she wants to fit the needs of her family. Our business is a convenience food business, and if this convenience is eliminated or curtailed, business may also be curtailed."*⁴⁸

⁴⁶ F. T. Dierson, *Hearings on H.R. 219*.

⁴⁷ *Ibid.*

⁴⁸ Paul S. Willis, President, Grocery Manufacturers of America, quoting the president of the Kellogg Company, Hart Subcommittee, *Hearings on S. 387*, p. 238.

Additional cost estimations are found in the transcript of the Senate Subcommittee on Antitrust and Monopoly hearings on S. 387.⁴⁹

Another factor to be considered is that "*big business does have a much better capacity to adjust to changing requirements imposed by legislation, by regulation, or by market strategy*"⁵⁰ than small business. Thus, standardized quantity legislation could turn out to be an extremely unjust economic burden on small producers.

The question of how additional costs are passed on, if standardized quantity is required, could be crucial. Since such regulations would apply only to intra-state commerce, one possibility is that California consumers would absorb them. This seems inequitable because 85 percent of California's canning production is sold out of the state.⁵¹ Any attempt to pass on these costs to consumers outside of California could result in a substantial loss of markets for California agricultural commodities, thereby jeopardizing an important segment of California's economy. In the words of R. J. Marsh:

*"While it would be possible from a technological standpoint to require standardization of container sizes for products which laws and regulations require be labeled on a volumetric basis, it would be economic suicide for the California canning industry if this were required in California but not elsewhere. Most likely the first thing that our foreign competitors would do (and 'foreign competitors' is used here to mean non-California canners, would be to come out with a different container size for volumetric labeled products. The California canning industry would be frozen and unable to meet such competition unless it either made a special pack solely for sale outside of the State of California or deferred meeting the competition until such time as the California law could be changed to authorize sale in this state of the product in the non-standardized container size."*⁵²

One solution to the problem would be to allow standard size cans to be filled to standard weights—in other words, to permit some slack filling. Esther Peterson, Assistant Secretary of Labor, put it this way, "*It is obvious, I am sure, that one cannot have standard size packages and standard weights at the same time where the product differs in density and hence in weight per ounce. A reasonable amount of air in a box is not necessarily 'slack fill' if weight is truly stated.*"⁵³ There are three difficulties attendant with this approach—one psychological, one legal, and one technical.

From the volume of "*slack fill*" complaints received by weights and measures officials and consumer groups, it appears that it would take a rather substantial public information campaign to convince the consumer she is not being cheated when the container is slack filled. Thus, the fact remains that consumers feel deceived by slack fill, whether it actually is deception or not.

The legal problems stem from slack fill laws. Section 12605 of the California Business and Professions Code covers this area:

"Section 12605. Construction to facilitate fraud; seizure; disposition.

No container wherein commodities are packed shall have a false bottom, false side walls, false lid or covering, or be otherwise so constructed or filled wholly or partially, as to facilitate the perpetration of deception or fraud."

⁴⁹ *Ibid.*, pp. 310, 325, and 738. See also testimony of F. T. Dierson, *Hearings on H.R. 219*.

⁵⁰ Testimony of Dr. Barnes, Hart Subcommittee, *Hearings on S. 387*, p. 394.

⁵¹ Testimony of R. J. Marsh, *Hearings on H.R. 219*.

⁵² *Ibid.*

⁵³ Testimony of Esther Peterson before the Hart Subcommittee, *op. cit.*, p. 126.

Furthermore, Section 403 (d) of the Federal Food, Drug, and Cosmetic Act with respect to foods "*prohibits a container that is so made, formed, or filled as to be misleading.*"⁵⁴ The reason these regulations are not specific is that there are logical grounds for slack fill. Cereal packaged in Michigan will settle somewhat in its package in transit to California, even if "*overpacked*" at the factory by means of a shaker. The contents of containers filled with hot liquids will contract as they cool. Marshmallow paste packed in Denver will expand or contract when shipped into areas with a different pressure than that found in Denver. Thus, enforcement officials would have to be called upon more often to interpret slack fill laws, and probably to interpret them more liberally, if slack fill were to be permitted in standard size containers in order that standard quantities be obtained. Needless to say, if slack fill is permitted for the reason described above, it will be tempting to unscrupulous operators to use such permission to deceive the consumer.

There is a difficult technical enigma also. This problem is best expressed by R. L. Cheney, executive director and marketing manager, Glass Container Manufacturers Institute:

"The use of a single-size container to pack a standard net weight of a variety of items having different densities would not be technologically sound because this would result in greater headspace for the denser items.

*"Wholly apart from the appearance of slack fill, headspace must be held at a minimum, in the range of 3 percent, in order to prevent oxidation and to preserve vitamin and other nutrient content. While theoretically minimum oxygen content could be maintained by increasing the vacuum, this would not be practical because the housewife couldn't get the lid off."*⁵⁵



⁵⁴ George P. Larrick, Commissioner, Federal Food and Drug Administration, testimony before Hart Subcommittee, *op. cit.*, p. 355.

⁵⁵ R. L. Cheney, *ibid.*, p. 427.

PART 5. UNIFORMITY



The discussion of standard quantity requirements brought to light the economic hardships which would be presented by a multitude of different state quantity regulations. No doubt if each entity had different regulations regarding quantity standards and if these were constitutional, the economies of scale now attendant with production by large manufacturers would cease to exist and food prices would rise. Thus, uniformity of laws and regulations is paramount if the consumer and manufacturer are to benefit from standardized, simple packaging. Consumers, manufacturers, and government officials clearly recognize the necessity. This is a primary reason for the adoption of the Model State Law on Weights and Measures by the National Conference on Weights and Measures and for the suggestion by the Consumer Counsel that such model law be used as a guideline. It is the reason manufacturers decried any attempts to proliferate numerous, far different weights and measures regulations. In the words of L. Y. Ballentine, Commissioner of Agriculture of North Carolina testifying in favor of S. 387 introduced by Senator Phillip Hart of Michigan

"Enactment of S. 387 would result not only in protecting the consumer but also, by setting standards for uniformity in packaging and labeling would afford industry both economic and public relations advantages.

"In my own work I see industry representatives constantly working and pleading for as much uniformity in regulatory requirements as it is possible to achieve. S. 387, if properly administered, would support the states which have adequate legislation to deal with these problems.

"In setting federal standards, it would tend to bring about greater uniformity in state standards. Enforcement officials often experience resistance to state laws and regulations because the requirements differ between states, creating a hardship for processors and others when they sell in several states and are required to have different packaging or labeling for each one.

*"Enactment of this legislation would do much toward elimination of such state-to-state variations. State control officials are constantly working toward as much uniformity as possible between state and federal regulations."*⁵⁶

Passage of the Hart Bill would not greatly restrict the sphere of possible state action in the field of packaging. Section 2 of the Hart Bill states: "No amendment made by this act shall be construed to repeal, invalidate, supersede or otherwise adversely affect . . . (d) any provision of state law which would be valid in the absence of such amendment unless there is a direct and positive conflict between such amendment in its application to interstate or foreign commerce and such provisions of state law." (See Appendix D.) The section of the Hart Bill on packaging and labeling which pertains to this study reads as follows:

⁵⁶ L. Y. Ballentine, *ibid.*, p. 204.

"Sec. 3A. (e) Whenever the Secretary of Health, Education, and Welfare (as to any food, drug, device, or cosmetic), or the Federal Trade Commission as to any other consumer commodity, determines that additional regulations are necessary to establish or preserve fair competition between or among competing products by enabling consumers to make rational comparison with respect to price and other qualities, or to prevent the deception of consumers as to such product, the Secretary or the Commission, as the case may be, shall promulgate under this subsection with respect to that commodity regulations effective to—

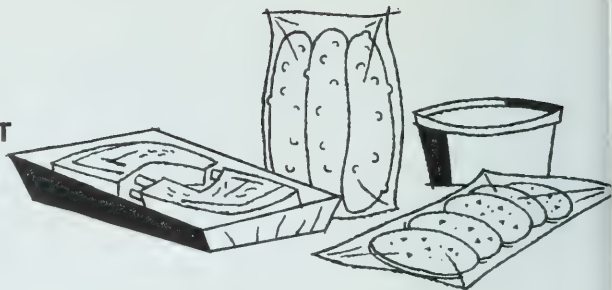
"(1) establish reasonable weights or quantities, or fractions or multiples thereof, in which that commodity shall be distributed for retail sale."

It is important to note that this bill makes no mention of price per unit regulations.

The necessity for basic uniformity among the states in the regulation of commerce is fundamental to the reservation of power over interstate commerce to the federal government. For this reason, any state legislation in the field of packaged commodities must not infringe upon the constitutional prerogatives of the federal government. Generally speaking, considerable latitude is given to state legislation in the absence of federal legislation preempting the field. The Legislative Counsel has held that the states presently have this authority over commerce in packaged commodities as an exercise of the police power, subject to the tests of uniformity and preemption. The counsel has also held that the passage of S. 387 would probably not preclude a state from adopting and enforcing standards which are either identical with or more restrictive than federal standards. (See Appendix E)



PART 6. PRICE PER UNIT



In order to circumvent the aforementioned problems which standardization of quantity would bring about, some groups have suggested that price per unit would not only avoid the problems but would be more meaningful because the consumer would be given, and therefore would not have to calculate, the price per unit. Any proposed price per unit legislation would undoubtedly be along the lines of Section 27 of the Model State Law on Weights and Measures, which is limited to "random" packages.

Sec. 27. Same: Declarations of Unit Price on Random Packages.

In addition to the declarations required by section 26 of this Act, any commodity in package form, the package being one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count." ⁵⁷

This language first appeared before the California Legislature as the amended version of A.B. 1364 (Knox) during the 1961 session. A.B. 1364 was assigned to the Assembly Interim Committee on Agriculture for the purpose of interim study. A hearing was subsequently held in San Francisco on the subject on October 9, 1961. Testimony was presented to the committee relative to the need for this information on meat and so-called delicatessen items that customarily appear in "random" packages.

A.B. 1364 was not recommended for passage by the committee. The committee felt that some of the language was vague (for instance, the words "random" and "standard"), that the bill should at least be confined to "food" that the consumer has the information needed to make such a calculation, that the costs to the consumer for such information would be greater than the benefit accruing to her from it, and that requiring such information would be an undue burden on small retailers. It concluded:

"It has been shown that many factors in the food industry have found it good marketing practice to supply price per unit information to their customers, but this does not mean that all stores should be required to do so. At present, the furnishing of this information is done on a competitive basis, consumers who feel that the computation of price per unit should be done for them may shop at stores which do it, or urge their local merchant to adopt the practice. Small retailers who find that the cost of the practice would make their prices too noncompetitive will continue to rely upon convenience and personal service to retain their trade. It would seem foolish for the state to further increase their cost disadvantage; the day of the captive consumer is not yet at hand." ⁵⁸

⁵⁷ National Bureau of Standards, U.S. Department of Commerce, "Model State Law on Weights and Measures, Form 2," p. 12.

⁵⁸ Assembly Interim Committee on Agriculture, *Final Report*, Vol. 17, No. 10 (1963), p. 34.

The office of the Consumer Counsel has brought to the attention of the committee that the following 20 states have enacted legislation requiring price per unit declarations on random packages:

Alaska	New Jersey
Arkansas	New York
Colorado	Oklahoma
Delaware	Pennsylvania
Illinois	South Dakota
Kentucky	Tennessee
Louisiana	Texas
Maine	Virginia
Maryland	Washington
Missouri	West Virginia ⁵⁹

However, it has also been suggested that these laws are not extensively enforced.

Obviously any price per unit information would have to be supplied by the retailer. Otherwise, the manufacturer might be infringing upon price-fixing or fair trade laws. Thus, manufacturers would not be adversely affected, for they would not be required to make any additional capital outlays as they might with standardized quantity regulations. Their competitive position in other states would not be affected because they could continue to ship the same size package, not a new one. In other words, each manufacturer would be treated equally in California, and the burden of placing price per unit information where the consumer can easily see it would fall upon the retailer.

The Legislature must consider carefully any proposed legislation on price per unit because such legislation, and the publicity arising therefrom, could easily deceive the consumer into excessive reliance on price alone. The consumer must also rely heavily on quality. A 10-ounce product which sells for 2 cents per ounce may be only one-half as effective as a 10-ounce one which sells for 3 cents. Thus, in terms of effectiveness and price, it would be to the consumer's benefit to buy the 30-cent product rather than two packages of the 20-cent product. Another conceivable detrimental effect of price per unit regulations is best put by Albert Halverstadt, Vice President, Advertising, Procter & Gamble Company:

"Emphasis on product weight as the measure of value could also have the detrimental effect of encouraging product debasement—the introduction of inert, or bulk or weight building additives which may not harm the consumer but would certainly do little to help her." ⁶⁰

An additional disadvantage of such legislation is that it might tend to freeze prices. A retailer would think twice before meeting the newly lowered prices of his competitor if doing so entailed not only remarking price but also remarking and recalculating price per unit. Thus, such legislation could serve to reduce competition.⁶¹

In examining any price per unit legislation, one central fact must be constantly borne in mind. Benefits accruing to the public from this information must exceed the costs of it. The manufacturer is in general unable to supply such information for reasons already stated, and the retailer has two possible alternatives for supplying meaningful price per unit information. He can label it next to the price of the item on each shelf or display area or he can supply

⁵⁹ Testimony of Helen Nelson, *Hearings on H.R. 219*.

⁶⁰ A. N. Halverstadt before the Hart Subcommittee, *op. cit.*, p. 173.

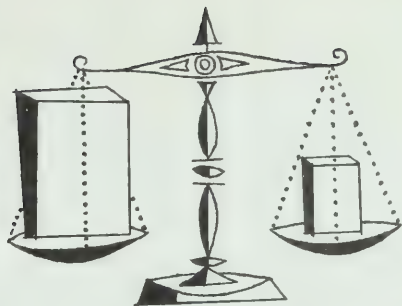
⁶¹ F. T. Dierson, *Hearings on H.R. 219*.

it on each individual package. It is difficult to say to what extent the initial calculation of price per unit information would represent an additional cost since it is not known to what extent retailers presently make such computations for their own use. Presumably, however, the competitive retailer has some idea of the unit value of most of his products. The additional cost reflected by the posting of such information on the shelf is also difficult to calculate, and would depend upon the nature of the shelf and the manner of posting. In general such a method of providing the information could be assumed to be much less costly than the marking of each individual package, since it eliminates repetitive labor costs. Available cost studies indicate that at the present level of technology the marking of each package would be a very costly undertaking, unless the packaging, pricing, and marking are done in a single operation. A self-calculating price per unit and price marking machine to be applied at the retail level to the general run of packaged items appears to be uneconomical at the present time. (See Appendices F and G.)



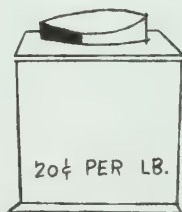
CONCLUSIONS:

A. Standardization by Weight



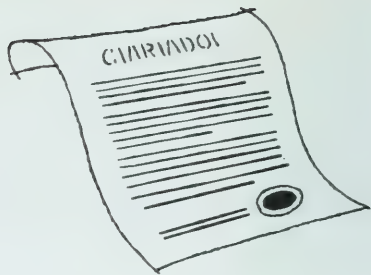
The committee concludes that despite a demonstrated tendency towards departure from standard weight packages in some commodities, it would be unwise for the state government to attempt to standardize the weight of such packages at the present time. The committee further concludes that standardization of weight in packaging, if it is done, should logically be done at the federal level. In spite of the fact that the states can constitutionally act in this field in the absence of federal legislation, the interstate traffic in packaged goods is so great as to make uniform national standards the desirable approach, from the standpoint of the public, the packager, and the retailer. The committee also concludes that such legislation must be highly selective in its choice of packaged commodities to avoid disturbing commodities wherein the packages have been already successfully standardized by size.

B. Price per unit information



The committee concludes that there is, on balance, no overriding need for comprehensive price per unit legislation at present. While the provision of such information would undoubtedly make shopping easier for consumers who utilize this form of comparison, it would also make shopping more expensive for all consumers, who would bear the additional costs of providing such information. The committee further concludes that evidence presented it during the last two interim periods justifies a distinction between products in which the package is standardized by custom and those where the product and the package are essentially random in nature. The former constitutes a category of packages with which the consumer can become familiar through repeated purchase, and where the advantages of the repetition of price per unit information are minimal. On the other hand, where the consumer encounters no familiar size of package, each purchase constitutes a unique experience. Under these circumstances, the committee concludes that there is a definite public interest in providing price per unit information for random packages, and that legislation for this purpose is both constitutionally and practically within the province of the California State Legislature.

RECOMMENDATION



The committee recommends the introduction of legislation to require the price per unit information be made available to consumers on certain nonuniform packaged items sold by weight, and that such information be made available either on the package or in the area where the package is offered for sale, at the option of the retailer.

Two years ago, the report of this committee in discussing the concept of random packaging, questioned the adequacy of the term "random" as a legally definable entity as related to packaged commodities, and further questioned the utility of using the draft provided in the Model Weights and Measures Law on this subject. Because of these objections, the committee has refrained from attempting to write a logical legal definition of a random packaged commodity and has instead followed the path indicated by the State Sealer of Weights and Measures. Mr. Kerlin, in testifying before this committee, suggested that the more practical approach would be a definition of the specific foods most often found in random packages and a subsequent exclusion of types of packages of such commodities that are least likely to contain random amounts. The result of such an approach is that the remaining packages will either be in fact random packages or so similar or competitive in nature that the public interest would be served by their inclusion.

The exclusions in the draft of canned, frozen, and nonrefrigerated items are for this purpose. The exclusion for unmarked packages weighed at the time of sale is in compliance with exemptions granted in other sections of the Business and Professions Code and encompasses packages wherein the price per unit is otherwise available at the time of sale. The exemption of prepared meals is in accordance with the relative meaninglessness of price per unit comparisons where products have multiple ingredients. The effect of the entire law is limited to "meat, poultry, fish, cheese, and products thereof" because evidence indicates that random packages most frequently occur in these commodities. The purpose of providing the retailer with an option in the posting of such information is to eliminate repetitive labor costs without limiting the quality of information to the consumer. It is the committee's conclusion that such legislation will provide measurable assistance to the consumer in the area of his most acute informational problem, and do so without measurably increasing the costs of the commodities to him.

PROPOSED STATUTE

An act to add Section 12024.6 to the Business and Professions Code, relating to weights and measures.

The people of the State of California do enact as follows:

Section 1. Section 12024.6 is added to the Business and Professions Code, to read:

12024.6. It shall be unlawful for any person to sell or advertise for sale in retail stores for consumer use in package form any meat, poultry, fish, or cheese, and products thereof, usually sold by weight, unless such package shall bear a plain and conspicuous declaration of the price per single unit of weight or unless a notice containing such a declaration for each such kind of package is conspicuously displayed on or above the shelf, bin, or area where such package is offered for sale.

This section shall not apply to any of the following:

(a) Such packaged commodities wherein the net contents are not otherwise required to be marked on the package and wherein the weight is determined at the time of sale.

(b) Such packaged commodities in sealed metal or glass containers.

(c) Such packaged commodities which do not normally require refrigeration.

(d) Such packaged commodities when the commodity is part of a prepared meal.

(e) Such packaged commodities when frozen.

(f) Such packaged commodities where the total selling price of the package is 20¢ or less.



Legislative Counsel's Digest

Weights and measures.

Adds Sec. 12024.6, B. & P. C.

Makes it unlawful to sell in retail stores for consumer use in package form any meat, poultry, fish, or cheese usually sold by weight unless the package bears a declaration of the price per single unit of weight or unless the declaration is displayed on or above the area where the package is offered for sale.

Specifies certain exceptions thereto.

APPENDIX A. EROSION OF STANDARD SIZES

EXAMPLES OF EROSION OF STANDARD QUANTITY SIZES

	Standard Size	"New" Size
HALF-POUND (8 oz.)		
Cheese	8 oz.	6 oz.
Apricots (dried)	8 oz.	6 oz.
Salad Dressing	8 oz.	6 oz.
POUND OR PINT (16 oz.)		
Rice	1 lb.	14 oz.
Crackers	1 lb.	13½ oz.
Spaghetti	1 lb.	14 & 12 oz.
Beer	16 oz. (1 pt.)	15 oz.
Canned Kidney Beans	1 lb. (303 can)	15 oz. (300 can)
Wine Vinegar	16 oz. (1 pt.)	12¼ fl. oz.
Hot Dogs	1 lb.	12 & 15 oz.
TWO POUNDS OR QUART (32 oz.)		
Raisins	2 lbs.	1 lb. 14 oz.
Soft Drinks	1 qt.	29, 28, 26, 24 oz.
Mayonnaise	1 qt.	24 oz.
Olive Oil	1 qt.	¾ qt.
GALLON (128 oz.)		
Apple Juice	1 gal.	3 qts., 3 oz.

EXAMPLES OF DETERIORATION OF INFORMAL INDUSTRY "STANDARD ODD SIZES"

	Standard Size	"New" Size
Raisins	15 oz.	11 oz. (Maid-Rite)
Evaporated Milk	13 fl. oz.	12¼ fl. oz. (Foremost)
Jam	1 lb. 4 oz.	1 lb. 2 oz. (Kraft)
Syrup	12 oz.	11 oz. (Bergens)
Egg Noodles	12 oz.	10 oz. (Golden Grain Shells)
Instant Coffee	6 oz.	5 oz. (Bordens)
Ketchup	14 oz.	12 oz. (Heinz Hot Ketchup)

APPENDIX B. COMPUTATION OF PRICE PER UNIT

Chart 1

PACKAGES AND PRICES OF SELECTED BABY FOOD ITEMS IN LOCAL MARKETS

Food Item	Brand	Contents—Ounces	Price
Strained Spinach	Beech-Nut	4 ¹ / ₄	4/45
	Gerber	4 ¹ / ₂	
	Heinz	4 ¹ / ₂	
Strained Meat	Gerber	3 ¹ / ₂	2/53
	Swift	3 ¹ / ₂	
Strained Dinners	Beech-Nut	4 ³ / ₄	3/49
	Gerber	4 ¹ / ₂	
	Heinz	4 ¹ / ₂	
Strained Juice	Beech-Nut	4.2	4/45
	Gerber	4.2	
	Heinz	4 ¹ / ₂	
Strained Egg Yolk	Gerber	3 ¹ / ₃	2/53
	Swift	3 ¹ / ₃	
Junior Pears	Beech-Nut	7 ¹ / ₂	3/49
	Gerber	7 ¹ / ₄	
Junior Prunes	Beech-Nut	7 ³ / ₄	3/49
	Gerber	8	

Chart 2

PACKAGES AND PRICES OF HOT CEREAL OFFERED IN LOCAL MARKET

Brand	Contents		Price of Package	Price Per Pound
Cream of Rice	1 lb.	1 ¹ / ₂ oz.	47¢	43¢
Instant Cream of Wheat		14 oz.	29¢	33.5¢
Instant Cream of Wheat	1 lb.	12 oz.	45¢	25.5¢
Loma Linda	1 lb.	6 oz.	45¢	33¢
Maypo		15 oz.	41¢	43.5¢
Malto Meal—New chocolate	1 lb.	6 oz.	43¢	32¢
Pillsbury Farina	1 lb.	11 ¹ / ₂ oz.	35¢	20¢
Old Fashioned Quaker Oats	1 lb.	2 oz.	27¢	23.5¢
Old Fashioned Quaker Oats	2 lbs.	10 oz.	53¢	20¢
Quick Quaker Oats	1 lb.	2 oz.	27¢	23.5¢
Quick Quaker Oats	2 lbs.	10 oz.	53¢	20¢
Instant Ralston	1 lb.	2 oz.	37¢	33.5¢
Roman Meal Cereal		14 oz.	29¢	33¢
Toasted 40% Bran	1 lb.		35¢	35¢
Wheat Hearts		14 oz.	27¢	30.5¢
Wheat Hearts	1 lb.	12 oz.	43¢	24.5¢
Wheatena	1 lb.	6 oz.	43¢	32¢
Zoom	1 lb.		31¢	31¢

APPENDIX C. STANDARD WEIGHTS IN BRITISH LAW

BRITISH WEIGHTS AND MEASURES LAW FOODS REQUIRED TO BE SOLD IN SPECIFIED QUANTITIES

Since 1926 British law has specified the quantity in which certain staple foods may be packaged. The specified quantities are:

2 ounces or multiples of 2 ounces up to 8 ounces
multiples of $\frac{1}{4}$ pound up to 2 pounds
multiples of $\frac{1}{2}$ pound up to 4 pounds
multiples of 1 pound

A packager selling in Great Britain can put these staple foods on the market in any or all of the following quantities:

2 oz.	1 lb.	2½ lbs.
4 oz.	1¼ lbs.	3 lbs.
6 oz.	1½ lbs.	3½ lbs.
8 oz.	1¾ lbs.	4 lbs.
12 oz.	2 lbs.	5 lbs. or any multiple of a pound

Thus, the British government, in specifying the graduation of package sizes encourages staple items to appear on the consumer market in a wide range of rational sizes to fit various family needs. Comparing prices among various brands and package sizes of these foods is easy for British consumers. The packager, too, has plenty of leeway; if he wants to put his product up in packages weighing less than a pound, for example, he can choose any or all of 5 sizes—2, 4, 6, 8 or 12 ounces.

These are the foods for which specified quantities are designated in the British law.

Tea	Oatmeal	Dried beans
Cocoa	Rolled oats	Dried peas
Cocoa powder	Rice	Dried dates
Chocolate powder	Flour of wheat, rye, maize,	Dried prunes
Coffee beans	pea or bean (including	Dried figs
Ground coffee	self-rising flour and	Dried muscatels
Potatoes	cake flour)	Dried apples
Butter	Cornflour	Dried pears
Margarine	Semolina	Dried peaches
Lard	Soya flour	Dried apricots
Compound cooking fat	Sago	Dried nectarines
Suet	Tapioca	Dried currants
Macaroni and similar products	Sugar	Dried raisins
		Dried sultanas



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No. 8

TRUTH IN PACKAGING BILL

Mr. HART. Mr. President, in behalf of myself and Senators KEFAUVER, DODD, LONG of Missouri, NEUBERGER, McNAMARA, MUSKIE, BARTLETT, and SINGLE, I introduce, for appropriate reference, the truth-in-packaging bill.

Similar legislation was introduced in the closing days of the 87th Congress so that suggestions and comments concerning its provisions could be made and studied.

As a result of responsible industry and consumer reaction, some changes have been made that give added benefits to consumer and businessman alike.

The proposed legislation directs the Food and Drug Administration—for foods, drugs, and cosmetics—and the Federal Trade Commission—for other consumer commodities—to promulgate regulations that will require packages accurately and clearly to give essential product information and fairly represent the contents.

In the original bill the authority to draft discretionary regulations on a product-line basis was given to the Federal Trade Commission. Under the new bill, traditional lines of authority have been re-established. The Food and Drug Administration will exercise the authority for foods, drugs, and cosmetics and the Federal Trade Commission will have jurisdiction for all other consumer commodities within the purview of the bill.

Other sections have also been modified.

Notice to promulgate regulations under the discretionary subsection must be published in the Federal Register so that all affected persons will have the opportunity to participate in the regulation-making process. In this way, it is intended that industry expertise can be utilized in the public interest.

Retailers and wholesalers are specifically excluded from the coverage of the bill unless they are actually engaged in the packaging and labeling process in interstate commerce.

The authority of the individual States to act in this area is protected and the Federal Government is directed to work with the States only on a voluntary basis to help achieve uniformity in the law.

The fact that this is a civil antitrust measure and carries no criminal sanctions has been further emphasized.

The definition of "consumer commodity" has been limited generally to "kitchen and bathroom" items, these being the great majority of products sold as marketbasket items in the average supermarket. These products represent commodities for which the package has replaced the salesman as a source of information. They have given rise to the kinds of problems for which the solutions of this bill are tailored. And these solutions are designed to require this package-salesman to represent the product as clearly and fairly as we used to expect from the corner grocer.

Approximately \$70 billion a year are spent by the American consumer on the marketbasket items about which this bill is concerned. This is an important segment of the American economy and represents almost one-third of the average family's budget.

Our aim is three fold: First, that the spirit and substance of the antitrust laws be extended to the relatively new form of nonprice competition represented by packaging. Second, that the American manufacturer be freed from the unfair trade practices that have grown up in this area beyond the reach of present law. Third, that the American consumer can know what she is buying and paying for.

Testimony at the hearings held last year by the Antitrust and Monopoly Subcommittee indicated that a large slice of the average family budget is being wasted because of the kind of packaging practices which this bill is designed to halt.

We learned that manufacturers are being forced by competitive packaging tactics to adopt practices of which no one is proud, but as one executive said, "We don't know how to get off the merry-go-round."

This bill is designed to take the ethical manufacturer off the merry-go-round so he may compete on a basis that is good for himself, the economy and the consumer—on the basis of price and quality, not on packaging gimmickry and deception.

This bill is designed to update the antitrust laws so they can respond to the new facts of life in the marketplace. Price competition too often finds itself obscured by newer forms of nonprice competitive practices that favor the big, discriminate against the small and cost the consumer untold sums yearly.

We have received a wide base of support for this bill as "public interest" legislation. The administration has pledged its support. Consumer-interest groups will work for its passage. Many State weights and measures and agriculture officials have expressed a strong desire for its enactment. And a number of manufacturers and industry representatives have indicated support for its provisions.

I believe that this widespread support from persons of diverse political philosophies means that before the 88th Congress has adjourned, truth in packaging will be the law of the land.

It is also encouraging that the gentleman from New York, Congressman CELLER, chairman of the House Judiciary Committee, is introducing a companion bill in the House. His support and participation are gratifying and welcome.

This bill is not intended as a cure-all to marketplace confusion. But it establishes an approach and a means for dealing with the misleading and unfair trade practices affecting the 8,000 items now on the average supermarket shelf. And it has been estimated that in the next decade there will be 20,000 such items from which the consumer must make a choice.

The record of the hearings the Antitrust and Monopoly Subcommittee has held on packaging and labeling practices, the thousands of letters of support that have poured into my office and the newspaper and magazine comments convince me that consumer and businessman alike need and welcome the benefits this bill affords. It is a reasonable attempt to solve problems that can and should be solved.

Your support is solicited in achieving truth in packaging.

I ask unanimous consent, Mr. President, that the text of the bill and a section-by-section analysis of it be printed at this point in the RECORD; and I ask that the bill lie on the table until the close of business on Wednesday, January 23, 1963, so that

other Senators who may wish to do so may join in sponsoring it.

The VICE PRESIDENT. The bill will be received and appropriately referred; and, without objection, the bill, and analysis will be printed in the RECORD, and the bill will lie on the desk, as requested by the Senator from Michigan.

The bill (S. 387) to amend the Clayton Act to prohibit restraints of trade carried into effect through the use of unfair and deceptive methods of packaging or labeling certain consumer commodities distributed in commerce, and for other purposes introduced by Mr. HART (for himself and other Senators), was received, read twice by its title, and referred to the Committee on the Judiciary, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (38 Stat., 730 et seq.: 15 U.S.C. 12 et seq.), commonly known as the Clayton Act, is amended by inserting therein, immediately after section 3 thereof, the following new section:

SEC. 3A. (a) It shall be unlawful for any person engaged in the packaging or labeling of any consumer commodity (as defined by this section) for distribution in commerce, or for any person (other than a common carrier for hire, a contract carrier for hire, or a freight forwarder for hire) engaged in the distribution in commerce of any packaged or labeled consumer commodity, to distribute or to cause to be distributed in commerce any such commodity if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to regulations promulgated pursuant to this section.

"(b) The prohibition contained in this subsection shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons (1) are engaged in the packaging or labeling of such commodities, or (2) determine by any means the nature, form, or content of packages in which such commodities are contained or labels affixed to such commodities.

"(c) As soon as practicable after the effective date of this section, regulations shall be promulgated to—

"(1) require the net quantity of contents (in terms of weight, measure, or count, or any combination thereof) of consumer commodities to be stated upon the front panel of packages containing such commodities, and upon any labels affixed to such commodities;

"(2) establish minimum standards with respect to the location and prominence of statements of the net quantity of contents (including minimum standards as to the type size and face in which such statements shall be made) appearing upon packages containing any consumer commodity and upon labels affixed to any such commodity;

"(3) prohibit the addition to such statements of net quantity of contents of any qualifying words or phrases;

"(4) prohibit the placement upon any package containing such commodity, or upon any label affixed thereto, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price, or that a retail price advantage is accorded to retail purchasers thereof by reason of the size of that package or the quantity of its contents, except that no regulation promulgated under this section shall prevent any person engaged at any time in the sale of any consumer commodity at retail to ultimate purchasers thereof from placing upon any such commodity, or upon any package containing that commodity, any marking which states the true and correct retail sale price at which such person at that time is offering that commodity for sale to such purchasers;

"(5) contain such exceptions to the foregoing requirements as the promulgating authority may determine to be required by the nature, form, or

quantity of particular consumer commodities, except that no exception may be made if that exception would deprive consumers of reasonable opportunity to make rational comparisons between among competing products; and

"(6) prevent the placement, upon any package in which such commodity is distributed for resale, of any illustration or pictorial matter which may deceive retail purchasers in any respect as to the contents of that package.

"(d) (1) Regulations under this section shall be promulgated by—

"(A) the Secretary of Health, Education, and Welfare, with respect to any consumer commodity which is a food, drug, device, or cosmetic, as such term is defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and

"(B) the Federal Trade Commission with respect to any other consumer commodity.

"(2) Such regulations adopted by the Secretary and by the Commission shall be uniform in content and application to the greatest practicable extent as determined by consultation between the Secretary and the Commission.

"(e) Whenever the Secretary of Health, Education, and Welfare (as to any food, drug, device, or cosmetic), or the Federal Trade Commission as to any other consumer commodity, determines that additional regulations are necessary to establish or preserve fair competition between or among competing products by enabling consumers to make rational comparison with respect to price and other qualities, or to prevent the deception of consumers as to such product, the Secretary or the Commission as the case may be, shall promulgate under this subsection with respect to that commodity regulations effective to—

"(1) establish reasonable weights or quantities or fractions or multiples thereof, in which the commodity shall be distributed for retail sale;

"(2) prevent the distribution of that commodity for retail sale in packages of sizes, shapes, or dimensional proportions which may deceive retail purchasers as to the net quantity of the contents thereof (in terms of weight, measure, or count);

"(3) establish and define standards of designations of size (other than statements of net quantity of contents) which may be used to characterize quantitatively the contents of packages containing that commodity;

"(4) establish and define the net quantity of any commodity (in terms of weight, measure, or count) which shall constitute a serving, if that commodity is distributed to retail purchasers in a package or with a label which bears a representation as to the number of servings provided by the net quantity of contents contained in that package to which that label is affixed;

"(5) establish and define standards for the quantitative designation of the contents of packages containing any consumer commodity of a kind the net quantity of contents of which cannot meaningfully be designated in terms of weight, measure, or count; and

"(6) require (consistent with requirements imposed by or pursuant to the Federal Food, Drug, and Cosmetic Act, as amended) that sufficient information with respect to the ingredients and composition of any consumer commodity (other than information concerning proprietary trade secrets) be placed in a prominent position upon packages containing that commodity and upon labels affixed thereto.

"(f) (1) Before promulgating any proposed regulation under subsection (e) with respect to any consumer commodity, the Secretary or the Commission, as the case may be, shall (A) consult with other agencies of the Government having special competence with respect to the subject of the regulation concerning the scope, application, form, and effect thereof, (B) publish in the Federal Register reasonable advance notice of intention to promulgate such regulation, and (C) accord to persons who would be affected thereby reasonable opportunity for consultation with respect to such proposed regulation.

"(2) All regulations adopted under this section shall be promulgated in conformity with provisions of the Administrative Procedure Act.

(3) Any regulation promulgated under this section may be modified by the promulgating authority, upon the initiative of that authority or on application made by any person affected by that regulation, whenever such authority determines that such modification is necessary to conform to the requirements of this section or to any change occurring in the method of packaging, labeling, distributing, or marketing of any consumer commodity.

(g) Upon written request made, by the officer agency authorized or directed by this section to establish packaging or labeling regulations as to any consumer commodity of any class or kind, to any producer or distributor thereof, such producer or distributor shall transmit promptly to that officer or agency a true and correct sample of each package or label used or to be used by that producer or distributor for or in connection with the distribution of any particularly described consumer commodity of that class or kind. Any person who, with intent to evade compliance with the requirements of this subsection (g), fails to transmit any such sample to such authority promptly upon receipt of such request shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

(h) (1) Any consumer commodity introduced or delivered for introduction into commerce in violation of any regulation promulgated by the Secretary of Health, Education, and Welfare under this section while that regulation is in force and in effect shall be deemed to be misbranded within the meaning of chapter III of the Federal Food, Drug, and Cosmetic Act.

(2) Any violation of any regulation promulgated under this section by the Federal Trade Commission while that regulation is in force and in effect shall constitute an unfair or deceptive act or practice in commerce in violation of section 5 (a) of the Federal Trade Commission Act.

(3) The remedy provided by section 16 of this Act shall be available to any person threatened with loss or damage by any violation of any such regulation while that regulation is in force and in effect.

(i) Each officer or agency required or authorized by this section to promulgate regulations for the packaging or labeling of any consumer commodity shall transmit to the Congress in January of each year a report containing a full and complete description of the activities of that officer or agency in the administration and enforcement of this section during the preceding calendar year.

(j) A copy of each regulation promulgated under this section shall be transmitted promptly to the Director of the National Bureau of Standards, who shall (1) transmit copies thereof to all appropriate State officers and agencies, and (2) furnish to such State officers and agencies information and assistance to promote to the greatest practicable extent uniformity in State and Federal standards for the packaging and labeling of consumer commodities. Nothing contained in this subsection shall be construed to impair or otherwise interfere with any program carried into effect by the Secretary of Health, Education, and Welfare under other provisions of law in cooperation with State governments or agencies, instrumentalities, or political subdivisions thereof.

(k) As used in this section—

(1) the term 'consumer commodity', except as otherwise specifically provided by this paragraph, means any food, drug, device or cosmetic (as those terms are defined by the Federal Food, Drug, and Cosmetic Act), and any other article or commodity of any kind or class which is customarily produced and distributed for sale through retail sales agencies or instrumentalities for consumption or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household and which usually is consumed or expended in the course of such consumption or use. Such term does not include (A) any meat, meat product, poultry, or poultry product, or any commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 51-157), commonly known as the Virus-Serum-

Toxin Act; (B) any beverage subject to packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.); (C) any household appliance, equipment, furniture, furnishing, or other durable article or commodity; or (D) any article or commodity intended for use in the maintenance of the exterior, or for the repair of any part, of any structure, or for use in the maintenance or repair of any article or commodity described by clause (C) of this sentence;

(2) the term 'package' means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that commodity to retail purchasers thereof, but does not include (A) shipping containers or wrappings used solely for the transportation of such commodity in bulk or in quantity to wholesale or retail distributors thereof or (B) containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 U.S.C. 231-233), the Act of March 4, 1915 (38 Stat. 1186, as amended; 15 U.S.C. 234-236), the Act of August 31, 1916 (39 Stat. 673, as amended; 15 U.S.C. 251-256), or the Act of May 21, 1928 (45 Stat. 685, as amended; 15 U.S.C. 257-257i);

(3) the term 'label' means any written, printed, or graphic matter affixed to any consumer commodity; and

(4) the term 'person' includes any firm, corporation, or association."

(b) The amendment made by this section shall take effect on the first day of the sixth month beginning after the date of enactment of this Act.

Sec. 2. No amendment made by this Act shall be construed to repeal, invalidate, supersede, or otherwise adversely affect—

(a) the Federal Trade Commission Act or any statute defined therein as an Antitrust Act;

(b) the Federal Food, Drug, and Cosmetic Act;

(c) the Hazardous Substance Act; or

(d) any provision of State law which would be valid in the absence of such amendment unless there is a direct and positive conflict between such amendment and such provision of State law.

The analysis presented by Mr. HART is as follows:

ANALYSIS OF TRUTH-IN-PACKAGING BILL INTRODUCTION

The bill amends the Clayton Act by adding a new section 3(a) (to take effect 6 months after enactment), for the purpose of prohibiting restraint of trade carried into effect through the use of unfair and deceptive methods of packaging and labeling certain consumer commodities as defined by this section.

SECTION 3(a)

Subsection (a) makes it unlawful for any person to package or label any consumer commodity (as defined by subsection (k) (1)) or to distribute in commerce any packaged or labeled commodities which do not conform to the regulations promulgated under this bill.

Subsection (b) exempts retailers and wholesalers from the provisions of the bill except to the extent they are actually engaged in packaging and labeling in interstate commerce.

Subsection (c) directs that the following regulations be promulgated;

1. To require that the net quantity of content statement be stated upon the front panel of packages and labels.

2. To establish minimum standards with respect to the location and prominence of net quantity of content statements (including minimum standards relating to type size and face).

3. To prohibit the addition of any qualifying words or phrases to net quantity of content statements.

4. To prohibit the printing on packages of information stating or implying that the product is being offered for sale at a price lower than the customary retail price or that a price advantage is being accorded to the purchaser because of the size or quantity of the package. But this does not apply to the ultimate retailer.

5. To make provision for exceptions to the foregoing requirements when necessary because of the nature, form, or quantity of the product.

6. To prevent placing illustrations or pictorial matter on packages which may deceive the purchaser as to the net quantity of content.

Subsection (d)(1)(a) and (b) require that the regulations under this section shall be promulgated by the Secretary of Health, Education, and Welfare with respect to foods, drugs, or cosmetics and by the Federal Trade Commission with respect to all other commodities.

2. Provides that regulations promulgated by the FDA and FTC shall be as uniform in content and extent as possible.

Subsection (c) gives the FTC and FDA discretion to establish additional regulations on a product-by-product basis. This discretion may be utilized only when necessary to establish or preserve fair competition by enabling consumers to make rational comparisons between competing products and when necessary to prevent consumer deception. Such regulations may be promulgated only to:

1. Establish reasonable weights or quantities in which a product can be sold.

2. Prevent the sale of a commodity in a package whose size, shape, or proportions may deceive purchasers as to the weight or the quantity of the product within the package.

3. Establish standards of size terminology such as "small," "medium," or "large."

4. Establish "serving" standards.

5. Establish standards to designate the quantitative contents of a package where net weight or number is not meaningful.

6. Require that sufficient information about the ingredients or composition be displayed prominently on the package or label with the exception of information concerning proprietary trade secrets.

Subsection (f):

1. Provides that before any regulation can be promulgated under the authority of subsection (c) that there must be consultation with other agencies of Government having special competence in the area involved and with persons or companies who might be affected by the proposed legislation. Notice of intention to promulgate such regulations must be printed in the Federal Register so that all affected parties can have an opportunity to be present if they desire. This subsection anticipates the "trade conference" concept presently being utilized by the FTC.

2. Provides that all regulations shall be promulgated in conformity with the Administrative Procedure Act.

3. Provides that any regulations may be modified on the initiative of the promulgating authority or by affected persons when changes in marketing methods and techniques make it necessary.

Subsection (g) authorizes the promulgating authority or the appropriate officer thereof to make a written request of any producer or distributor for a correct sample of any package or label he is presently using or intends to use. Failure to promptly forward the requested samples with intent to avoid compliance is punishable by a fine of not more than \$1,000 or not more than a year's imprisonment, or both.

Subsection (h):

1. Provides that if a commodity is put into commerce in violation of a regulation promulgated by the FDA, it shall be deemed "misbranded" within the meaning of the Food, Drug, and Cosmetics Act and subject to the penalties provided therein. This includes seizure, injunction, or criminal sanctions, depending on the circumstances involved.

2. Provides that any violation of a regulation promulgated by FTC shall constitute an unfair trade practice as set forth in section 5(a) of the Federal

Trade Commission Act. In general, this section sets forth the procedure for the issuance of cease-and-desist orders.

3. Makes the remedy for private litigants available in section 16 of the Clayton Act applicable to this section. Section 16 details the procedure for private litigants to get injunctive relief who are threatened by loss or damage for a violation of the act.

Subsection (i) provides that FDA and FTC shall transmit to Congress a yearly report of their activities under this act.

Subsection (j) provides that a copy of each regulation promulgated under this bill shall be forwarded to the National Bureau of Standards. The Bureau is directed to transmit copies to the appropriate State agencies and officials and furnish information and assistance to the States for the purpose of promoting uniformity between State and Federal standards.

This subsection anticipates the utilization of the Bureau of Weights and Measures in working with State officials or agencies on a voluntary basis to make State and Federal packaging and labeling regulations conform to the greatest practical extent.

Subsection (k):

1. Defines the term "consumer commodity." The term means any food, drug, device, or cosmetic. Those terms are defined by the Federal Food, Drug, and Cosmetic Act and any other commodity distributed through retail sales agencies for use by individuals for purposes of personal care or in the performance of services usually rendered within the household and usually used up in the performance of such services.

Specifically excluded are (A) any meat, product, poultry, or poultry product, or any commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the Virus Serum-Toxin Act; (B) any beverage subject to packaging or labeling requirements imposed under the Federal Alcohol Administration Act (26 U.S.C. 201 et seq.); (C) any household appliance, equipment, furniture, furnishing, or other durable article or commodity; or (D) any article or commodity intended for use in the maintenance of the exterior, or for the repair of any part, of any structure, or for use in the maintenance or repair of any article or commodity described by clause (A) of this sentence.

2. Defines "package" to mean any container or wrapping in which a consumer commodity is closed for use in the delivery or display of the product to consumers. It exempts shipping containers or wrappings used solely for shipping the product to wholesale or retail distributors.

3. Defines "label" to mean any written, printed, or graphic matter affixed to a consumer commodity.

4. Defines "person" to include any firm, corporation, or association.

Section 2 provides that no amendment made by this act shall be construed to invalidate or otherwise adversely affect—

(a) The Federal Trade Commission Act or a statute defined therein as an Antitrust Act;

(b) the Federal Food, Drug, and Cosmetic Act;

(c) the Hazardous Substance Act; or

(d) any provision of State law which would be valid in the absence of such amendment unless there is a direct and positive conflict between such amendment and such provision of State law.

APPENDIX E. PACKAGING LEGISLATION AND INTERSTATE COMMERCE: LEGISLATIVE COUNSEL'S OPINION

State of California
Office of Legislative Counsel

Sacramento, December 1, 1964

N. JOHN C. WILLIAMSON
212 Goodman Street
Bakersfield, California

Packaging—No. 6766

Mr. Williamson:

You have asked two questions, which are separately stated and considered below, relating to legislation by the state and federal government in the field of packaging.

QUESTION NO. 1

Assuming there is no federal legislation in the field of packaging, can the states legislate with regard to products in interstate commerce?

OPINION AND ANALYSIS NO. 1

Article I, Section 8, clause 3 of the Constitution of the United States provides in part that:

"Congress shall have power . . . to regulate commerce with foreign nations and among the several states. . . ."

This constitutional provision of its own force, without any action by Congress, establishes an immunity from the direct control of the states of those subjects of interstate commerce which imperatively demand a single uniform rule, operating throughout the country (*Cooley v. Board of Wardens of the Port of Philadelphia et al.* (1851), 13 L. ed. 996, 1005). Thus, the courts have consistently held that where an aspect of interstate commerce is of a national character and requires uniformity of regulation, Congress alone may provide the regulation (*Morgan v. Commonwealth of Virginia* (1945), 90 L. ed. 1317, 1322). If the subject matter is one which requires national uniformity, the states may not act even if Congress has not (*South Covington v. C. Street R. Co. v. Covington* (1914), 59 L. ed. 350, 354; see also 15. Am. Jur. 2d Commerce, sec. 9, at p. 639).

Where, however, the subject is not one on which national uniformity is required, the states may act within their respective jurisdictions until Congress sees fit to exercise its overriding authority (*Milk Control Bd. v. Eisenberg Farm Products* (1939), 83 L. ed. 752, 756). The United States Supreme Court has stated:

"In conferring upon Congress the regulation of commerce, it was never intended to cut the states off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country." (*Sherlock v. Alling* (1876), 23 L. ed. 819, 820).

The states may, therefore, regulate matters of local concern, in the exercise of their "police power," even though the regulation may affect interstate commerce, or even to some extent regulate it (*Southern Pacific Co. v. Arizona* (1944), 89 L. ed. 1915, 1923; *Huron Portland Cement Co. v. Detroit* (1960), 4 L. ed. 2d 852, 855). The only requirements regarding such regulation which have been consistently recognized have been that the regulation not discriminate against interstate commerce, that it safeguard an obvious state interest, and that the local interest outweigh whatever national interest there might be in the prevention of state restrictions (*Cities Ser. G. Co. v. Peerless O. & G. Co.* (1950), 95 L. ed. 190, 202; see also 15. Am. Jur. 2d Commerce, sec. 20, at pages 651-654).

Generally speaking, the courts have recognized that the states may, in the exercise of their police power, adopt regulations regarding the packaging of products which will affect products transported in interstate commerce (see *Armour & Co. v. North Dakota* (1915), 60 L. ed. 11; *Corn Products Refining Co. v. Eddy* (1918), 63 L. ed. 689; *Pacific States Box & Basket Co. v. White* (1935) 80 L. ed. 138; *Detweiler v. Welch* (1930), 46 F. 2d 75).

Mention should, however, be made of the so-called "original package" doctrine, which was for many years understood to free from state regulation products imported for sale from a foreign country, or from one state into another state, so long as such products were in the original package. More recently, the United States Supreme Court has indicated that the doctrine, as applied to interstate commerce, has come to be regarded, generally at least, as more artificial than sound, and that the test of the original package is not inflexible and final for the transactions of interstate commerce, whatever may be its validity for commerce with other countries. That is ultimate is the principle that one state in its dealings with another may not place itself in a position of economic isolation. The court has held that the original package doctrine does not bar a state, under a proper exercise of the "police power," from regulating the labeling of articles of commerce. Similarly, state inspection laws may be made applicable to goods in original packages. Furthermore, Congress may legislate to remove whatever restrictive influence the fact that packages are unbroken may have upon state power. (15 Am. Jr. 2d, Commerce, sec. 44, at pages 682-683).

In any event, the protection afforded by the original package doctrine ceases if the imported product is sold, even though the merchandise in the hands of the purchaser remains in the original package; if the container is open and smaller packages removed therefrom and offered for sale; if the original packages are put up for sale and so dealt with as to make them a part of the common mass of the property in the state; or it has even been held, if the recipient of the package has an unexecuted intention to open it and sell the contents (15 Am. Jr. 2d, Commerce, sec. 47, at p. 686).

Subject, therefore, to whatever restrictive influence the so-called "original package" doctrine may have in any particular case, we conclude that the states may, in the exercise of their police power, adopt legislation regulating the packaging of products which will be applicable to products in interstate commerce where there is no federal legislation in the field of packaging. Such legislation may not, however, discriminate against or place an embargo on interstate commerce; it must safeguard an obvious state interest, and the local interest must outweigh whatever national interest there might be in the prevention of state restrictions.

QUESTION NO. 2

Assuming that there is federal legislation regarding the packaging of products in interstate commerce, and such legislation is along the lines of S. 387 of the 88th Congress, would the legislation preempt to the federal government the regulations of the packaging of products in interstate commerce?

OPINION AND ANALYSIS No. 2

Generally speaking, S. 387 of the 88th Congress would require the Secretary of Health, Education, and Welfare, (as to any food, drug, device or cosmetic), and the Federal Trade Commission (as to any other consumer commodity) to promulgate regulations to:

- (1) Require the net quantity of contents of consumer commodities¹ to be stated upon packages containing such commodities and upon any labels affixed thereto;
- (2) Establish *minimum standards* with respect to the location and prominence of statement of the net quantity of contents appearing upon packages containing any consumer commodity and upon labels affixed thereto;
- (3) Prohibit various statements and pictures upon packages containing commodities and upon labels attached thereto (subd. (c), Sec. 3A).²

The bill would also require, whenever the Secretary of Health, Education, and Welfare, the Federal Trade Commission, determines that additional regulations are necessary to establish or preserve fair competition between or among competing products by enabling consumers to make rational comparisons with respect to price and other qualities, or to prevent the deception of consumers as to such product, that the secretary or the commission, as the case may be, promulgate with respect to that commodity regulations effective to:

- (1) Establish reasonable weights or quantities in which that commodity shall be distributed for retail sale;
- (2) Prevent the distribution of that commodity for retail sale in packages of sizes, shapes or dimensional proportions which may deceive retail purchasers as to the net quantity of contents thereof;
- (3) Establish and define standards of designations of size which may be used to characterize quantitatively the contents of packages containing that commodity;
- (4) Establish and define the net quantity of that commodity which shall constitute a serving;
- (5) Establish and define standards for the quantitative designation of the contents of packages containing any consumer commodity of a kind the net quantity of the contents of which cannot meaningfully be designated in terms of weight, measure or count;
- (6) Require that sufficient information with respect to the ingredients and composition of any consumer commodity be placed in a prominent position upon packages containing that commodity and upon labels affixed thereto (subd. (e), Sec. 3A).

We note that the bill would specifically provide that the Director of the National Bureau of Standards is required to furnish to state officers and agencies information and assistance to promote to the greatest practical extent uniformity in state and federal standards for the packing and labeling of consumer commodities (subd. (j), Sec. 3A). We also note that the author of the bill, Senator Hart, stated, with reference to the bill, that: "The authority of the individual states to act in this area is protected and the federal government is directed to work with the states only on a voluntary basis to help achieve uniformity in the law." (See Congressional Record, V. 109, No. 8, Jan. 21, 1963.)

Turning to a consideration of whether or not federal legislation along the lines of S. 387 would prevent the application to products in interstate commerce of any state legislation regulating the packaging of products, we note, initially, that S. 387 is limited, by its terms, to "consumer commodities," as that term would be defined by the bill (see par. (1), subd. (k), Sec. 3A). Thus, federal legislation along the lines of S. 387 would not prevent the application of state laws regulating the packing of products to products in interstate commerce which are not made subject to such federal legislation.

As to products which are made subject to the federal legislation, we note that the United States Supreme Court has held that federal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons—either the nature of the regulated subject matter permits no other conclusion, or that Congress has unmistakably so ordained (*Florida Avocado Growers v. Paul* (1963), 10 L. ed. 2d 248, 255 see also 15 Am. Jur. 2d Commerce, Sec. 24, at p. 656-657).

A holding of federal exclusion of state law is inescapable and requires no inquiry into congressional design where compliance with both federal and state regulation is a physical impossibility for one engaged in interstate commerce (*Florida Avocado Growers v. Paul*, supra, p. 257). On the other hand, in the absence of Congressional motive to exclude the states, state provisions which are substantially identical with federal provisions will be given effect (*Cafeteria v. Zook* (1948), 93 L. ed. 1005).

¹ The term "consumer commodity" would be defined by the bill, as follows:

"the term 'consumer commodity,' except as otherwise specifically provided by this paragraph, means any food, drug, device or cosmetic (as those terms are defined by the Federal Food, Drug, and Cosmetic Act), and any other article or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household and which usually is consumed or expended in the course of consumption or use. Such term does not include (A) any meat, meat product, poultry, or poultry product, or commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading 'Bureau of Animal Industry' of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the Virus-serum-toxin Act; (B) any beverage subject to packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.); (C) any household appliance, equipment, furniture, furnishings or other durable article or commodity; or (D) any article or commodity intended for use in the maintenance of exterior, or for the repair of any part, of any structure, or for use in the maintenance or repair of any article or commodity described by clause (C) of this sentence;" (par. (1), subd. (k), proposed Sec. 3A, Clayton Act)

² All section references are to sections which the S. 387 would add to the Clayton Act (38 Stat. 730 et seq.; 15 U.S.C. 12 et seq.)

Where an act of Congress purports to establish only minimum standards, the imposition of the states of stricter standards, or standards based on different criteria, is not barred by the federal action (*Florida Avocado Growers v. Paul*, supra, at p. 258).

We find no indication in the language or the legislative history of S. 387 of any Congressional intent to preempt to the federal government the regulation of the packaging of consumer products in interstate commerce. To the contrary, the bill specifically provides that the Director of the National Bureau of Standards is required to furnish to state officers and agencies information and assistance to promote to the greatest practical extent uniformity in state and federal standards for the packing and labeling of consumer commodities (subd. (j), Sec. 3A), and the author of the bill has stated that the authority of the individual states to act in this area is protected and the federal government is directed to work with the states only on a voluntary basis to help achieve uniformity in the law.

We also note that, at least insofar as S. 387 relates to standards with respect to the location and prominence of statements of the net quantity of contents appearing upon packages containing any consumer commodity and upon labels affixed thereto, the standards which are required to be promulgated are expressly described as "minimum standards" (subd. (j), Sec. 3A).

Thus, we find evidences in the language and legislative history of S. 387 of a Congressional intent to permit the continued application of state regulations to the packaging of consumer products in interstate commerce, rather than of an intent to exclude the states from the field.

While the states could not, of course, adopt and enforce, as to consumer products in interstate commerce, regulations which conflict with the regulations promulgated under S. 387, we think that the courts would hold that they could adopt and enforce regulations substantially identical with the federal regulations or which impose stricter standards than those imposed by the federal regulations.

We, therefore, do not think that federal legislation along the lines of S. 387 of the 88th Congress would be held by the courts to preempt to the federal government the regulation of the packaging of products in interstate commerce.

Very truly yours,

GEORGE H. MURPHY
Legislative Counsel

By /S/
STANLEY M. LOURIMORE
Deputy Legislative Counsel

APPENDIX F. RETAILER COST SURVEY ON PRICE PER UNIT MARKING



CALIFORNIA RETAILERS ASSOCIATION

503 MARKET STREET
SAN FRANCISCO 94105
781-6288

ELEVENTH & L STREETS
SACRAMENTO 95814
443-1977

417 SO. HILL STREET
LOS ANGELES 90013
623-2273

VINCENT D. KENNEDY—MANAGING DIRECTOR

Sacramento
November 2, 196

Mr. William H. Geyer, Committee Consultant
Assembly Interim Committee on Agriculture
California Legislature
Room 4098, State Capitol
Sacramento, California

Dear Bill:

A compilation of our findings in respect to the feasibility of retailers pricing commodities on a per standard unit basis in addition to price per package is attached.

Subsequent to the circulation of the original questionnaire, you asked, "Is machinery on the market today which will automatically price mark the unit?" The answer is as follows:

"Attempts have been made to manufacture such a unit, but as of now—and in the foreseeable future—it doesn't seem likely that a machine will be available to handle this function. One of the major problems in developing such a machine is the variety of cases, and variety of packages within the case. The logical place to price mark with a machine would be at the warehouse. However, most warehouses serve more than one price zone, which would create numerous problems of 'when,' 'where,' and 'how' to handle the price marked merchandise."

Please let us know if any further information is desired.

Cordially,
Leslie D. Howe
Governmental Affairs Director

SUBJECT: Feasibility of Retailers Pricing Commodities on a Per Standard Unit Basis in addition to Price Per Package

develop subject information for the Assembly Interim Committee on Agriculture hearing HR 219 (Gonsalves) study of retail food packaging practices, leading supermarket food merchandisers were questioned as follows:

- 1 How much time is spent by sales clerks in marking goods?
 - 2 How much additional time would it take to calculate and mark the price per standard unit?
 - 3 What is the estimated added burden in terms of cost which would have to be passed on to the consumer?
 - 4 Is there a spot on the label for an additional price?
 - 5 What are the problems such a requirement would cause with respect to special sales?
 - 6 A suggestion was made to the Committee that perhaps the manufacturer could pre-ticket the price per unit. Is it not desirable that retailers be free to set their own prices in order for free competition to work?
- Responses to these specific questions, in numerical order, were received from Stores A, B, and C (see below), and general commentaries were obtained from Stores D and E (see below):

Store A"—Response

After a careful analysis of our payroll records and our price marking procedures in the store, the following should give you our answers for the questions asked.

- 1) Approximately 5% of all clerk man hours in our grocery department is spent on the price marking of merchandise. This amounts to about 210 hours per week, or 10,920 hours per year.
- 2) It would take at least twice as many man hours as we presently use if we were to mark the price per standard unit in addition to the present price, in our estimation. Since only a few items are packed in the "standard" unit, virtually all merchandise would require dual marking. We are unable to estimate the time that would be needed to "calculate" the "standard unit" prices but it would be substantial.
- 3) The added cost which would have to be passed on to consumers would be a minimum of \$41,496 per year in the grocery departments alone. Since it is likely that numerous items in the other departments would also have to be dual priced, I estimate that the total additional cost would be in excess of \$50,000 per year.
- 4) Some few items have a "spot" large enough for dual pricing; most do not.
- 5) The problems such a requirement would cause, with respect to special sales, are enormous. It is apparent that customers would be thoroughly confused, since, in most instances, there would be four prices on a "special" item. Checkstand errors would be multiplied greatly.
- 6) There is no practicable way for the manufacturer to preticket the price per unit. Cost of doing business varies greatly from retailer to retailer and from store to store and consequently prices must vary too. This variance in pricing is very much in the best interests of the consumer and anything interfering with it would be highly detrimental to the general public.

Store B"—Response

- 1) This company has never "book-kept" or made a time and motion study of the amount of time spent by food clerks marking the retail price on the merchandise we sell.
- 2) Based upon general observation over a period of years, I think we could easily substantiate that at least two full-time employees spend all their time price-marking merchandise in one of our average volume stores.
I am of the opinion that it would take at least twice as much time to calculate and mark the prices per standard unit. Circumstance, of course, vary with the items being marked and it could easily run into three or four times.
- 3) Obviously no merchant should be expected to absorb the cost imposed by the revision of the law. Whatever it amounted to would have to be passed on to the consumer.
- 4) The answer to Question #4 could not be answered with a "yes" or "no." In addition to the confusion which two prices would present, I think it is pretty obvious that the only way two prices could be used would be to use a label with a sensitive type backing on which would be printed the necessary information.
- 5) To begin with, I think the problem would be minimized because of the cost involved in meeting the price requirements for special sales, and consequently, result in fewer sales where the sale price was lower than the regular price.
- 6) My understanding is that (1) very few States have Fair Trade Laws that hold up, and (2) where there is no such law there is a great variation among merchants.

Store C"—Response

- 1) It takes 17.3 seconds to price mark the average case (average case contains approx. 24 units).
- 2) An additional 17.3 seconds would be required to stamp the price alone, plus an additional 20 seconds to compute the standard unit price. This, we presume, would have to be done on some type of conversion cards, as there is not room in our ordering book for the variety of zone prices—plus the standard unit price.
At the present wage level of 6¢ per minute (which includes fringe benefits) the extra cost per case would be 3.7¢.
In addition, there is the cost of pricing numerous items which are now priced at the checkstand. Were we to put a standard unit price on all units, this would mean we would have to price our milk, eggs, candy, baby food, and a number of paper and soap products which we do not price now. Also, the clerk at the checkstand might be confused between the two prices, and might fail to ring up the correct price. We have no way of calculating what this factor might cost.

- 3) A conservative figure would be \$80.00 a week additional labor cost in our average store. This would be a continuing cost—week in and week out—and with the ever-increasing wage spiral, the cost of stamping the standard unit price on each package would increase. There is also the possibility that we would have to change our present price stamping equipment in order to differentiate between the unit price and actual price. If it were necessary for us to do this we would have to go to an adjustable band stamp, which would not be as efficient as the present used stamps. This cost factor was not taken into consideration in estimating the \$80.00 per week additional labor costs. We would have to raise our gross margin by 1% to compensate for the estimated additional cost of stamping the standard unit price.
- 4) The vast majority of packages do not have price spots. There would also be the problem of price marking such items as catsup, ammonia, liquid detergent, etc., where the price is on the cap. There is not sufficient room for more than one price.
- 5) Under the present system on special sales, the price is not stamped on the individual units, but is posted at the checkstand. This represents a considerable saving in labor because of the volume, but the sale price doesn't have to be removed from the merchandise that isn't sold. This saving would be lost if we were forced to put on the standard unit price.

"Store D"—General Commentary

Our work measurement studies have shown that the average clerk working at an average rate of stamping uses .091 man hours to price \$100 worth of groceries. At an average wage rate of \$3.10 per hour, not including fringe benefits, the double pricing of merchandise would cause an increase of .285% in grocery wage costs. To put it another way, we would have to increase our gross profits by .28% to absorb this cost. Additional costs for us would be: (1) purchasing of new stamping equipment to price items; (2) small items would have to be priced with Kum Kleen labels; (3) the cost of pricing by units would be considerably higher than the above figures because of the amount of computing that would be necessary. I believe that if you can apply the above figures to the total California Grocers' sales figure, it would be self-evident that this would cost the consumers a tremendous sum of money.

"Store E"—General Commentary

We feel very strongly that the pricing and requiring of commodity pricing will add cost to our operation and, therefore, the consumer will be paying more for her food. We do not have a breakdown, but will have to give you from experience our projected costs on the questions you ask: 1) The sales clerks spend about 10% of their time marking merchandise. 2) The additional time required to calculate and mark the price on each unit will triple this time because of the many varied packages and commodities that will have to be priced. 3) The added costs for the consumer will add about 2% to 2½% on her total food bill. In our system of a free competitive economy it will necessitate the elimination of special sales because of the added cost of marking, and, therefore, the consumer will pay more because she is now receiving the benefit of special sales which our industry promotes.



CALIFORNIA GROCERS ASSOCIATION

870 MARKET STREET • SAN FRANCISCO 94102

TELEPHONE SUTTER 1-1914

Mr. William Geyer, Consultant
 or Assemblyman John Williamson
 State Capitol
 Sacramento, California

Dr. Bill:

Pursuant to our telephone conversation a few days ago, I contacted various manufacturers of price marking equipment and asked the question, "Can you manufacture a small portable price marking device or machine that will show the unit price on a wide variety of sizes and shapes of food packages and containers?" I also asked that the machine be self-calculating.

I got a wide variety of answers, but yes, such a machine could be manufactured. As one company official told me "We can manufacture a machine to do anything." I then asked the question, "Would you expect your company to manufacture a machine if California was the only state that had a use for it?" They all said they doubted it very much, because there wouldn't be enough in it to warrant the expense of engineering such a machine with such a limited market. No one could give me a definite answer on this question, because there is no way at this time of knowing exactly as to how many machines would be required if California operators had to show the unit cost.

I also asked if they had any idea as to what the cost of such a self-calculating machine or marking device would be. On this I was unable to obtain any information. The manufacturers couldn't even guess without going through extensive engineering research. Most of them did, however, say that in their best judgment the machine would be expensive. And of course, Bill, we should never overlook that even with a self-calculating marking device that we are referring to the market operator would be confronted with the labor involved, and it would no doubt mean higher consumer prices.

I trust this satisfactorily answers your question that we discussed over the phone the other day.

Looking forward to seeing you soon.

Sincerely,
 CALIFORNIA GROCERS ASSOCIATION
 Merle J. Goddard
 Executive Director



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1963-65

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FINAL REPORT OF THE
ASSEMBLY INTERIM COMMITTEE ON AGRICULTURE
(House Resolution 500.1, 1963)

PART II

THE SAN JOAQUIN VALLEY ONE-VARIETY
COTTON DISTRICT

(House Resolution 235, 1963)

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LETTER OF TRANSMITTAL

January 14, 1965

HON. JESSE M. UNRUH

Speaker of the Assembly; and

HON. MEMBERS OF THE ASSEMBLY

State Capitol, Sacramento, California.

Gentlemen:

In accordance with the provisions of House Resolutions 500.1 and 235 of the 1963 General Session, The Assembly Interim Committee on Agriculture herewith submits Part II of its final report, "The San Joaquin Valley One-variety Cotton District."

Respectfully submitted,

JOHN C. WILLIAMSON, Chairman

HAROLD BOOTH, Vice Chairman

HALE ASHCRAFT

WILLIAM T. BAGLEY (with reservations)

ANTHONY C. BEILENSON

FRANK P. BELOTTI

CARL A. BRITSCHGI

GORDON COLOGNE

MYRON H. FREW

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JOE A. GONSALVES

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VICTOR V. VEYSEY

HOUSE RESOLUTION NO. 235 (PATTEE)

Relating to a Study of Acala Cotton

Resolved by the Assembly of the State of California, That the Assembly Committee on Rules is requested to refer for study to an appropriate interim committee the subject of one-variety cotton districts, including the use of test plots of cotton other than acala cotton, and that such interim committee shall report to the Assembly its findings and recommendations not later than the fifth legislative day of the 1965 Regular Session of the Legislature.

Assembly Journal, April 18, 1963, page 2276.

PART I. DESCRIPTION OF THE ONE-VARIETY DISTRICT LAW

The one-variety cotton district law prohibits the planting, possession for planting, picking, harvesting, or ginning of any variety of cotton other than the Acala variety derived from the one-variety breeding program carried on by the United States Cotton Research Station at Shafter, California. (Agricultural Code, Section 951.) This prohibition applies to eight contiguous one-county "districts" (Kern, Madera, Fresno, Kings, Tulare, Merced, Stanislaus and San Joaquin Counties) which are collectively and informally labeled the "San Joaquin Valley One-variety Cotton District" (Sec. 952).

The counties in the one-variety district are termed "districts" only for the purpose of geographical reference, and can be considered passive in the sense that they are without any organization or powers of their own. Cotton grown by the United States Department of Agriculture (U.S.D.A.) or the California Department of Agriculture, and cotton in transit is exempted from the prohibitions of the one-variety law (Sec. 954).

Violation of the one-variety law is a misdemeanor. In addition, the applicable code section contains express liability for civil damages (Sec. 953). Since 1961, the Director of Agriculture and the county commissioners have been authorized to administer the law (Sec. 958). A like amendment also made the violation of the one-variety law a public nuisance (Sec. 955), authorized the director or the proper commissioner to complain, and required the district attorney to file, upon receiving such complaint, a civil action to abate and prevent the nuisance (Sec. 956) and set forth the method of its disposal (Sec. 957).

The concept of a one-variety district is based on several assumptions:

- (1) Premium cotton is the most profitable type of cotton for San Joaquin Valley producers to grow.
- (2) The growth of multiple varieties of cotton makes it impossible to grow premium cotton, since pure varieties are contaminated, production quality becomes nonuniform, and the resulting mixture tends to be reduced to the lowest common denominator of its components.
- (3) There is no grower within the district whose best interests would be served by planting anything other than the approved variety of Acala cotton (Sec. 950).

The preamble of the law, in which these assumptions are found, was a part of the law as originally enacted in 1925. In 1933, during the codification of the Agricultural Code, the preamble was dropped, but was reenacted by amendments adopted in 1961. The reenactment might be said to constitute the specific assertion of the Legislature that the principles which underlay the initial legal adoption of the one-variety concept were equally valid 36 years later.

A. LEGISLATIVE HISTORY OF THE ONE-VARIETY CONCEPT

The one-variety cotton district law as applied to the San Joaquin Valley has been unattended by controversy until the past few years. The concept antedated the passage of the law itself. The theory that the planting of one variety in a given area would ultimately increase the quality and yield of that area appears to have originated in the Cotton Belt states, and to have gained the support and sponsorship, at an early stage, of the U.S.D.A. and state personnel. In these areas and during its early history, however, it was practiced on a local and voluntary basis, California being the first state to have enacted legislation creating by sanction of law such a district.¹

In 1925, a number of San Joaquin Valley cotton producers, after a study, petitioned the State Legislature to use its police powers to legally establish a one-variety cotton district. The Legislature complied, with the result being a law applicable to Riverside County in addition to the present eight counties. All the cotton produced in the state at the time was grown in these nine counties. Although cotton has subsequently been grown in a number of other counties in the state, there are at present only eight significant cotton-producing counties in California. These include six of the original eight San Joaquin Valley district counties, Madera, Merced, Fresno, Kings, Tulare, and Kern; and two desert counties, Imperial and Riverside. In addition, there are five other counties having less than 1,000 acres of cotton each.

TABLE I
CALIFORNIA COTTON PRODUCTION

County	Number of farm allotments (1963)	Acreage (1962)	Bales (1962)	Rank yield per acre
MAJOR				
Imperial -----	647	51,600	180,800	1 †
Riverside -----	256	21,650	64,400	2 †
Kern * -----	1,498	191,500	509,700	3
Fresno * -----	2,692	208,300	491,300	4
Merced * -----	406	28,790	69,220	5
Kings * -----	1,154	100,700	206,400	6
Tulare * -----	2,841	155,600	305,500	7 ‡
Madera * -----	945	49,780	91,580	8 ‡
MINOR				
San Diego -----	6	320	945	1
Stanislaus * -----	5	90	185	2
San Benito -----	4	220	415	3
Los Angeles -----	3	200	325	4
Inyo -----	3	250	230	5
Totals -----	10,460	809,000	1,912,000	

* One-variety district county.

† Above three bales.

‡ Below two bales.

In 1941, Riverside County requested permission to withdraw from the one-variety district. Because of the physical barrier between River-

¹ An article entitled "One Variety Community Plan Shows Numerous Practical Advantages" appeared in the 1933 *Yearbook of Agriculture*, published by the U.S.D.A. This article provides a comprehensive review of the history and the justification of the one-variety concept in cotton and notes that in 1925 the Legislature in California enacted a special act "giving legal protection to communities where the farmers restricted themselves to growing a single variety," p. 134.

side and the other eight counties, the request was granted. It is of importance that Riverside was not contiguous to any of the other counties in the district since its withdrawal posed no problems of contamination within the one-variety district.

In the early days of the Imperial Valley, cotton was an important commercial crop. However, for a number of years prior to and during World War II, cotton acreage was either small or nonexistent. In 1950, when the Korean War caused the termination of federal cotton acreage controls, the Imperial Valley once more became an important cotton-growing area, and the Acala variety was in general use. In 1955, growers there successfully sponsored the inclusion of Imperial County in the one-variety district law but then reversed themselves and had their county removed at the 1956 Special Session before any plantings were made under the law. The Imperial Valley withdrawal occurred when another variety was found to show promise of outyielding the legal Acala variety.

In 1959, violations of the one-variety law were discovered in two counties, Kern and Madera. The 1959 violations were reportedly the first discovered in many years.² They were dealt with under the then existing provisions of the Agricultural Code and furnished the impetus which caused supporters of the one-variety district to request a tightening of the enforcement provisions of the law. Resulting from the request was the declaration of violation being a nuisance, reenactment of the preamble, and the provisions charging the director and commissioners with administration of the law.

In the 1963 General Session, Assemblyman Gordon Winton of Merced introduced a measure (AB 1278) which would have allowed the planting of nonconforming cotton within the one-variety district provided the plantings were in plots of 20 acres or less, the ginning all took place within Madera County, and the entire operation was supervised by the county commissioner to prevent contamination of Acala cotton within the one-variety district. As finally amended, the bill would have permitted the experimental plantings only in Madera County, would have required the planter to apply for a permit from the commissioner pursuant to regulations drawn up for that purpose, would have limited each permittee to one 20-acre and ten 5-acre plots, and would have required such permittee to post a \$5,000 bond as surety for his compliance with the conditions of the permit.

AB 1278 was defeated in the Assembly Committee on Agriculture. Subsequently, Assemblyman Alan G. Pattee authored House Resolution 235 of the 1963 General Session calling for a general study of the one-variety district law. The Legislature authorized the study, and referred HR 235 to the Assembly Interim Committee on Agriculture. It is pursuant to this resolution that this report is submitted.

B. COMMITTEE STUDY OF HR 235

HR 235 authorized the committee to study the subject of one variety cotton district, "including the use of test plots of cotton other than Acala cotton." The committee was not limited, however, to the test

² Memorandum, E. C. Breech to H. E. Spires, California State Department of Agriculture, October 10, 1963.

plot segment of the problem, but rather felt free to look into and dissect the entire concept of one-variety cotton. Accordingly, the committee scheduled three hearings and field trips at such places as would afford the opportunity to the Members to make a broad, general study of the San Joaquin One-variety Cotton District Law.

The first hearing was held in Bakersfield on November 15, 1963, for the purpose of learning about the operation of the present one-variety law and taking testimony favorable to its retention. This hearing was preceded on November 14 by a committee field trip to the U.S.D.A. Cotton Research Station at Shafter, and surrounding cotton-producing areas, described by Marvin Hoover, extension cotton specialist at Shafter.

"The committee was taken on a tour of the U.S. Cotton Research Station at Shafter and to local cotton fields representative of fields in the chain, or steps required, in the pure seed multiplication program of the California Planting Cotton Seed Distributors (CPCSD). A local gin which cooperates in the pure seed saving program was also visited.

"At the U.S. Cotton Research Station the variety improvement phase of the program of the station was reviewed. This consisted of genetic screening (germ plasm from around the world), special trait endeavors (transfer of specific traits into breeding stocks), main breeding efforts (evaluation of hundreds of progenies and families) and testing (valleywide performance of families, strains and varieties). Other supporting activities (development of cultural information) of the station were also reviewed.

"Grower fields were visited from which pure seed was produced. Fields representative of each stage of multiplication (foundation, white tag, purple tag, and green tag) were shown to illustrate the steps in the increase program. Isolation requirements were also illustrated. The cooperative role of the pure seed grower, ginner, CPCSD, and the research station was clearly shown.

"A local gin which cooperates in the pure seed program was visited. Services performed by the gin (seed saving, delinting, chemical treatment, and sacking) were explained by the gin manager."

The second hearing was held in Brawley on December 5, 1963, for the purpose of taking testimony relative to the production of cotton and the selection of varieties in an area not covered by the one-variety law. On the afternoon of the 5th, the committee visited the experimental plots of the U.S.D.A. Southwest Irrigation Field Station at Brawley, and of the Delta & Pine Land Company, and surrounding cotton-producing areas. On December 6, committee members were flown to Friendly Corners, Arizona, for the purpose of observing and discussing cotton production in an area which is without a one-variety law, and where a number of cotton varieties are grown in proximity to each other without any clear preference by the growers for any single variety. These field trips are described as follows by W. W. Bradford, manager, Western Division, Delta & Pine Land Company:

"During the afternoon a field trip was arranged jointly by the Elmore Company, Delta & Pine Land Company and the Cotton

Section of the U.S.D.A. Southwest Irrigation Field Station. A large passenger bus was provided for the tour. The first stop was at the U.S.D.A. station south of Brawley, where the breeding nursery and many interesting cultural practice tests were viewed. The second stop was at Fifield Farms three miles east of Brawley to look at Delta & Pine Land Company's main variety test. This test consisted of eight varieties and strains replicated eight times with each two-row plot extending the full one-half mile length of the field. While here one row each (one-fifth acre) of Deltapine Smooth Leaf, Deltapine 5540 and Acala 4-42 was harvested for weight comparisons. Weights of seed cotton, as provided by Growers' Brawley gin, were 950 pounds for Deltapine Smooth Leaf, 690 pounds for Deltapine 5540 and 550 pounds for Acala 4-42.

"The tour proceeded north and west of Brawley to Westmorland observing cotton fields on the way. The third stop was at Growers' Westmorland gin, hosted by the Imperial Ginning Company.

"The fourth stop was at Delta & Pine Land Company's research nursery located on John Elmore's Desert Ranch 20 miles west of Brawley. At this 40-acre nursery several hundred different strains of cotton were observed growing in progeny rows, replicated tests and observation blocks.

"The final stop for the day was at a production field on Desert Ranch where first pick was made on one acre. The weight of seed cotton harvested was 9,360 pounds, or approximately $6\frac{1}{2}$ bales per acre. An invitation was issued for anyone interested to ride the pickers through the field. Many in attendance accepted the invitation.

"On December 6, committee members and other interested parties were flown in four private planes to Friendly Corners, Arizona, to observe performance of wilt-tolerant strains in Delta & Pine Land Company's 40-acre wilt-screening nursery. While in Arizona the committee met unofficially with several growers, processors, ginners and oil mill representatives to discuss cotton production in Arizona."

The third hearing was held in Madera on September 28 and 29, 1964, for the purpose of taking testimony from cotton growers in the northern counties of the San Joaquin Valley one-variety district, including the proponents of Assembly Bill 1278, from leaders of the American Textile Manufacturers Institute relative to the need for high-quality cotton, from the California cotton industry generally relative to the testing proposal advanced by the California Planting Cotton Seed Distributors, and from individuals who wished to amplify previous remarks or who had not previously testified.

This hearing was preceded on the morning of September 28 by a committee field trip to existing U.S.D.A. test plots in the vicinity of Madera and Chowchilla. This field trip was described as follows by John H. Turner, agronomist in charge, U.S.D.A. Cotton Research Station, Shafter:

"Tour planned by John H. Turner, director, U.S. Cotton Research Station, Shafter; Aubrey Baker, Madera County grower;

and Clarence Johnson, farm adviser, Agricultural Extension Service, Madera.

"Four stops were made to view cotton tests and hear of the objectives and previous results:

1. Aubrey Baker Ranch.
2. Bill Clay Ranch.
3. Chester Weaver Ranch.
4. Chip Rogers Ranch.

Stop No. 1—Variety-cultural Test

"This is the second year of this three-year study. Deltapine Smooth Leaf (representing a typical rainbelt-type variety) was compared with Acala 4-42 (a typical Western variety) at two levels of fertility. The 1963 results showed no difference in these two cottons in their response to fertilizer. Acala 4-42 made slightly more cotton than Deltapine Smooth Leaf.

Stop No. 2—Regional Variety and Strain Test

"Following a screening of some 40 cottons in 1963, the most promising variety from each commercial breeding firm was requested for this valleywide test. In addition to the eight varieties in this study, seven experimental Acalas that are being considered for future release were also added. Two additional varieties that had not performed well in screening were grown in observational plots adjacent to the study. The varietal characteristics and the fiber traits of each cotton were explained to the committee. Also, the best information developed relative to disease and insect tolerance was presented.

Stop No. 3—Studies at This Location

"a. *Acala Family Test.* This test was a randomized yield study with the separate Acala family components that make up the advanced strains shown at the previous stops. Considerable difference was evident, especially for crop maturity at this location.

"b. *A Screening Study.* This involved newly developed lines from various breeders to check their potential in the northern zone of the valley.

"c. *Special Selection Study.* This particular study involved selections made at Chowchilla, Tulare County, and Kern County. Breeders are attempting to determine the response of plant selections made at various valley sites from the same material the following year when all lines are grown at the various locations. Results from this study will indicate whether or not it is highly desirable for the breeder to make plant selections in each zone of the valley.

Stop No. 4—Fertility, Fumigation, and Land Preparation Studies

"This location has provided the farm adviser with an excellent site on which to conduct studies with varying levels of nitrogen and potash fertilizers. Also, a wonderful response from the new land preparation practice called 'precision tillage' has been found. This latter land preparation procedure was also being studied in relationship to soil fumigants in order to control nematodes. It was

evident that soil variability as exists in Madera and Merced Counties poses a difficult problem in determining the best cultural practices for any given farm unit. Far more differences in crop yield have been obtained from *cultural* treatments than from *varietal* differences."

In addition, some committee members attended the annual Cotton Field Day at the Shafter station on November 5 and 6, 1963, and the public hearing held by the State Department of Agriculture relative to the CPCSD proposal in Fresno on June 17, 1964.

PART II. JUSTIFICATION OF THE ONE-VARIETY DISTRICT LAW CONCEPT

In commencing this study of the one-variety law, the committee felt that the use of the police power of the state in this manner was justified if the results of the legislation did, in fact, adhere to the end to be obtained contained in the preamble of the law. The information received by the committee at the three hearings has convinced the committee that the San Joaquin Valley cotton industry is in an uniquely fortunate position of being protected by a one-variety law, and is overwhelmingly appreciative of that fact.

A. UNIQUENESS

The committee found the one-variety law in California to be unique. There are one-variety communities in the United States, based on voluntary association of cotton farmers, or upon informal preference,³ but in no other area of this country can one find a statute which precludes the planting and harvesting of other than a named cotton.⁴ The San Joaquin Valley is apparently the only significant cotton producing area where the one-variety community concept as fostered by the U.S.D.A. and other cotton experts during the second and third decades of this century gained a legal foothold.⁵

In attempting to find a parallel one-variety law, the committee contacted numerous sources. Replies indicated that the specific one-variety district law was unique not only to the cotton industry, but to other agricultural products as well. However, it was not found to be entirely without parallel. The consensus of the answers is best stated in these words:

... insofar as we are aware, cotton is the only agricultural product and California is the only state in which there is a district where by law only one variety of that product can be grown. However, there are other informal arrangements which can be found throughout the country. For example, in the South, one-variety communities were stimulated by the Federal Extension Service and the Agricultural Research Service, particularly with respect to cotton, but these programs were controlled locally and through agreements among the farmers. In addition, in areas in the West devoted to seed production of cross-pollinated forage and grass legumes, because of problems created by winds blowing and crossing the varieties, the farmers voluntarily agreed to cooperate and grow

³ One such area is Imperial County. In 1963, 99 percent of the cotton grown there was Deltapine Smooth Leaf.

⁴ From 1949 to 1961 the State of Nevada had in existence a one-variety cotton district in Clark and Nye Counties, limited to the production of Acala cotton. The purpose of this district was to enable the relatively modest cotton crop originating in this area to be ginned in the San Joaquin Valley. The operative regulation was rescinded for the purpose of growing long staple cotton in that area. Letter, Lee M. Burge, Executive Director, Nevada State Department of Agriculture, November 12, 1963.

⁵ It has been said that the U.S.D.A. initially recommended one-variety communities in 1917.

only one variety in order to produce an acceptable seed of that one variety. We further understand that vegetable and fruit canners will stimulate the same type of arrangement in order to have the vegetables and fruits continuously available for canning through the year. By means of such arrangements, the canners can accurately predict the types and quantities of fruits or vegetables which will be available, and their approximate maturity dates.⁶

The mere fact that the concept is unique does not, of course, justify its existence. As a practical matter, however, the committee found that this uniqueness has been translated into an economic advantage for San Joaquin Valley cotton growers.

B. MARKETING ADVANTAGE

Testimony before the committee established the fact that Acala 4-42, the current cotton grown in the San Joaquin one-variety district, commands a varying premium over other cottons estimated at 3 to 5 cents per pound on the free market. Of equal if not greater importance is the fact that virtually the entire crop is consumed in normal commercial channels.⁷

The mills, many of whom sent representatives to testify before the committee, depend on the superior spinning qualities of Acala as part of the blend necessary to bring other cottons up to required standards. This dependence means that the one-variety district has a built-in, and apparently permanent, market for its product. According to the bulk of the testimony on the point, the commercial market for most of the cotton grown in this country is dependent upon the continued availability of this quality California cotton.

Dave Hall, a textile manufacturer from Belmont, North Carolina, and the chairman of a group of cotton users representing the American Textile Manufacturers Institute, summed up the market appraisal of San Joaquin Valley Acala cotton in this manner:

The textile industry has spent more than \$4 billion in the last dozen years to improve its plants and equipment. But for all of that money, and any additional expenditures we might make, it is impossible for the spinner to add anything to the inherent quality of cotton.

We can clean it, we can straighten it, and remove the immature and imperfect fibers, but those fibers which remain and which are responsible for the running quality through our mills, at the stepped up speeds we must employ, are no better than the seeds you plant and the care you use in the growing, harvesting and ginning of your crops.

Cotton quality is important. It is equally important that we know where to find it in substantial quantities and on a consistent dependable basis as is presently the case with the Acala cotton.⁸

⁶ John C. Bagwell, General Counsel, United States Department of Agriculture, letter dated February 14, 1964. The National Cotton Council of America furnished corresponding information.

⁷ It was definitely established that the percentage of Acala from the San Joaquin Valley placed in the government loan is appreciably less than that of any other extensive cotton producing area in the United States, although the figures given the committee were in conflict.

⁸ Testimony before the committee, Madera, September 29, 1964.

Mr. F. M. Arthur, vice president and cotton buyer, Textiles, Inc., of Gastonia, North Carolina, noted the premium presently paid for California Acala from the one-variety district and added this statement:

... Mills don't just throw money away. Textile manufacturing is one of the most competitive industries in the world, and a mill would not be long in business if it was not carefully selective in price as well as quality when buying raw materials. We don't pay these prices because we have good friends among the shippers and growers out here, or because we like an occasional trip out West. We buy your cotton and pay your prices because our customers demand the quality, and our end product requires the spinning characteristics that can be obtained only from Acala cotton.⁹

The one-variety cotton presently in existence, Acala 4-42, is a superior cotton and one which, as is shown above, commands a market. Judging from the glowing testimony received from cotton buyers and users, the committee was inclined to believe that this superior quality was, if anything, being insufficiently rewarded in the market place. This appears to be accounted for in part by the failure of the federal government to make anything more than rudimentary distinctions between cotton qualities in its support programs, and the consequent emphasis of the programs on the protection of inferior cottons. With the predicted general lowering of cotton price supports, or with modernized federal quality distinctions, the existing premium for San Joaquin Valley Acala cotton should increase. This in turn would indicate that so long as the one-variety district remains successfully in effect, San Joaquin Valley growers should remain well insulated from any hardships caused by fluctuations in federal support policies. San Joaquin Valley growers have demonstrated faith in their own self-sufficiency by voting against the existing federal cotton support program.

C. YIELD ADVANTAGE

Superior quantity is of equal importance with superior quality in profitable cotton production. Without satisfactory yield, efficient farming practices are impossible and the unit price that the farmer must receive for his crop becomes higher than that which the buyer will pay. The committee found that the San Joaquin Valley cotton growers have received from U.S.D.A. breeders at Shafter a steadily improving variety of cotton which, insofar as present levels of technology permit, has realized the natural potentialities of the valley for cotton production, and has substantially overcome the main indigenous controllable limiting factor, verticillium wilt. In San Joaquin Valley variety tests, Acala releases have for years achieved yields equal or superior to privately bred cottons, and have demonstrated a remarkable level of reliability. Conversely, the committee was able to find no proof that any other current commercially released variety of cotton would be superior in yield to the present Acala variety throughout the district.

⁹ Testimony before the committee, Madera, September 29, 1964.

D. RESEARCH ADVANTAGE

One of the leading reasons for the development and maintenance of high-quality, high-quantity cotton production in the San Joaquin Valley is the research advantage made possible by the existence of a single variety in the valley. The San Joaquin Valley produces in the neighborhood of a million and a half bales of cotton yearly. The research at the Shafter station operated by the U.S.D.A. costs about \$500,000 yearly, the costs being shared by the federal government, the state government and the local growers involved. Using rough mathematics, the costs of research, seed production, counsel and assistance provided the growers in connection with cotton, computed on a per-bale basis, amounts to about $33\frac{1}{3}$ cents per bale.

The average bale in the San Joaquin Valley sells for approximately \$170. The growers in the valley are almost unanimous in stating that the cost of research per bale is more than reasonable.¹⁰ This low research cost is directly traceable to the one-variety concept. The fact that the great bulk of research, breeding, strain tests and improvement techniques are employed on one variety means concentrated effort. As Acala is improved, so is the earning power of every cotton farmer in the San Joaquin Valley.

A hypothetical situation shows the feasibility of research in a one-variety situation as compared to a multivariety area. Assume five varieties were legally grown in the San Joaquin Valley. In order for each of the five to receive the same scientific treatment presently afforded Acala, the cost of research would be increased proportionately, or five-fold. Assuming the converse, five varieties and no increase in research moneys, it is apparent that each variety would receive substantially less than Acala presently is afforded.

E. SEED COST ADVANTAGE

Originally, the one-variety law allowed the planting of any and all Acala cottons. The 1961 amendments altered the situation by inserting a prohibition against the planting of any Acala seed other than that derived from the one-variety breeding program at the U.S.D.A. Shafter station (Sec. 951). This act was actually nothing more than legislative sanction and recognition of the long established breeding practice in the one-variety district. The U.S.D.A. had been experimenting with suitable cotton varieties in the San Joaquin Valley since 1917. When the one-variety law was enacted, the Shafter station, established in 1922, made use of its work to select a desirable variety for planting throughout the valley. Since federal law does not permit a U.S.D.A. station to sell or distribute seed commercially, a loose organization of local growers was formed for this purpose. In 1936, this organization was formalized as the California Planting Cotton Seed Distributors, a nonprofit California corporation.

Each year, the distributors receive 60 pounds of pure hand-pollinated seed from the Shafter station. This seed is that which, in the view of the Shafter personnel, constitutes its most advanced Acala seed strain compatible with large-scale commercial production. The emphasis in

¹⁰ Not one witness appeared before the committee who felt the present research program costly or wasteful. With small exception, most evidenced complete faith in the research program of the U.S.D.A.

breeding at the station has been on the development of a high-fiber-quality cotton, but also on yield and cultural adaptation. The 60 pounds of seed do not become the actual planting seed for the San Joaquin Valley until after five years have elapsed. At that time, the 60 pounds have been increased, by yearly plantings, to more than 25,000 tons.

The first year after selection, the new seed is planted on five acres at the U.S.D.A. station and termed "progeny increase." The seed saved from this five-acre plot is then planted on 300 acres of "foundation seed fields," farms under contract to the distributors. From this seed, 4,000 acres of third-year or "white tag" fields are planted. The resultant seed crop is then planted, in the fourth year, on 70,000 acres of "pure seed fields," characterized by a purple tag. Finally, the regular cotton crop or "green tag" product is grown in the fifth year. The seeds are then sold by the California Planting Cotton Seed Distributors to the cotton farmers in the San Joaquin Valley.

The organization numbers about 300 members, that figure being made up of those growers who sign contracts with the distributors to produce seed. They alone have voting rights. However, the distributors are governed by a board of seven directors who are elected by the membership but are not themselves required to be members. The sole requirement is that the directors be cotton producers in the San Joaquin one-variety district. The members are selected by the cooperators, the participating gins. These gins are not members and have no vote. Since members must sign contracts with both the distributors and the co-operators, however, the distributors maintain a voice in their membership policy although the primary initiative in dealing with members remains with the cooperators.

The distributors operate on a projected-cost basis. In effect, they have a monopoly upon the sale of seed in the valley.¹¹ The fact that it is a nonprofit corporation negates any adverse effect which this monopoly status under legal protection might otherwise create. The primary financial beneficiaries of their operation appear to be the San Joaquin Valley cotton growers in that seed cost to the grower is appreciably less than that of commercially produced varieties;¹² the seed producer, who gets both a guarantee base and incentive payment; the U.S.D.A., which receives from \$150,000 to \$170,000 annually for research out of the seed price; and the University of California, which receives \$40,000 to \$60,000 for research from the same source.

F. GROWER SUPPORT

The cotton growers in the San Joaquin Valley overwhelmingly favor the retention of the one-variety district. In the absence of any self-enforcing mechanism in the one-variety district law for determining grower sentiment, such as exists for commodities operating programs under the California Marketing Act, the responsibility for determining the sentiment of growers within the districts devolves to the Legislature. Although the committee did not specifically attempt to measure

¹¹ Although it is true that cotton growers may save their own seed for planting if it is derived from Acala stocks bred at the Shafter station, few do, since such seed would become progressively outdated each succeeding year.

¹² See Appendix B. For a description of the seed pricing policy of the distributors, see the distributors' pamphlet, *The Story of California's San Joaquin Valley Cotton* (Bakersfield, 1963), pp. 14-17.

this support, it was self-evident from the testimony and mail received by the committee. It was further attested to by the statements of proponents of private testing within the district, who not only as a rule indicated a desire to preserve the one-variety district, but also stipulated that they believed that the vast majority of district growers were also of that opinion. The fact that this program is so well established in the valley and receives such deepfelt support is indicative, the committee feels, that the San Joaquin Valley farmers are aware of the value of the one-variety district law which they have established and much prefer the marketing and production situation that presently exists under it to the uncertainties that would follow upon its abandonment.

PART III. PROBLEMS OF OUTSIDE BREEDING AND TESTING

The proponents for a program of outside testing and breeding are centered in Madera County. Various methods of allowing outside breeders and cotton researchers in the San Joaquin Valley were advanced to the committee. The major problem in all such proposals was not how this should be done but whether such testing and breeding could in fact be allowed consistent with the continuation of the one-variety concept. The case as described by proponents is as follows:

A. ARGUMENTS FOR OUTSIDE BREEDING AND TESTING

At the present time all breeding and testing in the San Joaquin Valley is done by the U.S.D.A. in conjunction with the University of California. There is no competition between these entities; they operate together with a like aim, to improve the cotton grown in the San Joaquin Valley. However, this method of attempting to improve the position of the San Joaquin Valley cotton farmer overlooks one important factor, the incentive derived from competition.

Assemblyman Winton, the author of the measure which would have allowed private testing in the valley, expressed the argument favoring such legislation when he stated:

... Why put in legislation like this? I'd like to point out that I think in any enterprise competition is very essential. In this particular enterprise we have one breeder of cotton who has charge and the only breeder actually who can do any experimentation within the valley. It seemed to us, those that were interested in the bill, that if other breeders have the opportunity to breed cotton in this area, and to experiment with it that perhaps they could come up with a variety or strain of cotton that was better suited to the climate and soil and growing conditions of this area of the state. Perhaps they wouldn't, but at the present time, with the experimentation limited to one agency, if that agency doesn't develop something that's better you have no chance. You can have three or four or maybe more breeders working on the same problem at the same time. I would say that your chances are multiplied that you might come up with a good strain or a better strain of cotton in this area. Acala is a good strain, but we're always searching. . . . We're searching for a better way of doing things, and it seems to me that this would give a much better chance to find a better strain of cotton for this particular area.¹³

Assemblyman Winton's statement implies a further contention often advanced by proponents of outside testing. That is that varietal breeding must of necessity be related to the site of production. The San Joaquin Valley one-variety district is nearly 200 miles long, running

¹³ Testimony before the committee, Madera, September 28, 1964.

from north to south, and comprises many different climatic and soil conditions. This is generally accepted as the fundamental explanation for differing yields within areas of the district. Proponents therefore contend that a cotton bred in one area of the district will have a tendency to adapt itself to that area, and be a relatively less effective producer in other areas. Specifically, they argued that the Acala cottons bred at the Shafter station in Kern County may be ideally suited to the southern and western areas of the district, but are much less suited to the northern and eastern areas, typified by Madera County.

Proponents further argue that outside breeding in areas such as Madera County must be undertaken because variety tests now carried out there do not truly test the ability of private breeders to develop a suitable cotton. Since a private cotton breeder must breed commercially, it is logical to assume that his released varieties are developed for existing markets in other cotton-producing areas, none of which approximate the production conditions in Madera County. Under these circumstances, it is possible for the Acala release to be the best available cotton in the area and yet not be the best that could be developed, given local breeding.

Finally, a collateral argument is made by the proponents of outside testing relative to the standards of cotton evaluation for the purposes of district release. They charge that the U.S.D.A. works on the development of a superior quality cotton, often to the detriment of production yield. An outside breeder, the contention is, may well find a cotton which is inferior, or even grossly inferior, to Acala in these particulars but which outyields Acala so substantially that the increase in yield puts more money into the pocket of the farmer than is received from Acala with its premium for quality.

B. ARGUMENTS AGAINST OUTSIDE BREEDING AND TESTING

Reduced to simplicity, the opponents of outside breeding state that outside breeding will ultimately lead to the breakdown of the one-variety district, and that all legitimate existing problems can be solved within the context of the present law.

1. Contamination and Bootlegging

Opponents first foresee outside testing leading to contamination and bootlegging. This point was noted by several witnesses who appeared before the committee. Lloyd Martin, with the Golden State Gins in Madera, stated:

Estimates vary on the number of breeders who might take advantage of this opportunity to come into our district, but from letters that I have received from commercial seed companies throughout the cotton belt of the south, I have to believe that there are at least 10 outside breeders who would be interested.

Assume then that each of these breeders had one plot. . . . It could amount to 200 acres of other than Acala variety cotton being grown in Madera County and unless complete and close supervision is given to this, there could even be some of the original seed

stock brought in here that might get into the wrong hands and we might even have a few illegal plots within the first year.¹⁴

It would appear that contamination and bootlegging of seeds are both possible results of any open testing programs. Other possibilities, all adverse to the best interest of the cotton farmers in the valley, also should be noted.

2. Incentive to Breeders to Emphasize Sales

Viewing the realities, any breeder who is allowed in the San Joaquin Valley may have an interest, even a desire, to improve the quality of cotton from a scientific viewpoint; however, the private breeder presumably also has a strong obligation to realize a return on his capital investment in breeding. The breeder, in other words, would ultimately want to sell his product, and his decision to do so could conceivably be only indirectly related to the relative merit of his end product.

In a normal free market situation, this would be as it should be, and inferior products would be driven out through lack of consumer acceptance. However, the policy of the one-variety district law is that uniformity of product is necessary to develop and perpetuate price premium and, by extension, the maximum return to the farmer. Under these circumstances, the existence of an inferior product on the market, even for a short time, might destroy the collective advantage for everyone else. Supporters of the present one-variety law are therefore fearful that a breeder may come up with a product not clearly superior in either yield or quality to the approved variety in the valley and still, through advertising, the encouragement of bootlegging, or other means, use his breeding operation as a lever to undermine the one-variety district. Seed companies, unable to sell their seed in the valley at this time, would have everything to gain and nothing to lose in the ultimate destruction of the one-variety district.

3. What Follows Successful Breeding?

If it is assumed that commercial breeders can operate within the valley without any of the consequences foreseen above, where would the successful breeding program lead? Opponents of such a program still fear the likelihood, if not the necessity, of an eventual breakdown of the one-variety district. As noted, the commercial breeders would be operating on a profit motive. There are possibly today inferior quality cottons which will outyield Acala in some part or parts of San Joaquin Valley and which would give to the farmer, today, more in-pocket income than he receives today from Acala. The private breeder, using this definition of superiority, could conceivably convince the majority of the farmers in an area to petition the Legislature to repeal the one-variety law for instant profit, or to substitute the new variety for Acala in the law.

The opponents note, however, that to repeal the one-variety district with its quality cotton could do irreparable harm to the cotton industry nationally as well as in this state. In addition, they point out that the government loan, from which much of the in-pocket income from in-

¹⁴ Madera, September 29, 1964. Mr. Martin went on to note numerous places where seed theft was possible, and a like number of possibilities of contamination. Included were the test plot, the cotton gin, the oil mill and the trucks enroute from any of the above.

ferior cottons presently comes, is temporary. To place the California San Joaquin farmer in the position of relying on a temporary, artificial market at the expense of a well-established, apparently permanent market might prove, in the long run, less than wise. On the other hand, to substitute the locally bred new variety for Acala would probably be unacceptable to the present satisfied Acala growers in the remainder of the district, and the result would be a political stalemate.

For the above reasons, the opponents of private outside breeding and testing—and the great bulk of farmers in the area are found within their ranks—have expressed their belief that the testing and breeding be left where it now is, with the personnel manning the U.S.D.A. Shafter station.

4. Indissolubility of the One-variety District

Proponents of outside breeding have argued that if a plan for outside breeding is not adopted, then the Legislature should make it possible for a county to remove itself from the district, either on the request of a specified percentage of the farmers in the county or of a percentage of the acreage in a given county actually planted in cotton. At face value, such a provision would seem equitable, and might appear to be the answer to the hypothetical political stalemate cited in previous paragraph.

Close examination, however, precludes the committee from making such a recommendation. The one-variety district, of necessity, must be indissoluble. To allow one county to withdraw would pose serious problems of contamination and bootlegging to neighboring counties. Even if such contamination could be reasonably well controlled, the existence of a proximate nonmember county in the San Joaquin Valley might seriously affect the buyer confidence upon which the premium price is based. It is true that Riverside, at an earlier date, was allowed to withdraw, but the natural barrier between the present district and Riverside County precluded the contamination threat. With the present member counties, no such physical barriers exist.

5. Adequate Testing Program Now Underway

Throughout the history of the one-variety law, the great bulk of the valley has been more than satisfied with the work done by the U.S.D.A. at its Shafter station. The facts support the contentment of the cotton farmers. Over the last 15 years, for instance, Acala 4-42 has shown a 71-percent gain in yield in the valley and 15-percent increase in quality. In 1945 the yield was 535 pounds, in 1955, 774 pounds, and in 1962 over 1,100 pounds of lint per acre.¹⁵ While it is difficult to estimate the precise role that variety has played in this increase, it must be given a substantial part of the credit. The relative increase in yield as opposed to quality should also be proof that production factors have not been neglected in favor of high lint standards.

In some portions of the valley, the lint per acre has lagged because of a combination of soil and growing conditions, including a shorter growing period. In these areas are concentrated the proponents of outside testing. For that reason, our discussion of the adequacy of present

¹⁵ Testimony of Kenneth Frick, cotton grower and president of the California Planting Cotton Seed Distributors, Bakersfield, November 15, 1963.

research is concerned with that portion of the valley where some dissatisfaction has been voiced.

In Madera and adjacent counties (Merced and western Fresno), variety tests were conducted during the period 1953 through 1962. These tests were aimed at the improvement of the cotton variety in the entire valley and consisted of such major type tests as variety comparison, comparison of California strains of cotton, and models of the present variety. Tests compared California cottons with those from the Mississippi Delta, Arizona, New Mexico and California. Each year in excess of one of this type of test was conducted. In five of the years concerned, tests were conducted on the Mississippi Delta cottons.

Since 1962, increased testing has been conducted in Madera County with five locations selected, each location having at least six types of tests. One particular test, for example, compared 40 cottons from seven states other than California. Besides the variety tests, evaluations were made of advanced strains from the California breeding program and strain management tests were made with advanced strains. In 1963, additional variety management tests comparing Acala and Deltapine Smooth Leaf under differing nitrogen fertilization practices were commenced and are being continued.

In 1964, the program in Madera was further enlarged, with plant breeders making plant selections of promising cottons. Eighty-four separate cottons were tested and represented cottons from 14 states and Peru besides California. These were seed stocks furnished to the California breeders for evaluation of both wilt tolerance and earliness of maturity. In addition, there was a continuation of evaluation of advanced strain materials and varieties management comparisons and models of present varieties.

It would appear, in summary, that the northern area presently is receiving as much research, breeding and testing attention as any area in the San Joaquin Valley, with the possible exception of the Shafter station. The proponents of outside breeding have themselves conceded that much more has been already accomplished in the way of increased testing than they had thought possible when they first directed attention to the problem. It is also worth noting that Tulare County, where yields have suffered badly from a wilt complex problem, but where there has been relatively little interest in amending the one-variety law, has also been the beneficiary of a stepped-up research program. This fact would seem to indicate that both the Shafter station and the seed distributors stand ready to assist any problem area in the district within the limits of available funds.

Finally, the tests currently being carried on in the northern part of the district, as well as in other areas, seem reasonably calculated to assist the Shafter station in the development and selection of a cotton that will perform well in all parts of the district. The current Acala release, 4-42, has stood up extremely well in all testing areas, both in comparison to other Acala cottons, and to other varieties of cotton. The lay judgment of the committee, based upon the evidence of such tests, is that Acala 4-42 is unquestionably the superior cotton for production within the San Joaquin Valley one-variety district.

6. The CPCSD Proposal

The recognition of the present superiority of Acala 4-42, and the conclusion that the Shafter station now has adequate information available to it through its testing program to make a reasoned judgment on the utility of promising strains of cotton in the various subareas within the district, does not mean that no more research should be undertaken. Information on the performance throughout the district of the latest releases and promising strains of other cottons is less than perfect and complete. To permit the measurement of the current release of Acala by a more extensive yardstick, and to keep the search as wide as possible for any other cotton that might hold out the possibility of better performance within the district, the California Planting Cotton Seed Distributors have proposed a new, districtwide testing program.

On June 17, 1964, The California Planting Cotton Seed Distributors reported on the findings of a special industry committee on the one-variety cotton program in the San Joaquin Valley. This proposal, and subsequent amendments to it, is as follows:

Continuous Testing

The economic welfare of the agricultural industry and the State of California will be well served by conducting, on a continuing basis, a cotton variety testing program which will insure the cotton growers of the one-variety district of the most superior and economically profitable variety of cotton.

Indeed, it is appropriate not only to commend past performance on the yield and quality objectives of the one-variety district's cultural research and breeding programs, but to urge an intensification of such efforts along with the necessary financial assistance to support them.

Rising production costs in conjunction with current restrictive acreage allotments, as well as the possibility of increased acreages with lower price supports, require continuing and accelerated research as a matter of practical economics. It is the board's belief that such research may well be even more important in the future than it has in the past.

Problem Areas

Northern Yields. While the history of Acala yield improvement shows approximately the same percentage of progress for each county within the one-variety district, lint production in the northern zone continues below the average yields of the central and southern counties.

According to authoritative testimony of U.S.D.A. and University of California specialists, the disparity in yields between the colder northern and the warmer southern zones is due primarily to the difference in average daily heat units. It is their opinion that any variety of cotton would result in similar yield differentials.

In recognition of the climatic differences, the board has authorized the Shafter station to initiate a comprehensive varietal and strain testing program to be conducted in all four zones of the one-variety district as a part of its continuing efforts to find and de-

velop those cotton strains best adapted to maximum production and uniform high quality for each of the climatic divisions of the district.

Soil Diseases

Certain areas of Tulare County are suffering wilt conditions, compounded by the probability of other as yet unidentified soil diseases, which present declining yield problems of vital economic concern. Definitive research into the problems of multiple soil diseases has been started, but practical solutions are currently non-existent or inconclusive.

It is the board's intentions that the CPCSD should pursue every reasonable and practical avenue of assistance, not only for the benefit of these problem areas, but for the benefit of the total district as well.

Supervision

The San Joaquin Valley cotton variety testing program shall be conducted under the authority of the Director of the State Department of Agriculture. There shall be a representative advisory committee appointed by the director. This committee shall be composed of one person each from the United States Department of Agriculture and the University of California plus four San Joaquin Valley cotton growers representing one each from Western Cotton Growers, Calcot, the California Planting Cotton Seed Distributors and one from another appropriate farm organization; plus one representative each from the cottonseed oil and the cotton fiber marketing companies of the San Joaquin Valley.

Zone Testing

The testing program shall be conducted in at least four locations representative of the climatic and cultural zones of the San Joaquin Valley as selected and approved by the Director of Agriculture on the recommendations of his advisory committee.

Testing Organization

The Director of the State Department of Agriculture shall designate the organization or organizations responsible for the actual conduct of the testing program including yield, fiber, and spinning quality and it shall operate under his direct supervision. It shall be an organization(s) with qualified staff and technical knowledge and equipment for conducting such research.

Varieties

Any public or private breeding organization which is conducting a substantial and recognized program should be encouraged to submit its most promising varieties for inclusion in the testing program. The number of cotton varieties included in each test location shall not exceed a reasonable number and shall include the current Aeala release as the standard by which all other varieties will be compared for all important characteristics including, but not limited to, yield, disease resistance, mechanized harvesting, and various measures of fiber and spinning quality. The Director of the State

Department of Agriculture shall have final authority in determining which varieties are included. He shall also approve testing procedures to insure that adequate scientific procedures are followed.

Superior Variety

Should any variety, public or private, prove equal to or superior in yield and spinning quality to the standard Acala release, as measured by accepted research procedures, and in the opinion of the advisory committee, be sufficiently superior in some other important character, so that it would be economically advantageous for it to be grown, that variety shall be recommended and publicized by the Director of the State Department of Agriculture for adoption by cotton growers within the one-variety district.

AMENDMENTS TO THE PROPOSAL

At a meeting of the designated members of the Industry Advisory Committee held at the Tagus Ranch on December 9, 1964, the following changes in, or addition to, the proposal were recommended:

1. That the existing industry members of the advisory committee be appointed by the organizations which they represent, rather than by the Director of Agriculture, and that a representative of the director be included on the committee.
2. That six additional grower members be appointed to the advisory committee to represent each of the significant cotton-producing counties within the district; respectively, Kern, Tulare, Kings, Fresno, Merced, and Madera Counties, and that these members be selected by vote of all A.S.C. cotton growers within each county from growers nominated by petitions signed by 10 or more growers.
3. That the testing program be financed through an assessment levied on the sale of planting seed within the district, and that this assessment be \$1 per ton for the coming year.
4. That the final choice of a testing supervisor and testing organization be postponed until after the selection of the grower members of the committee.

It is the committee's hope that the plan, when placed in operation, offers the promise of a fuller and more scientific testing of outside cotton than would be possible under any private breeding approach, and does so without threatening the existence of the one-variety district.

CONCLUSION

The committee concludes that the present one-variety law is of great benefit to, and its retention is overwhelmingly favored by, San Joaquin Valley cotton growers. The committee further concludes that while outside breeding has some hypothetically attractive features, its conduct, even under ideal circumstances, risks the future prosperity of the district and its growers to an extent that renders it an unacceptable alternative, especially in the light of the high level of general satisfaction with the present situation, and other available methods for achieving the results hoped for from private breeding. Finally, the committee concludes that with the implementation of its recommendations, the one-variety law will contain all the necessary tools for the continued prosperity of the San Joaquin Valley cotton industry.

RECOMMENDATIONS

1. That no change be made in the one-variety cotton district law except as hereinafter provided.
2. Section 954 be amended to (a) permit the U.S.D.A. and state department to harvest and gin the cotton and (b) to specifically grant to the State Department of Agriculture authority to plant, grow, harvest, and gin cotton, and to designate other persons or agencies to do so in its behalf. This legislation is necessary to clarify the authority of the State Department of Agriculture to test cotton or to designate others to do so in its behalf. Such authority would be necessary should the cotton industry desire to have a testing program within the district conducted by a body other than the United States Department of Agriculture. (See Appendix A.)
3. That the CPCSD proposal be implemented with all possible speed, with the following suggestions:
 - a. Testing should not specifically be limited to commercially released varieties but may include public and private strains that the director has reason to believe might show promise in the San Joaquin Valley.
 - b. As soon as possible, the director shall develop in concurrence with the advisory committee a scientific and acceptable definition of a "superior variety."

The committee specifically endorses the amendment of the proposal to include the election of six county grower representatives to the advisory committee as necessary to the creation of a representative committee.

4. That as soon as practical, the U.S.D.A. station and the CPCSD be encouraged to release differing strains of the Acala variety that might be suitable to differing regions within the district and would not disturb the one-variety district purposes.

PROPOSED LEGISLATION

An act to amend Section 954 of the Agricultural Code, relating to cotton.

The people of the State of California do enact as follows:

1 SECTION 1. Section 954 of the Agricultural Code is amended
2 to read:

3 954. This article does not apply to the planting ~~or~~, pos-
4 sessing for planting, growing, picking, harvesting or ginning
5 of cotton by the United States Department of Agriculture or
6 by the department, nor to the transportation of cottonseed
7 through such districts from a point without the district to a
8 destination without the district. *The department may plant,*
9 *grow, harvest, or gin cotton within such districts and designate*
10 *other persons or agencies to do so for experimental purposes*
11 *under the direct supervision of the department.*

LEGISLATIVE COUNSEL'S DIGEST

Amends Sec. 954, Ag.C.

Cotton districts.

Provides that the law concerning Acala cotton districts does not apply to the possessing for planting, picking, harvesting, or ginning of cotton, as well as the planting or growing of cotton, by the U.S. Department of Agriculture and the California Department of Agriculture.

Permits the California Department of Agriculture to plant, grow, harvest, or gin cotton in such districts and to designate other persons and agencies under the direct supervision of the department to do so for experimental purposes.

Appendix A

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
Sacramento, December 28, 1964

HON. JOHN C. WILLIAMSON
212 Goodman Street
Bakersfield, California

ACALA COTTON—NO. 8445

Dear Mr. Williamson:

You have asked us three questions regarding the growing of cotton which are separately stated and considered below.

QUESTION NO. 1

Does the Director of Agriculture now have the power to plant and grow varieties of cotton, other than Acala cotton, within a one-variety cotton district for experimental purposes?

OPINION NO. 1

Yes.

ANALYSIS NO. 1

Section 951 of the Agricultural Code* makes it unlawful, in one-variety cotton districts:

“ . . . to plant, possess for planting, pick, harvest, or gin any variety or species of cotton other than that variety or species known as ‘Acala,’ which consists of the seeds or plants derived from the common seed stocks under the one variety breeding program at the United States Cotton Field Station, Shafter, California.”

We think that it is clear that these provisions of Section 951 generally prohibit the planting or growing in a one-variety cotton district of any cotton, except the prescribed Acala cotton.

The statutory provisions relating to one-variety cotton districts are, however, expressly made inapplicable to the planting or growing of cotton by the State Department of Agriculture by Section 954, which reads, in part, as follows:

“This article does not apply to the planting or growing of cotton by the . . . department [Department of Agriculture; see subd. (d), Sec. 2] . . .”

Neither this provision of Section 954, nor any other provision of law of which we are aware, expressly grants to the State Department of Agriculture, or to the Director of Agriculture, the power to plant and grow varieties of cotton other than Acala cotton in a one-variety cotton district for experimental purposes.

* All section references are to sections of the Agricultural Code.

Section 30, however, does require the State Department of Agriculture, among other things, to "... promote and protect the agricultural industry of the State. . . ." Under this provision, we think that the department and the Director of Agriculture, as the executive officer charged with the duty of conducting the department (see Sec. 21), have ample power to plant and grow varieties of cotton for experimental purposes, and to do so within a one-variety cotton district.

QUESTION NO. 2

Can the Director of Agriculture delegate to others his power to plant and grow varieties of cotton, other than Acala cotton, within a one-variety cotton district for experimental purposes?

OPINION NO. 2

Yes.

ANALYSIS NO. 2

Section 12 reads as follows:

"Whenever any power or authority is given by any provisions of this code [Agricultural Code] to any person it may be exercised by any deputy, inspector, or agent duly authorized by him."

We conclude from the express language of this section that the Director of Agriculture can delegate to any deputy, inspector, or agent duly authorized by him his power to plant or grow varieties of cotton, other than Acala cotton, within a one-variety cotton district.

QUESTION NO. 3

Is the existence of the power of the Director of Agriculture to plant or grow varieties of cotton, other than Acala cotton, within a one-variety cotton district subject to any reasonable doubt which could be corrected by legislation?

OPINION AND ANALYSIS NO. 3

As we have indicated in our analysis of your first question, there is no provision of law, of which we are aware, that now expressly grants to the Director of Agriculture the power to plant and grow varieties of cotton, other than Acala cotton, within a one-variety cotton district for experimental purposes. While, in our opinion, he does now have such power, legislation specifically granting him the power to do so would, we think, clarify the matter.

Very truly yours,

GEORGE H. MURPHY
Legislative Counsel

By STANLEY M. LOURIMORE
Deputy Legislative Counsel

Appendix B

PRICES: Acala 4-42 (SAN JOAQUIN VALLEY) VS. OTHER TYPES IN OTHER AREAS

Note: Green tag, certified, merited and pedigreed are synonymous

1963 PRICES

	Machine delinted	More or less than SJV Acala 4-42 green tag	Acid delinted	More or less than SJV Acala 4-42 green tag
SAN JOAQUIN VALLEY				
Acala 4-42—green tag.....	\$192		\$242	
IMPERIAL				
DPL merited.....	\$215	\$+23	\$265	\$+23
ARIZONA				
D & PL Smoothleaf merited.....	215	+23	265	+23
D & PL Smoothleaf certified, locally grown.....			240	—2
Pima S-2 certified, plus PCNB.....			285	+43
Acala 44, WR 44 certified.....			270	+28
Acala 4-42, green tag.....	220	+28	270	+28
1517 C or D.....			235	—7
Stoneville, 7A.....			315	+73
TEXAS				
DPL TPSA 6, pedigreed or certified.....	210	+18	320	+78
DPL TPSA 41, pedigreed or certified.....	210	+18	320	+78
Lankart 57, pedigreed or certified.....	210	+18	350	+108
Gregg 35, pedigreed or certified.....	200	+8	320	+78
Paymaster 54B, pedigreed or certified.....	220	+28	340	+98
Paymaster 101A, pedigreed or certified.....	220	+28	340	+98
Stormproof Western, pedigreed or certified.....	185	—7	310	+68

Sources: Arizona Cotton Planting Seed Distributors, Texas Planting Seed Association, California Planting Cotton Seed Distributors.

DELTA & PINE LAND COMPANY
January 8, 1965

MR. WILLIAM H. GEYER
Committee Consultant
Assembly Committee on Agriculture
Room 4098, State Capitol, Sacramento

Dear Bill:

As requested by Jim Bishop during a telephone conversation this morning I am sending you the price of our D&PL brand cotton planting seed. We appreciate your interest and willingness to include this in your report.

Since we are not associated with a crop improvement association in California, it is necessary that we apply our own classification to various generations of seed. We sell three classifications of seed in the west, Basic, Verified and Merited. Basic is the same generation as Foundation and is sold only to growers who have signed contracts with us for seed increase. Verified is the same generation as Registered (purple tag) and Merited is the same generation as Certified (green tag). Both of these generations are available to the general public.

We have never sold seed in the fuzzy state, so all prices are for delinted and treated seed ready to plant.

Quantity	Verified		Merited	
	Machine delinted (per ton)	Acid delinted (per ton)	Machine delinted (per ton)	Acid delinted (per ton)
1 ton to 19 tons -----	\$245	\$295	\$195	\$245
20 tons to 199 tons -----	240	290	190	240
200 tons to 499 tons -----	238	288	188	238
500 tons to 849 tons -----	235	285	185	235

As you know there are considerable costs in delinting and treating seed and these costs vary depending on the type delinting and where the delinting is done. Price quoted on a fuzzy basis is misleading at best.

I hope this information will be of some value to you.

Sincerely yours,

W. W. BRADFORD, *Manager*
Western Division

Appendix C

WITNESSES APPEARING BEFORE THE COMMITTEE ON HR 235

Ronald Allen, Grower, Fresno County
Bryce C. Acree, Manager, Madera Farmers Gin Company, Madera
F. M. Arthur, Textiles-Incorporated, Gastonia, North Carolina—Representing American Textile Manufacturers Institute
Aubrey K. Baker, Grower, Madera
William A. Barber, Burlington Cotton Company, Greenville, South Carolina—Representing American Textile Manufacturers Institute
Jack Benson, Grower, Brawley
Frank Bergon, Grower, Madera County
Dr. Warren Bradford, Western Division Manager, The Delta & Pine Land Co., Imperial
Tilford Cheney, Grower, Tulare County, Director of California Planting Cotton Seed Distributors
Jim Clements, Producers Cotton Oil Co., Calipatria
Donald Cox, Grower
Leslie J. Doan, J. G. Boswell Company
Harry Defore, Pacolet Industries, Inc., Pendleton, South Carolina—Representing American Textile Manufacturers Institute
William Du Bois, Cotton Producer, Imperial Valley
Dr. Jack Du Clois, De Kalb Agriculture Association, Inc., Tempe, Ariz.
Eugene Egan, Vice President, Producers Cotton Oil Co., Fresno
John J. Elmore, Grower, Imperial Valley
Steven H. Elmore, Grower, Imperial Valley
Early C. Ewing, Jr., Director of Research, Delta & Pine Land Co., Miss.
Ray Flanagan, Red Top Ranch, Inc., Red Top
Kenneth Frick, Grower, Arvin, President of California Planting Cotton Seed Distributors
Berson Frye, Cotton Merchant, Fresno
Joe Galleano, Grower, Madera
B. W. Glasgow, Minturn Cooperative Gin, Le Grand
Minor Gray, President, The Delta & Pine Land Co., Scott, Miss.
Kenneth Groefsema, El Nido Grower Group
Le Roy Gudgel, San Joaquin Cotton Oil Company, Chowchilla
R. Dave Hall, Climax Spinning Company, Belmont, North Carolina—Representing American Textile Manufacturers Institute
J. Lawrence Hass, Vice President and Manager of the Bank of America, Brawley
Clyde Houk, Grower, Dos Palos

- Marvin Hoover, Extension Cotton Specialist, University of California, Shafter
- David E. Howe, The American Thread Company, New York, New York
—Representing American Textile Manufacturers Institute
- J. Russell Kennedy, General Manager, Calcot, Ltd., Bakersfield
- Merrill Lehman, U.S. Cotton Research Station, Shafter
- Lloyd R. Martin, General Manager, Golden State Gins, Madera
- Paul R. Martin, Cotton Grower, Madera
- Emory O'Banion, Grower, and Member, Board of Supervisors, Merced County, Dos Palos
- Dr. Maurice Peterson, Dean of Agriculture, University of California, Berkeley
- L. R. Portress, Grower
- Kenneth Reynolds, President, Imperial County Growers Association, Calipatria
- Chip Rogers, Grower
- C. R. Rathbone, Assistant Manager, Ranchers' Cotton Oil Company, Madera
- John Sordi, Grower, Madera
- Jack Schmitz, Grower, and Member, Board of Supervisors, Madera County
- Hartford Smith, Manager, Dos Palos Cooperative Gin, Dos Palos
- Robert L. Smith, President, Kern County Farm Bureau
- Robert W. Smith, Lowenstein Cotton & Storage Company, Anderson, South Carolina—Representing American Textile Manufacturers Institute
- Fred Sterzing, General Manager, Southwest Flaxseed Association, Imperial
- Harold Sturgis, General Manager, Holtville Cotton Products, Imperial
- Harry Thompson, Ginner and Grower, Kern County
- John Turner, Director, U.S. Cotton Research Station, Shafter
- R. C. Weaver, Grower, Chowchilla
- M. E. Williams, Madera
- Fred J. Zethraeus, Gin Manager, Tulare County



ASSEMBLY INTERIM COMMITTEE REPORTS
1963-1965

VOLUME 17

NUMBER 13

FINAL REPORT OF THE
ASSEMBLY INTERIM COMMITTEE ON AGRICULTURE
(House Resolution 500.1, 1963)

PART III

REPORT OF THE SUBCOMMITTEE ON LIVESTOCK AND DAIRIES

THE CALIFORNIA MILK STABILIZATION ACT
(House Resolution 498, 1963)

MEMBERS OF THE SUBCOMMITTEE

FRANK P. BELOTTI, *Chairman*

HALE ASHCRAFT
HAROLD E. BOOTH
CARL A. BRITSCHGI
MYRON H. FREW
JOE A. GONSALVES

HARVEY JOHNSON
ALAN G. PATTEE
CARLEY V. PORTER
JOHN C. WILLIAMSON

DR. OLAN D. FORKER, *Economist-Consultant*
ELIZABETH J. SPAULDING, *Subcommittee Secretary*

MEMBERS OF THE FULL COMMITTEE

JOHN C. WILLIAMSON, *Chairman*
HAROLD E. BOOTH, *Vice Chairman*

HALE ASHCRAFT
WILLIAM T. BAGLEY
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WALTER W. POWERS
JOHN G. VENEMAN
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WILLIAM H. GEYER, *Consultant*
GEORGE ROBBINS, *Legislative Intern*
HAZEL LOMBARDO, *Committee Secretary*

Published by the

ASSEMBLY
OF THE STATE OF CALIFORNIA

HON. JESSE M. UNRUH
Speaker of the Assembly
HON. JEROME R. WALDIE
Majority Floor Leader

HON. CARLOS BEE
Speaker pro Tempore of the Assembly
HON. ROBERT MONAGAN
Minority Floor Leader

JAMES D. DRISCOLL
Chief Clerk of the Assembly

LETTERS OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON AGRICULTURE

February 1, 1965

HON. JESSE M. UNRUH
Speaker of the Assembly; and

HON. MEMBERS OF THE ASSEMBLY
State Capitol, Sacramento, California

Gentlemen: In accordance with the provisions of House Resolutions 498 and 500.1 of the 1963 General Session, the Assembly Interim Committee on Agriculture herewith submits Part III of its final report, containing a record and report of the Subcommittee on Livestock and Dairies, entitled "The California Milk Stabilization Act."

Respectfully submitted,

JOHN C. WILLIAMSON, *Chairman*
HAROLD E. BOOTH, *Vice Chairman*

HALE ASHCRAFT
WILLIAM T. BAGLEY
FRANK P. BELOTTI
CARL A. BRITSCHGI
GORDON COLOGNE
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CARLEY V. PORTER
WALTER W. POWERS
JOHN G. VENEMAN
VICTOR V. VEYSEY

January 12, 1965

HON. JOHN C. WILLIAMSON

Chairman

Assembly Interim Committee on Agriculture

State Capitol

Sacramento, California

Dear Mr. Williamson :

Your Subcommittee on Livestock and Dairies of the Assembly Interim Committee on Agriculture, in accordance with your instructions, herewith submits its report on the subject matter assigned and studied during the 1963-64 interim period.

Respectfully submitted,

FRANK P. BELOTTI, *Chairman*

HALE ASHCRAFT

HAROLD E. BOOTH

CARL A. BRITSCHGI

MYRON H. FREW

JOE A. GONSALVES

HARVEY JOHNSON

ALAN G. PATTEE

CARLEY V. PORTER

JOHN C. WILLIAMSON

ACKNOWLEDGMENTS

Your committee wishes to take this opportunity to express its appreciation to the various organizations and individuals for their fine cooperation and assistance during the 1963-64 interim.

We are indebted to Director of Agriculture Charles A. Paul for the help Donald A. Weinland, Assistant to the Director; Chief William J. Hunt, Jr., of the Division of Dairy Industry; Chief Albert E. Reynolds of the Bureau of Dairy Service; Chief Louis C. Schafer and Mr. L. R. Walker of the Bureau of Milk Stabilization, have given this committee in its deliberations.

Particular acknowledgment and thanks are extended to Dr. Olan D. Forker, Dr. D. A. Clarke, Jr., and members of the staff of the Division of Agricultural Sciences, University of California, and to the university for the invaluable assistance Dr. Forker and Dr. Clarke have given the committee by their participation in the hearings and preparation of reports.

We are extremely grateful for the continued fine service rendered by the Legislative Counsel Bureau, and to Kent L. DeChambeau and Stanley M. Lourimore, members of the staff.

Your committee is also indebted to the following industry organizations, as well as a number of individual producers and distributors whose presentations contributed to the accumulation of data and testimony represented by this report: Dairy Institute of California, California Milk Producers' Federation, California Farm Bureau Federation, Agricultural Council of California, Dairyman's Cooperative Creamery Association, Milk Producers Council, Superior Milk Producers Association, San Diego Milk Producers Council, Protected Milk Producers Association, Central Milk Sales Agency, General Dairy Industry of Southern California, Western Dairymen's Association, Dairymen's Service Association, United Dairymen's Association, Milk Producers Association of Central California, American Dairy Association of California, California State Grange, California Cheese and Butter Association, Alameda County Milk Dealers Association, Associated Dairymen, Danish Creamery Association, Northern California Milk Dealers' Association, United Dairymen's Association, Dairy Mart Farms, Inc., California Teamsters Legislative Council, California Retailers Association, and Security First National Bank.

We wish to extend a special thanks to the University of California at Berkeley, and officials of the following cities and counties for the warm hospitality and use of their facilities: City and County of San Diego, City of Dairy Valley, Lake San Marcos, Stanislaus County and City of Modesto.



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PART I. COMMITTEE ACTIVITIES

A. PURPOSE OF HEARINGS

1. House Resolution 498

House Resolution 498 (Belotti) charges the Assembly Subcommittee on Livestock and Dairies with the responsibility of determining whether or not the legislative intent and objectives of the California Milk Stabilization Act are being achieved, and reads as follows:

“WHEREAS, The California Legislature has declared that fluid milk and fluid cream are necessary articles of food for human consumption; and

“WHEREAS, The production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare; and

“WHEREAS, The production, transportation, processing, storage, distribution or sale of fluid milk and fluid cream in the State of California is an industry affecting the public health and welfare; and

“WHEREAS, In the past unfair, unjust, destructive and demoralizing trade practices have been carried on in the production, marketing, sale, processing, and distribution of fluid milk and fluid cream which constitutes a menace to the health and welfare of the inhabitants of this state; and

“WHEREAS, Such practices tend to undermine sanitary regulations and standards of content and purity, however effectually such sanitary regulations may be enforced; and

“WHEREAS, It has been demonstrated in this state, as well as in many other states of these United States, that health regulations alone are insufficient to prevent disturbances in the milk industry which threaten to destroy and seriously impair present and future supplies of fluid milk; and

“WHEREAS, It has been previously declared to be the policy of this state to promote, foster and encourage the intelligent production and orderly marketing of commodities necessary to its citizens, including milk; and

“WHEREAS, The law presently known as the Milk Stabilization Act has been a part of the laws of this state since 1937; and

“WHEREAS, This law has been amended from time to time during the ensuing period for the purpose of facilitating its administration and to carry out the legislative intent as set forth in Section 4205 of the Agricultural Code; and

“WHEREAS, It is stated legislative intent as set forth in Section 4205 that the powers conferred in Chapter 17 (commencing with Section 4200) Division 6 of the Agricultural Code be liberally constructed and that nothing in the chapter be construed as

permitting or authorizing the development of conditions of monopoly in the production or distribution of fluid milk or fluid cream and that, furthermore, in the establishment of the terms and conditions under which fluid milk and fluid cream shall be purchased from producers, and under the same, such terms and conditions shall be those which will, in the several localities and markets of the state and under the varying conditions of production and distribution, insure an adequate and continuous supply of pure fresh wholesome fluid milk and fluid cream to consumers thereof at fair and reasonable prices; now, therefore, be it

"Resolved by the Assembly of the State of California, That the Assembly Committee on Rules is requested to assign to an appropriate interim committee the study of whether or not the legislative intent and objectives of the California Milk Stabilization Act, as set forth in Article 1 (commencing with Section 4200), Chapter 17, Division 6 of the Agricultural Code, are being properly carried out and that such committee be authorized and directed to call upon any agency or source of information such as, but not limited to, the University of California and the Department of Agriculture to assist in its study with such interim committee to report its findings and conclusions to the Assembly by the fifth legislative day of the 1965 Regular Session."

The legislative intent and objectives of the Milk Stabilization Act as set forth in Article 1, Chapter 17, Division 6 of the Agricultural Code that were studied are summarized as follows:

1. "... (to) insure an adequate and continuous supply . . .
2. "of pure, fresh, wholesome fluid milk and fluid cream to consumers thereof . . .
3. "at fair and reasonable prices." (Section 4205)
4. "To enable the dairy industry . . . to correct existing evils, develop and maintain satisfactory marketing conditions, and bring about a reasonable amount of stability in the production and marketing of fluid milk and cream . . ." (Section 4204d)
5. "(although) It is the intent . . . that . . . this chapter shall be liberally construed. . . . Nothing in this chapter shall be construed as permitting or authorizing the development of conditions of monopoly in the production or distribution of fluid milk or fluid cream." (Section 4205)

Hearings and field trips were held throughout the state to obtain information from producers, distributors, retailers, consumers, and other interested parties concerning the current status of the industry. Witnesses from the Department of Agriculture were specifically requested to present data that would assist the committee in this evaluation of the Milk Stabilization Act. In addition, the committee encouraged testimony concerning problems not directly related to H.R. 498 and requested that industry submit whatever proposals for legislative action that they deemed appropriate and necessary.

B. HISTORY OF HEARINGS

During the 1963-64 interim, your Subcommittee on Livestock and Dairies held five public hearings from January 10, 1964, through October 5, 1964.

On January 10, 1964, your committee met in San Diego in morning session for the purpose of outlining a program for future hearings, based on the subject matter of H.R. 498, to determine whether or not the legislative intent and objectives of the California Milk Stabilization Act are being properly achieved.

Following the committee's executive session, the meeting opened to receive testimony from representatives of the Department of Agriculture, and leaders of various segments of the dairy industry.

All eight witnesses who appeared before the committee concurred that the context of H.R. 498 provided sufficiently for a comprehensive legislative study of the problem areas outlined.

On February 14, 1964, your committee met in Dairy Valley, Los Angeles County, and heard testimony relating to the Milk Stabilization Act from 11 witnesses during a five-hour session. The city council chamber overflowed with a crowd of intensely interested dairymen. This meeting was preceded on February 13th by a field trip to Los Angeles County dairies.

On May 26, 1964, your committee met at Lake San Marcos, San Diego County, to receive testimony from 12 witnesses on the problems of the dairy industry in that area. Three proposals for legislative action were suggested for the committee's consideration. This meeting was preceded on May 25th by a field trip to dairies in northern San Diego County.

On September 15, 1964, your committee met in Modesto to obtain testimony from milk producers and producer groups, concerning the adequacy and wholesomeness of the state's milk supply, reasonableness of prices and margins, and the stability and prosperity of the industry. Four representatives from the Department of Agriculture, together with 18 producers and industry witnesses, testified in a session that lasted well over five hours. This meeting was preceded on September 14th by a field trip to Stanislaus County dairies.

On October 5, 1964, your committee met in Berkeley to hear facts and opinions from distributors and organizations relative to the adequacy and quality of the state's milk supply, reasonableness of raw product costs and margins, and whether the stability and prosperity in the marketing of milk is being fulfilled. Eleven witnesses were heard at this four-hour session.

In summary, your committee heard 64 witnesses during some 23½ hours of session in five California cities.

Each hearing was well attended by members of the committee. The large number of witnesses and interested observers clearly indicates the intense concern for the general welfare of the industry and its continued stability under the California Milk Stabilization Act. A summary of testimony and a list of suggestions for legislative action as presented by witnesses at each hearing appear in the Appendix to this report.

Your committee met in executive session on November 9, 1964, at Palm Springs and again on December 8, 1964, at Newport Beach and discussed and evaluated at great length the evidence received at formal hearings and information available from other sources. A summary of the important issues and considerations, and the committee's findings, conclusions, and recommendations are presented in the report that follows.

PART II. FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

The hearings of this interim session were held to receive testimony and collect facts as to whether or not the legislative intent and objectives of the California Milk Stabilization Act, as set forth in Article I (commencing with Section 4200), Chapter 17, Division 6, of the Agricultural Code, are being properly carried out.

The intent and objectives as specified in the Agricultural Code are to:

1. "... insure an adequate and continuous supply . . .
2. of pure, 'fresh, wholesome fluid milk and fluid cream to consumers thereof . . .
3. at fair and reasonable prices."

In addition, the act specifies the purpose as:

4. "enabling the dairy industry . . . to correct existing evils, develop and maintain satisfactory marketing conditions, and bring about and maintain a reasonable amount of stability and prosperity in the production and marketing of fluid milk and fluid cream . . ."
5. Although it was specified that the intent should be liberally construed, a warning was given that "Nothing in this chapter shall be construed as permitting or authorizing the development of conditions of monopoly in the production or distribution of fluid milk or fluid cream."
6. The act gives authority and direction to the Director of Agriculture to carry out the intent and objectives of the act.

A. FINDINGS

Generally, the witnesses were in agreement that the industry is currently, and has been, providing consumers with an adequate supply of pure, fresh, wholesome milk at reasonable prices, and that the industry has been relatively progressive and stable.

Market milk production has exceeded class I usage by more than 20 percent since 1958. Persons responsible for enforcing sanitary and quality standards stated that the stability created by the Milk Stabilization Act provides a favorable environment for enforcement of health and sanitary standards.

Testimony, supported by separate research, indicates that the producer class I price is higher and the consumer price is lower in California than average prices in most other United States markets.

The distributor representatives seem to be generally satisfied that the legislative intent and objectives are being achieved. However, some producer representatives indicate unrest and dissatisfaction with various current conditions in the industry. This dissatisfaction may now or sometime in the future contribute to industry instability. No testi-

mony was offered by consumer representatives or by the retail store sector of distribution, despite the fact that all hearings received adequate publicity and some representatives of both groups were in attendance.

Although most witnesses testified that the Milk Stabilization Act is a useful tool that benefits all segments—producer, distributor, and consumer—the testimony and requests for legislative action indicated certain problem areas that need further consideration, review, and perhaps action by either the State Legislature or the Department of Agriculture. In summary, they are:

1. The method of payment to producers,
2. Sales to military installations,
3. Producer-distributor integration,
4. Usage classification,
5. The two-pool method of producer payment, and
6. The problem of increasing costs.

1. Method of Payment to Producers

Currently, payments to producers are based on the usage of the individual plant (or group of plants in the case of a distributor pool) to which a producer ships his milk and the minimum class price in effect in the marketing area where the milk is sold.

Each producer enters into a contractual agreement with his distributor concerning quantities of milk that will be exchanged and the producer's share of the various class usages. The negotiated terms of the contract, in effect, determine the blend price received by each producer. This procedure has resulted in a wide variation among producers in the blend price or returns received.

Some producers are paid on the basis of 100 percent class I utilization, and other producers are paid on the basis of a very small percentage class I utilization. As a result, some producers receive less than \$3.39 per hundredweight for market milk, while other producers in the same production region receive average prices equal to the minimum class I price which may be as high as \$5.69 per hundredweight for 3.8 percent milk.

This difference in the average blend price received among producers is perhaps the reason for the indicated producer unrest and dissatisfaction. The system used results in this disparity and perhaps provides the underlying cause for two other specific problems presented in the hearings—the military sales problem and the producer-distributor integration problem.

Producers in the lower percentage group in the northern San Joaquin Valley that receive less than \$3.70 per hundredweight have an incentive of at least \$1 per hundredweight to somehow achieve the same blend price as some other producers in the same area. A \$1 difference in blend price amounts to about \$16,500 difference in annual income for a herd of 150 cows averaging 11,000 pounds of milk per cow. Producers with a low usage thus have a relatively large incentive to move into the higher income group either through integration, purchase of a more favorable contract, organization to make military or school bids, or violation of the minimum price or unfair trade practice provisions of the act.

Some producers indicated additional dissatisfaction with the contract as an instrument of negotiation. They claimed that the contract provides the distributor with unequal bargaining power and provides the distributor with the power to discriminate pricewise among producers. They argued that the large quantity of milk available in excess of class I usage places a producer in a position of having no alternative but to take whatever contract terms the distributor offers. Distributors argued in favor of the contract and claimed that since it is a negotiated instrument (both parties agree to its terms), the unequal balance of power argument is invalid.

However, testimony by both groups clearly indicated that the contractual arrangement does enable distributors to pay different producers different blend or average prices. The distributors argued that this was beneficial in that they were thus able to pay producers in high-cost areas a higher blend and producers in typically low-cost areas a lower blend price. High contract producers are opposed to a reallocation of usage which deprives them of a portion of their class I usage for the benefit of other producers, many of whom are only recently converted from manufacturing milk operations. Conceptually, within the limits of plant or distributor usage and minimum class prices, a plant or distributor can pay a high blend price to high-cost producers, and a low blend price to low-cost producers. If this is true, then the contract system which is required by law, permits different blend prices to be paid to different producers.

Some producers argued that this arrangement is conducive to the continued existence of inefficient, high-cost producing dairies and contributes to the surplus. Evidence of a more-than-adequate supply of milk and the disparity of blend returns among producers implies a maladjustment in the utilization of resources and supports their argument.

It should be noted at this point that producing units now in existence have developed under the current system or method of payment. A too-rapid adjustment in blend prices among producers would result in windfall losses to some and windfall gains to others. Therefore, to avoid such extreme consequences, only a long-term plan to modify the current method of payment should be considered.

Although producer groups indicated dissatisfaction in this area, no proposal for resolving this issue either administratively or through legislative change was presented.

Since the method of payment, the level of producer blend prices, and the disparity in blend returns among producers seem to underlie most of the dissatisfaction of producers and producer groups; and appears to be inconsistent with the intent of the act, and since no satisfactory legislation or administrative change is suggested by the testimony presented, this committee recommends that the Department of Agriculture and the industry study alternative methods of payment and develop a program that will alleviate the evident current condition of unrest, disparity, and inconsistency. Because of the evident importance of this issue, this committee desires to be kept informed.

2. Sales to Military Installations

During recent years, milk sold to military installations has moved at producer prices below the minimum established by the state. The state does not enforce or set minimum resale prices on milk sold to military installations. Conceivably, the state can enforce class I prices to proprietary firms, but cannot enforce minimum price provisions on cooperatives. Producer cooperatives were first to obtain bids that resulted in returns to producers below class I prices. To compete against the producer processing cooperatives, "special purpose" cooperatives were organized for the specific purpose of making bids on military sales. The "special purpose" cooperatives thus attempted to compete and maintain a class I outlet for the proprietary producers.

The whole problem of military sales is now under consideration by the courts and the Department of Agriculture. But, unquestionably, this development is causing some disruption in the stability of the industry and gives rise to a leakage problem in the regulation of milk prices. Also, as previously remarked, it is related to or may be a result of the situation summarized under "Method of Payment to Producers" above.

The net result of this activity is that producers receive less than the established minimum class I price for milk sold to military installations. A portion of this milk, some testified, ultimately finds its way to non-military households.

This committee recommends that the Assembly support the Department of Agriculture and the industry in their efforts to regulate sales of milk to military installations, and thus to fulfill the intent of the act.

3. Producer-distributor Integration

Since 1957, the industry has shown some instability in that from the period 1957-1961, integration expanded through a rapid increase in the number of milk depots or cash-and-carry outlets. These were developed by producers to obtain a higher class I usage outlet and thus a higher blend return for their production.

During the period 1960-1964, the number of such outlets was relatively stable, but an increase occurred in the number of distributing units with a financial interest in or complete ownership of producing units. Testimony indicated that this growing integration was motivated by a desire on the part of distributors, especially smaller distributors, to gain additional financial stability for their businesses as producers with high class I outlets.

Some witnesses expressed the opinion that integration moves now occur less frequently, perhaps because increased prices of feed and other inputs have reduced the incentive for integration. Nevertheless, the problem remains a serious one, and in the opinion of the committee, is directly related to the disparity conditions already discussed in the section on "Method of Payment to Producers."

As long as these disparity conditions persist, the disparity of and by itself will provide ample incentive for producer-distributor integration. The committee, therefore, suggests that any program developed to alleviate current disparity conditions will, at the same time, serve to reduce incentives for integration.

4. Usage Classification

The milk and dairy products in each use classification are specified in the 1963 Agricultural Code. In the course of hearings before your committee, producer groups asked that cottage cheese and certain other products be classed as class I, rather than class II, as at present.

Based on the evidence available, it is not possible to determine the feasibility of this proposal. A University of California report to this committee during its last interim session and testimony during this session indicates that processors could, for the period 1950 to 1962, pay approximately 30 cents per hundredweight more for milk than they were paying before they would resort to using imported ingredients. However, the relationship between the value of milk utilized in these specific products and the current price being paid by processors was not presented in evidence.

Since adequate information is lacking, the committee is unable, at present, to determine whether or not a separate class should be established for cottage cheese and other higher value products. Therefore, no recommendation is made regarding reclassification.

During executive session, this committee discussed the feasibility of releasing the power of classification to the Director of Agriculture so that his office, with all its resources, could consider such proposals. The decision was to retain the power of classification, but the committee requests that the Director of Agriculture consider the feasibility of reclassification at frequent intervals.

5. Two-pool Method of Producer Payment

This item is given separate consideration because it represents a new ruling of the Department of Agriculture and because it came under attack during the hearings.

Prior to April 1, 1964, a three-pool method of allocating the plant usage (plant pool) to producers was permitted. This three-pool method permitted distributors to make unequal payments (blend prices) to producers for contract quantities of milk through use of the guarantee provision of the contract agreement. The mandatory two-pool method results in equal blend prices to each producer member of the plant (or distributor) pool for the contract portion of milk received. This ruling in itself did not alter the pool base which was and is, except for the distributor pool for multiplant firms authorized by AB 1534, defined in terms of the utilization and effective class prices at each distributor plant.

In making the two-pool method mandatory, the Department of Agriculture stated that its purpose was to enforce minimum price regulations and equalize the blend price payment among producers.

When the authority of the director to institute the mandatory two-pool method was questioned, the Legislative Counsel gave its opinion that the Director of Agriculture had such authority. Nevertheless, this method of payment came under attack at the hearings.

This committee therefore recommends that the Department of Agriculture study closely the effects of this method and determine whether or not the results are consistent with the intent and objectives of the Agricultural Code and report back to this committee. This procedure needs the continued attention of this particular committee.

6. The Problem of Increasing Costs

Both producers and distributors have had to adjust continuously to increased prices of factors of production and distribution. Producers, especially in metropolitan areas, have had large increases in taxes, wage rates, and cost of supplies. Periodically, producers have requested increases in the class I price, feeling justified in their request because the act directs the administrator to consider costs of production in the determination of minimum prices. However, in view of the amount of excess market milk, the Director of Agriculture has not deemed an increase in the class I price appropriate. It should be noted additionally that the current interpretation by the director of what is "surplus" or "excess" milk is under attack as contrary to amendments of Section 4281 of the Agricultural Code adopted by the 1957 Legislature.

Since increased taxes place a disproportionate burden on metropolitan producers, and since this is a problem common to all agricultural firms, this committee recommends that the urban taxation of agricultural enterprises be studied. This committee endorses study and action by the full Committee on Agriculture. However, this committee recognizes that this is not the basic factor underlying the current problems specified herein, rather it is one contributing factor toward reallocation of resources among competing uses.

Distributors have often suggested that wage rate increases have not been reflected in increased margins soon enough to absorb their effect on increased cost. Sometimes 12 months elapse before hearings are scheduled to consider the effect of the increased wage rate. The reason given for the delay is that new cost estimates are necessary to provide a basis for changes in the margin. The current costing procedure requires considerable manpower and is time consuming. This committee strongly recommends that the Department of Agriculture make a study of their current costing methods and modify them so as to determine the impact of wage rate and other cost increases more rapidly.

B. CONCLUSIONS AND RECOMMENDATIONS

The overall *conclusions* of your committee are that:

1. With the exception of the disparities discussed, which the committee feels can be resolved, the intent and objectives of the Milk Stabilization Act are being properly achieved;
2. The Milk Stabilization Act has served and is serving the consumer and all segments well;
3. The performance of the Milk Stabilization Act appears to have improved markedly under the present administration; and
4. Aside from some technical amendments, there appears to be no need for major revisions of the act.

It is the committee's belief that the Milk Stabilization Act is successful today because the Legislature has continuously taken an active role in studying its effects and problems and in amending the act when amendments seemed appropriate. The hearing testimony did indicate some current problem areas that need both industry and legislative

action. Therefore, your committee *recommends* and requests the following action:

1. Since most of the problem areas described in this report are related to or associated with the level of producer payments, this committee requests that the Department of Agriculture and industry conduct a thorough appraisal of alternative producer payment and pooling procedures and keep this committee informed of their findings and action.
2. Since it appears that some portion of milk sold through military installations ultimately finds its way into nonmilitary households, your committee recommends that the Assembly support changes in rules and regulations of the Department of Agriculture to enforce minimum price provisions on milk sold to military installations, and send representatives to Washington, D. C., to discuss this problem with the appropriate authorities.
3. Since one of the factors of the increasing cost problem facing dairymen in metropolitan areas is urban taxation, your committee heartily endorses study and action on taxation of land used in agricultural production by the full Committee on Agriculture.
4. Since the time lag is long between wage rate increases and reconsideration of distributor margins, your committee recommends that the Department of Agriculture develop streamlined costing methods to enable them to determine more rapidly the impact of wage rate increases.

PART III. RESEARCH FINDINGS

A. THE CALIFORNIA MILK SUPPLY

"Is the supply of milk adequate now and will it be in the foreseeable future?" This question posed by the committee was answered in the affirmative by most witnesses. Under current departmental interpretations of "surplus" or "excess" milk, market milk production has exceeded class I usage by more than 20 percent since 1958 (Table 1) and currently exceeds class I needs by approximately 30 percent.

TABLE 1
Commercial Production and Usage of Market Milk Fat
California 1944-1964

Year	Commercial production, thousand pounds	Class I usage, thousand pounds	Other than class I usage	
			Thousand pounds	Percent of production
1944	110,729	103,731	6,998	6.3
1945	117,825	113,825	4,000	3.4
1946	128,580	122,569	6,011	4.7
1947	136,289	122,565	13,724	10.1
1948	135,274	123,173	12,101	8.9
1949	139,485	124,853	14,632	10.5
1950	142,842	128,640	14,202	9.9
1951	149,547	134,880	14,667	9.8
1952	153,077	141,869	11,208	7.3
1953	164,871	145,893	18,978	11.5
1954	171,621	148,494	23,127	13.5
1955	179,351	157,435	21,916	12.2
1956	191,244	168,108	23,136	12.1
1957	210,691	174,148	36,543	17.3
1958	215,679	175,739	39,940	18.5
1959	229,511	179,253	50,258	21.9
1960	230,133	180,425	49,708	21.6
1961	236,510	179,544	56,966	24.1
1962	240,104	181,913	58,191	24.2
1963	246,003	188,046	57,957	23.6
1964				
January	21,518	16,348	5,170	24.0
February	20,541	15,676	4,865	23.7
March	22,094	16,121	5,973	27.0
April	22,094	15,902	6,192	28.0
May	22,956	16,338	6,618	28.8
January-May	109,203	80,385	28,818	26.4

SOURCE: California Department of Agriculture, hearing of California Assembly Interim Subcommittee on Livestock and Dairies, Modesto, September 15, 1964.

As such surplus grows more and more, milk eligible for grade A cannot find a market through fluid channels and is diverted to manufacturing plants.

During the 10-year period following World War II (1947-1956), the reserve supply or "other than class I usage" never exceeded 13.5 percent on an annual average basis. During this period of time, ac-

cording to Mr. Weinland, a Department of Agriculture representative, "consumers in California were supplied very adequately and processors had little difficulty in obtaining their needs . . . (except when) some seasonal shortages appeared during the fall of 1952 . . . when the indicated standby on a milkfat basis was only 2.9 percent for October (Table 2) and the annual average for 1952 dropped to 7.3 percent."

TABLE 2
Seasonal Variation in Percentages of Production of Market Milk
Fat in Excess of Class 1 Utilization in California
1950-1956

	1950	1951	1952	1953	1954	1955	1956	Seven-year average
January.....	13.0	10.0	8.7	7.7	15.9	15.0	13.6	12.0
February.....	11.2	10.9	7.4	8.8	14.2	12.9	12.3	11.1
March.....	12.6	11.5	9.4	12.2	16.3	12.8	11.4	12.3
April.....	13.6	14.2	12.0	13.8	16.2	13.7	15.2	14.1
May.....	11.4	12.4	5.8	14.4	14.5	15.1	12.6	12.3
June.....	11.8	9.9	9.6	13.7	12.9	13.1	10.7	11.7
July.....	10.7	11.8	7.7	12.2	11.5	13.7	13.7	11.6
August.....	8.9	9.1	7.6	12.8	13.7	10.8	11.8	10.7
September.....	6.0	7.0	4.1	9.4	10.1	8.2	10.7	7.9
October.....	6.0	5.0	2.9	7.2	11.4	9.6	8.8	7.3
November.....	5.6	6.9	6.2	12.3	11.3	9.8	9.5	8.8
December.....	8.3	8.9	6.4	13.0	13.4	11.9	14.7	10.9
Average.....	9.9	9.8	7.3	11.5	13.5	12.2	12.1	10.9

1957-1963

	1957	1958	1959	1960	1961	1962	1963	Seven-year average
January.....	16.2	20.6	19.1	24.5	25.0	25.8	25.5	22.4
February.....	15.7	20.9	20.7	22.4	24.3	25.4	24.9	22.0
March.....	17.5	22.3	24.3	22.2	24.7	23.7	25.5	22.9
April.....	17.9	20.8	24.0	20.7	25.4	26.5	25.1	22.9
May.....	17.3	16.9	24.7	22.2	24.7	23.3	24.5	21.9
June.....	18.5	19.3	24.1	22.0	25.0	23.9	25.4	22.6
July.....	18.4	19.6	22.9	22.1	26.0	27.6	24.5	23.0
August.....	15.6	16.6	21.7	21.3	23.5	24.6	22.4	20.8
September.....	17.6	14.9	19.8	18.2	20.3	22.6	22.1	19.4
October.....	15.9	13.9	18.0	19.7	21.6	21.6	19.8	18.6
November.....	16.9	17.7	21.6	21.2	22.8	22.4	20.0	20.4
December.....	20.5	18.6	20.9	22.3	25.6	24.3	22.9	22.2
Average.....	17.3	18.5	21.9	21.6	24.2	24.3	23.6	21.6

SOURCE: California Department of Agriculture, hearing of California Assembly Interim Subcommittee on Livestock and Dairies, Modesto, September 15, 1964.

It appears, therefore, that the unofficial standby of 13 percent, used by the Department of Agriculture and recognized by the industry for a number of years as a guide, is adequate. Thus, the current supply is more than adequate to satisfy the intent and objectives of the Milk Stabilization Act.

The production of manufacturing milk has been rapidly declining in recent years (85 million pounds of fat in 1944 compared to 50 million pounds in 1964), and the increased quantity of market milk available for "other than class I usage" is necessary to produce the manufactured dairy products required by California's increasing number of consumers (Table 3). However, the specified intent of the act is not to insure to consumers an adequate supply of manufactured dairy products, but to "... insure an adequate and continuous supply of . . . fluid milk and fluid cream to consumers . . ." (emphasis added).

A large portion of the manufactured dairy products now consumed is imported from other excess milk producing states. Since California processors must compete with imported products in the California market and since the intent of the Milk Stabilization Act does not encompass this portion of supply, the quantity of milk produced locally for manufacturing uses is outside the scope of this study.

If the department's interpretation of "surplus" or "excess" milk is accepted, the "more than adequate" supply conclusion raises some concern as to the reasonableness of prices. Since the minimum price to producers for class I usage influences the quantity of milk that producers in the aggregate are willing to produce, the class I price is higher than necessary to bring forth the adequate supply of market milk. More will be said about this later. It may be desirable that there be

TABLE 3
Milk Fat Available for Manufacture
California 1944-1964

Year	Manufacturing production, thousand pounds	Other than class I usage of market, thousand pounds	Milk fat available for manufacture, thousand pounds	Percent of total obtained from other than class I
1944.....	85,355	6,998	92,353	7.6
1945.....	87,580	4,000	91,580	4.4
1946.....	83,070	6,011	89,081	6.7
1947.....	82,966	13,724	96,690	14.2
1948.....	78,334	12,101	90,435	13.4
1949.....	77,271	14,632	91,903	15.9
1950.....	78,088	14,202	92,290	15.4
1951.....	71,957	14,667	86,624	16.9
1952.....	68,957	11,208	80,165	14.0
1953.....	75,721	18,978	94,699	20.0
1954.....	83,462	23,127	106,589	21.7
1955.....	83,407	21,916	105,323	20.8
1956.....	73,519	23,136	96,655	23.9
1957.....	66,505	36,543	103,048	35.5
1958.....	57,413	39,940	97,353	41.0
1959.....	54,075	50,258	104,333	48.2
1960.....	59,052	49,708	108,760	45.7
1961.....	58,424	56,966	115,390	49.4
1962.....	58,276	58,191	116,467	50.0
1963.....	50,670	57,957	108,627	53.4
1964.....				
January.....	2,707	5,170	7,877	65.6
February.....	2,488	4,865	7,353	66.2
March.....	3,021	5,973	8,994	66.4
April.....	3,383	6,192	9,575	64.7
May.....	3,775	6,618	10,393	63.7
January-May...	15,374	28,818	44,192	65.2

SOURCE: California Department of Agriculture, hearing of California Assembly Interim Subcommittee on Livestock and Dairies, Modesto, September 15, 1964.

further exploration of the position currently advanced by many producers that the department is not carrying out the intent of the 1957 amendment of the Agricultural Code Section 4281 in its present definitions administratively of "surplus" or "excess" milk.

Supply Is Pure, Fresh and Wholesome

All evidence received indicates that the intent of the Legislature is being fulfilled with regard to milk quality. All who testified agreed that the quality of California's fluid milk supply is now the best in the state's history, and is equal to or superior to the quality of milk in other United States markets. Mr. Reynolds, of the Department of Agriculture, stated, "It would be more difficult to enforce quality or consumer protection standards in an industry that was weak and not prosperous." To the extent then that the minimum pricing provisions of the Milk Stabilization Act are successful in maintaining a strong and prosperous industry, the act helps to insure to consumers a "pure, fresh and wholesome" supply.

Portions of testimony presented by Mr. Weinland, assistant to the Director of State Department of Agriculture, are given below to provide an indication of the current quality of California's milk supply and the means utilized to provide consumers with a pure, fresh and wholesome supply.

"Laws protecting the wholesomeness and safety of California's milk supply have been considered among the best in the nation for many years. These safeguards protect the health of the consumer in many ways; for example, market milk and fluid milk products must comply with strict standards as to bacteria, sediment, adulteration, freedom from antibiotics and pesticide residues. In addition, milk must be obtained from healthy animals properly fed and kept.

"In addition to purity standards which apply to milk itself, the California laws require all producers of market milk to comply with building standards which are the most advanced in the nation. Every construction detail is spelled out in the California Administrative Code to accomplish complete cleanliness and sanitation in the production of milk.

"The milk processor is also tightly regulated with respect to cleanliness and sanitation. Each milk processor is required to be licensed by the Department of Agriculture and as a condition of license approval must conform to building construction standards and sanitary methods of processing and packaging.

"The pasteurization process is carefully regulated to insure consumers safe milk and milk products. California is among the few states which require pasteurizer operators to be licensed. Qualification is determined by rigid examinations.

"The Director of Agriculture is empowered to delegate the responsibility of enforcing the market milk laws to city or county health departments, if they make application and provide competent personnel and laboratory facilities. These are known as approved milk inspection services. There are 34 services, operating in the state, all supervised by the Bureau of Dairy Service staff. These services employ about 100 milk inspectors who cover the

market milk dairy farms and processing plants throughout the state.

"Counties where no approved milk inspection service is available can apply to the director for permission to use the grade A label if 51 percent of the producers, processors and distributors so signify. These areas are known as established milk inspection services and are operated by the state. Thirteen counties and parts of seven others are inspected by the Department of Agriculture.

"Milk from dairy farms and milk processing plants which fails to conform to the bacterial standards is required to be degraded or excluded from the market. Milk which is impure, tainted, dirty or unwholesome is subject to condemnation.

"California has set strict requirements regarding pesticide residues in milk and milk products. Samples of raw milk at producer level are taken from each dairy farm at approximately 90-day intervals. Milk which does not meet these strict requirements for pesticides is kept off the market by the enforcement officials. Samples of pasteurized milk sold in every area of the state are tested at least once each month to determine compliance.

"Milk is also tested for the presence of antibiotics which could enter the supply from treated animals. The antibiotic control program has been so effective that now a positive sample is rarely found.

"The Bureau of Dairy Service is cooperating with the U.S. Public Health Service and the State Department of Public Health in carrying out a radiological surveillance program. Bureau officials are submitting samples of milk from every area in California for radiological testing. The bureau is also participating in a special study partially financed by federal funds to determine the causes of increased levels of radioactive fallout in the milk produced in certain areas of the state.

"In 1963 the director formed an advisory body known as the California Milk Quality Committee. The committee is made up of qualified people who represent producers, consumers, public health officials, veterinarians, farm advisers and scientists. The purpose of the group is to coordinate the efforts of all agencies, public and private, in a common effort to control bovine mastitis. A definite program has been outlined and is expected to be put into action very soon.

"We do not have access to information regarding the quality of market milk produced and sold in other states but we do know that the U.S. Public Health Milk Ordinance and Code is used as a basis of law by 34 states, 1542 municipalities and 397 counties and California standards of milk production are considerably more strict than the federal standards. For example, the U.S. Public Health Milk Ordinance and Code places a bacterial limit of 200,000 per milliliter on raw milk for pasteurization while the California limit is 75,000."

B. PRICES AND MARGINS

It is the legislative intent of the Milk Stabilization Act that consumer prices shall be "fair and reasonable" but the definition or determina-

tion of reasonableness is not specified. For the purposes of evaluating the reasonableness of California consumer prices, the committee has considered two different questions: (1) Has the California program of regulation resulted in prices to consumers "in line with" prices in other markets where different types of regulations occur? (2) Has the California program permitted and encouraged the industry to achieve economic efficiency so that an adequate but no more than adequate share of the state's resources is used in the production and distribution of fluid milk and fluid cream?

1. California Consumer Prices Compared with Prices in Other Markets

In summarizing testimony, all witnesses considered prices to consumers reasonable. In addition, available research results indicate that consumer prices are "in line" with prices in other United States markets.

One witness provided direct price comparisons stating that "a 46-city average for the month of December 1963 was 24.6 cents per quart, while . . . milk sold out of the store in Los Angeles for 24 cents and in (the bay area) for 24½ cents." Labor union representatives stated that they considered the California price reasonable even though prices were lower in some other markets. They regarded the low prices in other markets as temporary (the result of price wars), disruptive to normal marketing, and detrimental to their members.

Results of a statistical study recently made, but not published, support the conclusion that consumer milk prices on the average in California are slightly lower than consumer prices in many other United States markets. A cross-sectional analysis of the out-of-store price of milk in quart fiber containers in 161 United States markets, as reported in the *Fluid Milk and Cream Report* for January 1964, was conducted. The results indicate, after allowing for size of market and regional price differences in each of the markets, that the out-of-store price of milk in California markets averages two cents per quart lower than in markets with federal milk market orders and one cent per quart lower than the average price for markets grouped according to other types of price regulation—federal-state, state, and unregulated.

2. Economic Efficiency of Production and Distribution

a. *Producer Prices and Milk Supplies.* The class I price paid producers for fluid milk has increased from \$5 per hundredweight in 1955 to \$5.69 in 1963. Despite this increase, however, the average annual blend price received by California producers has stayed relatively stable, between \$4.67 and \$4.90 (Table 4). Figure 1 clearly depicts the increase in average class I price (San Francisco minimum used here as a basis for comparison), the relative stability of annual average blend prices, and the growing divergence of these two prices.

A comparison of California's producer prices for fluid milk with prices in other United States markets indicates that California producer prices were lower than the average of all markets during the early and middle 1950's but are now slightly higher (Table 5). While producers in 33 markets in California were paid about one cent less per quart for fluid milk in January 1950, by January 1953 California producers received an average of 0.2 cent more.

TABLE 4
**Comparison of Average Class 1 Price, San Francisco, and
 Average Blend Price, California, per hundredweight
 1944-1963**

Year	Average annual blend price	Average milk fat test	Average annual adjusted price @ 3.8 test	Average class I price San Francisco
1944.....	\$3.66	3.78	\$3.68	-----
1945.....	3.64	3.77	3.67	-----
1946.....	4.43	3.80	4.43	-----
1947.....	4.87	3.85	4.80	-----
1948.....	5.18	3.87	5.11	\$5.25
1949.....	4.82	3.86	4.76	4.99
1950.....	4.35	3.85	4.30	4.58
1951.....	5.00	3.84	4.96	5.17
1952.....	5.64	3.80	5.64	5.77
1953.....	5.29	3.75	5.34	5.55
1954.....	4.62	3.75	4.67	5.02
1955.....	4.61	3.74	4.67	5.00
1956.....	4.74	3.71	4.83	5.23
1957.....	4.75	3.70	4.85	5.50
1958.....	4.68	3.70	4.78	5.50
1959.....	4.74	3.66	4.88	5.67
1960.....	4.77	3.67	4.90	5.73
1961.....	4.71	3.66	4.85	5.73
1962.....	4.69	3.65	4.84	5.75
1963.....	4.63	3.63	4.80	5.69

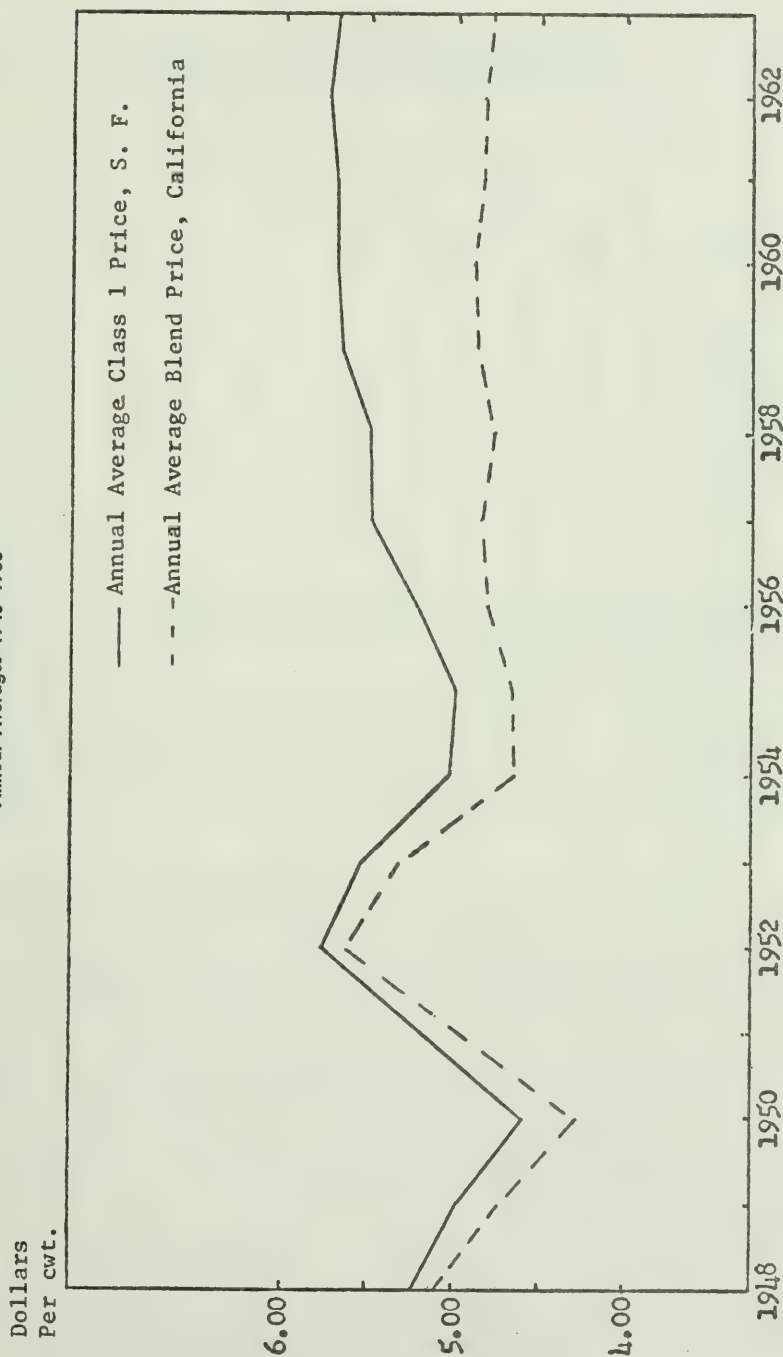
SOURCE: From prepared statement of California Department of Agriculture, hearing of California Assembly Interim Subcommittee on Livestock and Dairies, Modesto, September 15, 1964.

Despite the continuous rise in class I prices since 1955 and despite an improvement relative to average producer fluid milk prices in other United States markets, California producers on the average have not realized an effective increase in returns because the production increase has brought an increase in the proportion of "other than class I usage," (Table 1). However, some individual producers have been able to maintain a favored position of usage and have realized blend returns near the class I minimum. Since the average or blend return has been relatively constant (Figure 1), the ability of some producers to achieve a higher-than-average blend return results in other producers receiving lower-than-average blend returns. Thus, while some have benefited from the increased class I price since 1955, others have not benefited and have had to accept or carry a disproportionate burden of the "other than class I usage" increase.

Since producers in the aggregate are producing 25 percent more milk than is required for class I usage at the current minimum class I price, the California consumer price is probably higher than is "reasonable" from the viewpoint of an efficiency criterion. In other words, since the class I price, from 1957 to the present, has been associated with the production of more milk than is necessary to satisfy class I needs, more resources are employed in milk production than are necessary—a less than optimum allocation of this state's resources. One can thus argue the class I price could be lower and still insure to consumers a continuous and adequate supply of fluid milk and fluid cream. And if the class I price were lower, the consumer price could be lower.

FIGURE 1

Average Class 1 Prices, San Francisco, Compared With Average Blend Prices, California
Annual Averages 1948-1963



SOURCE: From prepared Statement of California Department of Agriculture, hearing of California Assembly Interim Subcommittee on Livestock and Dairies, Modesto, September 15, 1964.

TABLE 5

**Prices Paid Producers for Fluid Milk,^a Major United States and California Markets
January 1950, January 1954, and January 1963**

Producer prices ^b	Number of markets					
	January 1950		January 1954		January 1963	
	United States	California	United States	California ^c	United States	California
6.5- 7.4.....	2	d	-----	-----	-----	-----
7.5- 8.4.....	12	-----	2	-----	7	-----
8.5- 9.4.....	12	1	6	-----	13	-----
9.5-10.4.....	19	28	14	21	25	-----
10.5-11.4.....	10	4	26	12	26	4
11.5-12.4.....	15	-----	9	3	23	21
12.5-13.4.....	14	-----	19	1	26	1
13.5-14.4.....	2	-----	18	-----	18	-----
14.5-15.4.....	3	-----	5	-----	9	-----
15.5-16.4.....	1	-----	2	-----	1	-----
Total markets....	90	33	100	37	148	26
Average prices ^e ..	10.8	9.9	12.7	10.5	11.6	11.8

^a Prices in cents per quart.

^b Prices for United States markets calculated for butterfat tests reported as most commonly sold by dealers. California prices based on butterfat test of 3.6 percent.

^c Including price decreases of 1 cent per quart effective in most California markets on January 1 or January 16, 1954.

^d Blanks indicate no data available.

^e Simple averages of all reported prices, not weighted by market volumes.

SOURCES: Figures for the United States based on U.S. Statistical Reporting Service, *Fluid Milk and Cream Report*, monthly issues; figures for California based on California Crop and Livestock Reporting Service, *Dairy Information Bulletin*, monthly issues.

Note: Reprinted from "Economic Aspects of Government Milk Price Regulation" by D. A. Clarke, Jr., Information Series in Agricultural Economics, No. 63-4, November 1963, p. 15.

b. *Marketing Margins.* Little if any evidence on margins was received at the hearings. However, published information available to this committee provides a basis for some evaluation.

A comparison of California processor and store margins (price spreads) in two California markets with comparable margins in 18 other United States markets is shown in Table 6. From this information, the committee observes that the margins allowed California processors are *less*, but the margins allowed stores are *more* than the average of margins existing in the other 18 markets. In addition, it is noted that the total margin (wholesale, plus store spread), allowed in the California markets, is less for milk in quart containers but more for milk in half-gallon containers. Research currently underway at the University of California, but not yet published, appears to support these earlier observations.

Since California's food distribution and retailing system is considered one of the most efficient in the country, it seems reasonable to except the store and retail margin to be at least equal to or possibly lower than the average. The available information indicates, therefore, that consumers may be paying more for the store service than is necessary to maintain resources in this activity.

TABLE 6

**Price Spreads for 20 Markets: Fluid Milk in Quart and Half-gallon Containers
Adjusted for Geographic Price Differences, 1962**

Market	Wholesale spread ^a		Store spread ^b		Wholesale, plus store spread	
	Quarts	Half gallons	Quarts	Half gallons	Quarts	Half gallons
	Cents					
Boston.....	9.0	11.9	2.8	4.6	11.8	16.5
New York.....	12.6	°	2.0	-----	14.6	28.2
Philadelphia.....	11.3	19.0	0.5	2.6	11.9	21.6
Pittsburgh.....	11.3	19.2	1.6	3.5	12.9	22.6
Scranton.....	11.8	-----	1.6	-----	13.4	-----
Cincinnati.....	13.2	24.4	2.3	2.6	15.5	27.0
Cleveland.....	9.4	17.8	1.4	1.9	10.9	19.7
Chicago.....	15.1	27.5	0.5	1.9	14.7	25.6
Detroit.....	-----	-----	-----	-----	15.4	19.3
Minneapolis.....	-----	-----	-----	-----	11.8	18.1
Kansas City.....	9.1	16.7	3.4	6.5	12.6	23.3
St. Louis.....	-----	-----	-----	-----	-----	-----
Baltimore.....	16.0	26.8	1.7	2.2	17.8	28.9
Washington.....	14.2	21.5	1.5	0.1	15.7	21.6
Atlanta.....	10.7	21.2	3.3	5.6	14.0	26.8
Houston.....	12.4	23.0	-1.1	-0.9	13.2	21.5
Seattle.....	11.4	21.6	2.3	3.7	13.7	25.4
Portland.....	10.8	20.7	1.5	2.5	12.3	23.1
Los Angeles.....	9.7	18.4	2.0	3.9	11.6	22.3
San Francisco.....	11.1	21.2	1.9	3.9	13.0	25.0
Los Angeles-San Francisco average.....	10.4	19.8	2.0	3.9	12.3	23.7
Average of other markets.....	11.9	20.9	1.7	2.8	13.6	23.1
Range of adjusted margins.....	9.0-16.0	11.9-27.5	-1.1-3.4	-0.9-6.5	10.9-17.8	16.5-28.9

^a The difference between the price paid the farmer and the price received from stores.

^b The difference between the delivered price to the store and the price paid by the consumer at the store.

^c Blank space indicates no data available.

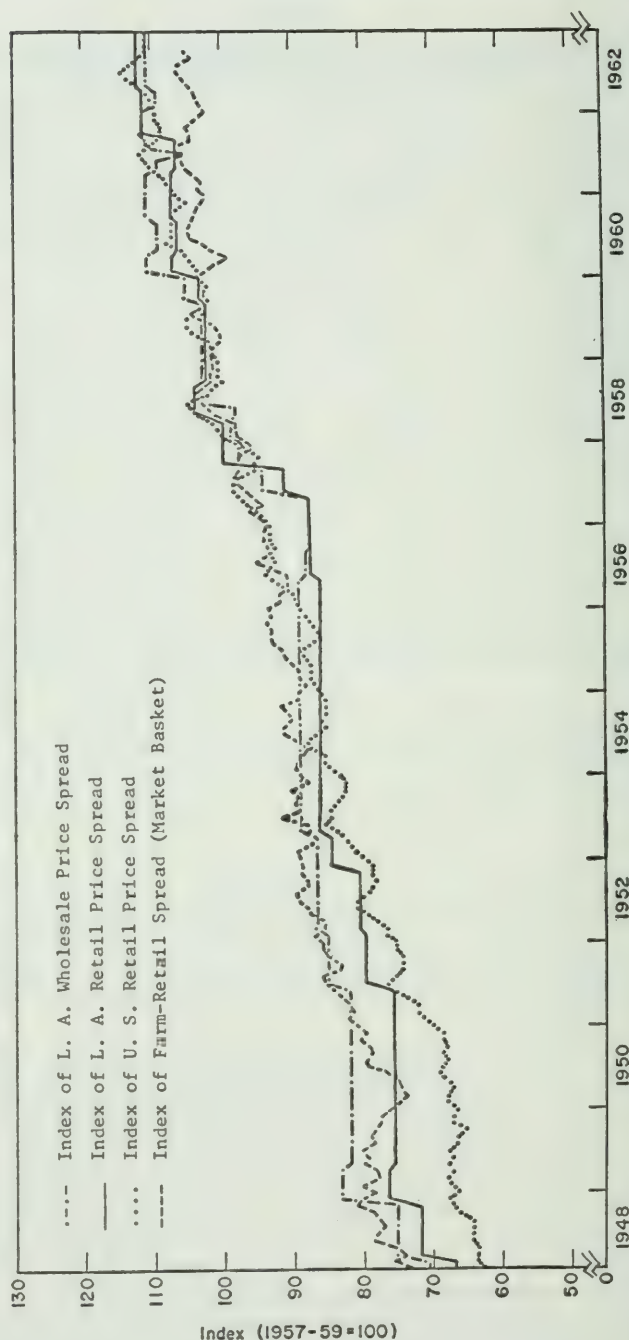
SOURCE: Extracted from "Economic Aspects of Government Milk Price Regulation" by D. A. Clarke, Jr., Information Series in Agricultural Economics, No. 63-4, November 1963, pp. 21-22.

Indications that the wider difference in margins may be of recent origin are given in the following statements quoted from the 1963 report of the University of California previously mentioned:

"All four indexes were constructed with 1957-1959 as the base period. They have been plotted by months for 1948-1962 and are shown in Figure 2. It is clear that the retail and wholesale price spread indexes for Los Angeles have both risen less rapidly than the United States retail milk price spread index but moved in general conformity with the market basket index series. Both Los Angeles indexes rose a little less rapidly than the market basket series in the early 1950's and in the period from mid-1955 to 1957. Since 1959, however, they have advanced somewhat more rapidly and have remained at slightly higher levels than the market basket

FIGURE 2

Indexes of Price Spreads for Los Angeles Wholesale Milk, Los Angeles Retail Milk, United States Retail Milk and Market Basket for Farm Food Products (Farm-Retail Spread), 1948-1962, by Months



NOTE: Reprinted from "Economic Aspects of Government Milk Price Regulation" by D. A. Clarke, Jr., Information Series in Agricultural Economics, No. 63-4, November 1963, p. 15.

index, thus indicating that milk prices paid by consumers in that area have compared relatively unfavorably with other food prices in the more recent years.

"In summary, it seems apparent that the results which were 'favorable'—in terms of relatively low marketing charges—in the early period of price regulation have tended to become less favorable in more recent years."¹

3. Conclusion

The California consumer price for fluid milk appears "reasonable" when compared with consumer prices in other markets. In other words, California consumers are being provided an adequate supply of pure, fresh wholesome milk at prices "in line" with prices being paid by consumers in most parts of the United States.

However, it appears that California consumers of fluid milk could be provided milk at even a lower or more reasonable price than exists now. The industry under the current program is probably not achieving its full potential of economic efficiency. This shortcoming is indicated by (a) the current large quantity of market milk available for "other than class I usage" and (b) the comparatively large margin or price spread allowed stores for milk in both quart and half-gallon containers.

C. PROSPERITY, STABILITY, AND PROGRESSIVENESS OF THE INDUSTRY

1. Producers

At the committee hearings in Dairy Valley, Lake San Marcos, and Modesto, producers and producer groups indicated some degree of financial difficulty. Some producers adjacent to large metropolitan areas and some located in the upper San Joaquin Valley were most vocal in their plea for more prosperity. The metropolitan producers are faced with continually increasing taxes, labor costs, and real estate values; but in general, have a class I usage proportion that is considerably higher than the average utilization for the state. The valley producers also subject to increasing costs blamed their prosperity difficulties on low blend returns through contractual arrangements that yield a relatively low proportion of class I usage. Testimony was offered indicating that some producers are quite prosperous. The only conclusion possible in the light of so wide a range in producer blend prices is merely that some producers are prosperous and others are not. In metropolitan areas, no doubt, the high value of land, with accompanying high taxes, constitutes a major cause of financial difficulty.

Testimony by producers provides some insight as to the indicated lack of prosperity. One producer stated that he paid no personal income tax in 1963, although he sold over \$450,000 worth of milk. He was relatively efficient because he milked 840 cows, with an average production of 15,500 pounds of milk and 553 pounds of butterfat per cow. However, his class I utilization was only 25 to 29 percent of production through October 1963. It was increased to 52 percent in November, 1963; however, he said he could make a profit only if he attained 75 percent utilization. He further stated that he saw no justice

¹D. A. Clarke, Jr., "Economic Aspects of Government Milk Price Regulation," University of California Information Series in Agricultural Economics, No. 63-4. (Berkeley: November 1963, p. 23.)

in a system that paid him on the basis of 52 percent and others on a basis of over 75 percent utilization. Why should he be penalized for having a lower cost of production and the ability to stay in business even at the lower blend price? Another producer told the same story.

Statistics concerning the stability of producing units indicated that between 1958 and 1964, there were 15 percent fewer market milk dairies and 49 percent fewer manufacturing milk dairies milking 8 percent fewer cows, and the average number of cows per dairy had increased by 43 percent (Table 7).

TABLE 7
Number of Dairy Farms, Cow Population and the
Average Number of Cows per Dairy

Year	Market milk dairies	Manufacturing milk dairies	Total dairies	Number of milk cows 2 years old and older*	Average number of cows per dairy
1958.....	4,200	No record	No record	945,000	-----
1959.....	4,100	6,519	10,619	945,000	89
1960.....	4,000	5,464	9,764	899,000	92
1961.....	3,924	5,378	9,302	899,000	97
1962.....	3,551	4,525	8,076	881,000	109
1963.....	3,533	4,060	7,613	881,000	116
1964.....	3,482†	3,343	6,825	867,000	127
Change 1959 to 1964....	-15%	-49%	-35%	-8%	+43%

* Partially estimated.

† Subject to slight adjustment.

SOURCE: From prepared statement of California Department of Agriculture, hearing of California Assembly Interim Subcommittee on Livestock and Dairies, Modesto, September 15, 1964.

During the first six months of 1964, 122 market milk dairies went out of business while 51 new market milk dairies were built. Table 8 lists these changes by county of dairy location. The greatest net reduction in dairy farms occurred in the Central Coast counties and the San Joaquin Valley. In the southern California counties, with a net reduction of only three dairies, the pattern appears to be one of relocation from Los Angeles and Orange Counties to San Bernardino County.

2. Processors

Testimony by Mr. Blank supported by quantitative evidence from the "Marketing and Transportation Situation" (U.S.D.A., E.R.S.: November 1963, Table 7) indicated that 10 major United States dairy product companies have, for several years, enjoyed a larger average profit rate on stockholders' equity than have 49 food-processing companies (including the 10 dairy product companies). Rates for 1962 respectively for the two groups were 10.2 percent and 9.9 percent. Only a group of 7 grain mill product companies (11.8 percent rate in 1962) and a group of 9 miscellaneous food companies (14.3 percent in 1962) are now doing better. Bakery companies (8) have realized average profit rates (9.7 percent in 1962) about equal to the average for all food processing companies while 10 meat packers and 5 canning

TABLE 8

**Number of New Market Milk Dairies Built and Going Out of Business,
January 1 to July 1, 1964, by County, California**

	Market milk dairies going out of business		Market milk dairies built	
	Number dairies	Cows represented	Number dairies	Cows represented
Del Norte.....				
Humboldt.....				
Mendocino.....	2	102		
North coast total.....	2	102		
Shasta.....				
Siskiyou.....			2	200
Trinity.....				
North central total.....			2	200
Lassen.....				
Modoc.....				
Plumas.....				
North east total.....				
Alameda.....				
Contra Costa.....				
Lake.....				
Marin.....	2	218		
Monterey.....	1	60		
Napa.....				
San Benito.....				
San Francisco.....				
San Luis Obispo.....	2	200	1*	125
San Mateo.....				
Santa Clara.....	2	200		
Santa Cruz.....				
Sonoma.....	6	574	1	90
Central coast total.....	13	1,252	2	215
Butte.....				
Colusa.....				
Glenn.....			1	100
Sacramento.....	5	620	1	500
Solano.....				
Sutter.....				
Tehama.....				
Yolo.....				
Yuba.....	1	60		
Sacramento Valley total.....	6	680	2	600
Fresno.....	13	1,330	3†	570
Kern.....	1	200	1	800
Kings.....	5	709	1	1
Madera.....	7	580	7	1,085
Merced.....	20	2,184	6†	1,045
San Joaquin.....	9	1,134		
Stanislaus.....	17	1,651	3	230
Tulare.....	5	528	3	590
San Joaquin Valley total.....	77	8,316‡	24	4,320

TABLE 8—Continued

**Number of New Market Milk Dairies Built and Going Out of Business,
January 1 to July 1, 1964, by County, California**

	Market milk dairies going out of business		Market milk dairies built	
	Number dairies	Cows represented	Number dairies	Cows represented
Alpine.....				
Amador.....				
Calaveras.....				
El Dorado.....				
Inyo.....				
Mariposa.....				
Mono.....				
Nevada.....				
Placer.....				
Sierra.....				
Tuolumne.....				
Sierra mountain total.....				
Imperial.....				
Los Angeles.....	16	3,600	1	240
Orange.....	6	1,200		
Riverside.....			2	170
San Bernardino.....	1	80	16	3,900
San Diego.....	1	180	2	340
Santa Barbara.....				
Ventura.....				
Southern California total.....	24	5,060§	21	4,650
State total.....	122	15,410	51	9,935

1 No information.

* Under construction.

† Includes one dairy under construction.

‡ Most cows absorbed by existing dairies.

§ All cows absorbed by existing dairies.

SOURCE: From prepared statement of California Department of Agriculture, hearing of California Assembly Interim Subcommittee on Livestock and Dairies, Modesto, September 15, 1964.

companies realized profit rates (5.1 percent and 6.8 percent respectively) much lower than the average for all 49 food processing companies.

In California, the Bureau of Milk Stabilization allows an 8-percent return on necessary investment. Mr. Blank concluded, therefore, that "the rate of return used by the State of California in establishing minimum prices appears to be below the general earnings of food processing companies nationally, but is in line with practical conditions when we take into consideration that some of the risk has been curtailed in our industry by the Milk Stabilization Act . . ." However, no specific evidence of the profit rate of individual companies or groups of companies was available to the committee. Therefore, it is not possible to determine whether California distributors realize a reasonable or unreasonable profit rate on the basis of available information.

Some indication of stability was obtained from testimony concerning changes in the industry. It was stated that integration movements, in which producers established their own resale outlets were most

numerous during the period 1957-1962. Integration of the form where distributors established their own producing units were most common during the period 1961-62. However, it was claimed that since 1962, there has been a (relative) decline in integration activity.

Yet, incentives for further integration movements still seem to exist. More discussion on integration incentives is in the next chapter. Such integration movements may be viewed as indications of industry instability rooted in the operation of the Milk Stabilization Act.

In addition to testimony from witnesses, published material provides additional insight. A University of California report summarizes industry performance as follows:

"To summarize, the processing efficiency, price-cost margins, and the size of selling cost dimensions of performance in the California fluid milk industry appear to be reasonably 'in line' with those of other marketing systems. Its progressiveness in processing techniques and product designs also compares favorably with that of other marketing systems. In view of these observations, it would appear that the performance of the California fluid milk industry has not been adversely affected by the observed structural changes in the market environment. This conclusion establishes the basis for dismissing the premise that the observed structural changes within the fluid milk industry in California posed the threat of monopolistic exploitation. The evidence presented, while necessarily limited, points to present performance of the industry at an 'acceptable' level, but the analysis fails to give any indication as to whether, through structural or institutional alteration, future performance of the industry can be improved."¹

Mr. Weinland, of the Department of Agriculture, summarized his impression of the progressiveness of the fluid milk industry when he stated:

"Improvements are continually developing in the processing and distribution of milk. Plastic-coated cartons now replace wax-coated cartons. A new 10-quart home delivery package has emerged. The handling of bulk milk at the wholesale level in metal cans is being replaced by packing in plastic and cardboard. There is automation in the plants and data-processing equipment in the offices."

In addition, Mr. Blank testified in Berkeley:

"There have been many radical changes in the equipment and methods used for processing, packaging and distributing milk. As new developments in equipment have been made, which will either produce a better product, or tend to reduce the cost of processing and handling such, our distributors generally have been quick to make changes. They have not waited until their older equipment was fully depreciated, or at a stage where replacement was necessary from a mechanical standpoint. They could adopt this attitude because they have not had to worry about the possibility of sharp market declines which might make it extremely difficult, or impossible, to recover the additional investments. The

¹ D. I. Padberg and D. A. Clarke, Jr., "Structural Changes in the California Fluid Milk Industry," California Agricultural Experiment Station Bulletin 802, June 1964, p. 50.

United States Department of Agriculture has taken note of this progressive element in California, and in a recent summation of changes in milk processing and distribution made by the Agricultural Marketing Service they state, 'more distribution innovations have started in California than in most other states.' Whether it was bulk handling of milk from the farms to the plants, or pioneering the use of new containers for wholesale and store distribution, California distributors have acted with dispatch under our stable market conditions."

3. Conclusion

From the available information, this committee concludes that the milk control program in California has provided the economic environment for a relatively prosperous and progressive industry, and in general is properly achieving the intent and objectives of the Milk Stabilization Act. However, the committee notes some degree of instability associated with the program in the form of integration movements that may well be taking root because of the program. The committee also notes some instability because of disparity in producer returns in and among marketing regions. The basis for this observed instability is discussed in more detail in the next chapter.

D. SPECIAL PROBLEMS

During the course of the hearings, the following specific problem areas were repeatedly brought to the attention of the committee:

1. Method of payment to producers.
2. Sales to military installations.
3. Producer-distributor integration.
4. Usage classification.
5. Two-pool method of producer payment.
6. The problem of increasing costs.

Most of these problem areas have been mentioned in previous chapters. However, in this chapter each will be discussed in more detail with some attempt to present underlying causes, implications, and alternative solutions.

1. Method of Payment to Producers

The method of payment to producers currently used results in wide differences in average returns among producers for essentially the same product. This method with its resultant disparity provides the underlying cause for producer dissatisfaction, provides an incentive for integration, and provides distributors with the ability to discriminate pricewise among their producer shippers.

Individual producer payments are based on the usage of the individual plant (or group of plants in the case of a distributor pool to which a producer ships his milk) and the minimum class price in effect in the marketing area where the milk is sold. Each producer enters into a contractual agreement with his distributor concerning quantities of milk that will be exchanged and the producer's share of the various class usages. In effect, the negotiated terms of the individual contract determine the blend price received by each producer.

To illustrate, let's use a hypothetical situation. Suppose plant X in the southern metropolitan marketing area used 75 percent of its re-

ceipts for class I and 25 percent for class II products. If the minimum class I price was \$5.50 per cwt. and the class II price was \$3.50 per cwt., the average value of plant X's milk would be \$5 per cwt. $(\$5.50 \times .75) + (\$3.50 \times .25)$. If each producer shared equally in this usage, each producer would receive \$5 per cwt. for all milk shipped. Although the plant must make total payment that averages \$5 per cwt., some producers may receive more—some less—than the average because of the particular terms of their contract. Assume that plant X receives milk from two producers, A and B. If producer A's contract was such that he received payment on the basis of 90 percent class I and 10 percent class II utilization, his blend price would be \$5.30 per cwt. Since A's class I usage is greater than 75 percent, the other producer will receive less than the average. In this hypothetical situation, if both producers shipped one-half the plant's supply or equal total quantities of milk then producer B's realized usage for payment purposes would be 60 percent class I and 40 percent class II for a blend return of \$4.70 per cwt.

As demonstrated in the example, without delving into the mechanics of allocation determination, the contract required by Section 4280e of the Agricultural Code, makes permissive arrangements whereby some producers receive blend returns close to the minimum class I price while others receive blend or average returns close to the class II or III minimum price. The degree of divergence possible depends on the plant usage pattern, the producer's production relative to the terms of his contract, the willingness of the producer to enter into specific agreements, and the procurement policies of distributors.

Data presented by the Department of Agriculture at the Modesto hearing gave evidence of the magnitude of the disparity. Figure 3 is representative of the evidence presented.

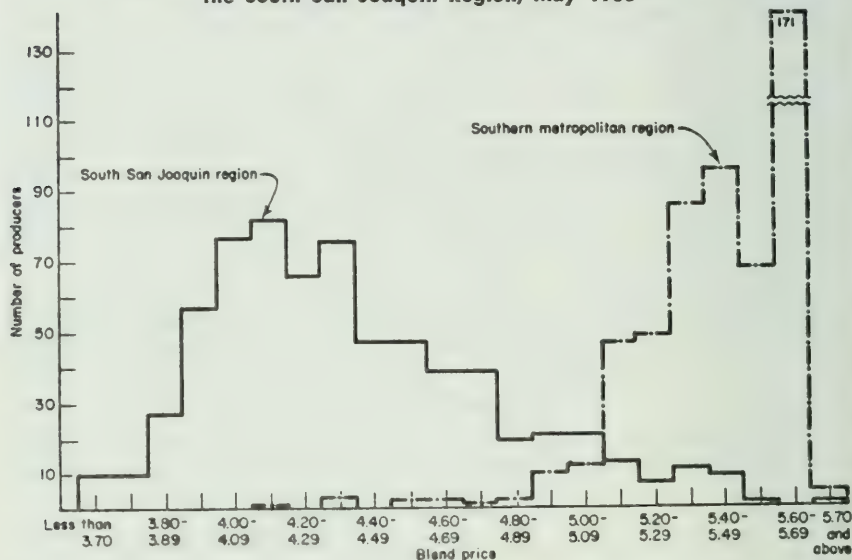
In May 1963 producers shipping to plants in the south San Joaquin region received blend prices ranging from less than \$3.70 to over \$5.70 per cwt., with the largest number of producers receiving between \$4.10 and \$4.19 per cwt. Southern metropolitan shippers, on the other hand, received blend prices ranging from \$4.10 to over \$5.70 per cwt., with the largest number receiving from \$5.60 to \$5.69 per cwt. Comparatively, the class I prices in the south San Joaquin and southern metropolitan regions were about \$5.34 and \$5.62 respectively, while the average price for all market milk in May, 1963 was \$4.72 per cwt. (adjusted to 3.8 percent fat content). Therefore, the predominant number of producers in the San Joaquin Valley region received approximately \$1.50 less per cwt. than producers in southern California and \$0.50 less than the average for the state. A similar situation exists in and between the San Francisco Bay and north San Joaquin Valley regions.

Much of the industry dissatisfaction and unrest and many of the other problem areas presented seem to evolve from or be associated with this disparity in producer income. The disparity is not, in itself, necessarily good or bad; but the fact that it is possible for a producer, by obtaining a higher class I usage, to realize a higher blend return provides an incentive for producers with low blend returns to attempt to improve their position somehow. The disparity is conducive to continuation of the current producer unrest and provides a continuing in-

centive for integration movements and violations of the price and unfair trade provisions of the act.

FIGURE 3

Distribution of Blend Prices Received by Milk Producers Shipping to Fluid Milk Plants Located in the Southern Metropolitan Region and the South San Joaquin Region, May 1963^a



^a Prices adjusted to 3.8 percent butterfat.

SOURCE: Special survey by California Department of Agriculture, Bureau of Milk Stabilization.

In testimony, producers claimed that the contract, as an instrument of negotiation, provides the distributor purchaser of milk with undue power. As demonstrated above, a distributor can—via the contract—pay a high blend price to some of his producers and a low blend price to others.

Some distributors argued that this ability is good for the industry. Mr. Blank stated in Berkeley that “the fluctuation in consumer requirements always creates some arguments as to the manner of allocating usage and standby among producers. We believe the problem has been handled as well and as practically as it could be in the State of California. We must recognize this state covers vast geographic areas, and milk is produced under varying conditions as to land, labor, and feed in the milkshed areas throughout the state. . . . The procurement and payment policies followed by distributors who have plants in both types of areas (high-cost metropolitan and relatively low-cost valley areas) have been aimed at providing a profitable income to both groups of dairymen from whom they have been procuring supplies. And the upward trend in production confirms the propriety of such policies.” Distributors also argued that since terms of the contract are negotiated (i.e., both parties agree to its terms), the discrimination or unequal balance of power argument is invalid.

Some producers, on the other hand, maintained that the arrangement is conducive to the continued existence of inefficient, high-cost producing dairies and contributes to the production of excess supplies of market milk. They testified in general that an individual producer, when there are large quantities of market milk in excess of class I needs, has very little, if any, bargaining power and no alternative but to take whatever contract terms and produce whatever total quantity of milk the purchaser desires.

Another witness stated that he felt the contract system, as it exists today, is being used to create additional supplies of market milk to offset the decline in manufacturing milk production. The contract in the 1930's provided the producer an assurance of payment. If one lost a contract then, it did not mean economic chaos. Today, the loss of a contract can mean economic destruction.

Thus, it is clear that the contract instrument which specifies the method of payment and the distribution of the plant or distributor usage to individual producers is required by legislation in the Agricultural Code. However, it would seem from the evidence presented, that this authority may be inconsistent with the legislative intent that "nothing in this chapter shall be construed as permitting or authorizing the development of conditions of monopoly . . ."

2. Sales to Military Installations

Fluid milk sales are currently being made to military installations at a price probably insufficient to return to the producers concerned the established minimum class I price. A large share of these sales are made by producer cooperatives. Recently, some "special purpose" cooperatives have been formed to gain military sales contracts. Proprietary distributors process and distribute the milk for these "special purpose" cooperatives. It was argued that cooperatives entered into the military business because of the pressures of a greatly increased grade A supply and their loss of sales of grade A milk to proprietary distributors. In self-defense, they sought retail outlets, one of which has been military sales. As producer-processing cooperatives gained military sales and proprietary distributors lost sales, producers who had been supplying the latter organized special interest cooperatives in order to maintain or gain back their class I market.

This situation creates two problematic conditions. First, producers receive less than the minimum class I price for that portion of market milk sold to military installations. Second, military residents of California pay a significantly lower price for fluid milk than nonmilitary residents.

The first condition exists because producers are willing to sell excess market milk at prices above the class II or III price, but lower than the minimum class I price. The possibility that a producer (or a group of producers) may improve his blend return by obtaining a military contract creates the incentive for individual producer competition that results in a reduction in aggregate return to all producers.

Table 9 compares the prices and returns at various levels of trade for one actual existing military contract with returns from milk sold through nonmilitary commercial channels. In this instance, military consumers pay almost 10 cents less per quart than nonmilitary con-

TABLE 9

Comparison of Producer Price, Delivered Price, Price to Consumer, Processor Spread, and Retailer Spread for Milk Sold Under an Existing Military Contract and for Milk Sold Under Milk Stabilization Regulation, San Francisco First Quarter, 1964

	Producer price ^a	Delivered price ^b	Price to consumers ^c	Spread to processor ^d	Spread to retailer ^e
	1	2	3	4	5
	Cents per quart				
Milk sold to military.....	10.00	13.80	14.20	3.80	0.40
Milk sold under milk stabilization regulation.....	12.40	20.21	25.00	7.81	4.79

^a Based on BMS audit of returns to producers for milk sold to military under an existing contract and on established class I price for other sales.

^b Price paid for milk delivered to military installation and to retail store, discounted for volume and limited service (the maximum in this area, 10 percent for volume plus 4 percent for limited service), Zone 3, San Francisco.

^c Price paid by consumer for milk at commissary on military installation and the established minimum out-of-store price. Price for milk purchased at commissary is based on markup of 3 percent.

^d Column 2 minus column 1.

^e Column 3 minus column 2.

sumers. Of this difference, 2.4 cents is absorbed by producers. Processors absorbed 4 cents per quart. And while stores receive about 4.8 cents per quart margin, commissaries operate on a spread of 0.4 of a cent per quart, which accounts for the remaining difference of nearly 4.5 cents per quart.

No doubt, many nonmilitary consumers have wondered why they must pay a higher price for milk handled through civilian channels. Some witnesses testified that because of this price difference, a portion finds its way into nonmilitary households. A comparison of the trends in the proportion of military personnel living in California and the proportion of fluid milk sold to federal installations appears to support this claim (Table 10). While the military population is now 1.8 percent of the total population, the smallest proportion since 1950, fluid milk sales to federal installations are the highest since 1948—6.7 percent of total sales.

3. Producer-distributor Integration

Some concern was indicated by various witnesses concerning the changing ownership pattern of producing and distributing units. During the period 1957 to 1960, a large number of producing units established or purchased retail outlets of some form—cash and carry, milk depots, retail routes—as milk production began to exceed class I needs by larger and larger amounts. The producer who had received reduced blend returns looked for some means of improving his situation. While practically no cash-and-carry outlets existed in California prior to 1957, there were 18 in January, 1957; 29 in January, 1958; 53 in January, 1959; and 64 in April, 1959.¹ Although no figures are

¹ Data obtained from the Bureau of Milk Stabilization, California Department of Agriculture. These figures do not include the large number of ranch outlets that have been in existence in Southern California for many years.

TABLE 10

Relation Between Fluid Milk Sales to Federal Government Installations as a Percent of Total Fluid Milk Sales and Military Personnel as a Percent of Total Population, California, 1948-1963

Year	Fluid milk sales to federal government installations as a percent of total fluid milk sales	Military personnel as a percent of total population
1948.....	2.5	1.7
1949.....	2.5	1.7
1950.....	2.6	1.6
1951.....	4.2	3.4
1952.....	5.1	3.8
1953.....	4.4	3.5
1954.....	4.0	2.7
1955.....	4.4	2.4
1956.....	4.6	2.5
1957.....	5.2	2.3
1958.....	5.5	2.2
1959.....	5.9	2.1
1960.....	6.1	1.9
1961.....	6.6	1.8
1962.....	6.3	1.8
1963.....	6.7	1.8

SOURCES: Computed from data in reports as follows: California Crop and Livestock Reporting Service, *California Dairy Industry Statistics* (various annual issues); *Manufactured Dairy Products, Milk Production, Utilization and Prices*, Sacramento and California Department of Finance, *California Population—1963* (Sacramento, 1963).

available for subsequent years, testimony indicated that the number of cash-and-carry outlets has been relatively stable since 1959. A USDA report indicates that sales through drive-in dairies in central California accounted for 1.8 percent of total sales in that area in 1957; grew to 5.2 percent by 1959, peaked at 6.4 percent in 1962; and declined to 5.8 percent in 1963.¹

Since 1959, integration movements, according to some witnesses, have taken the form of financial merger of distribution units with production units. The direction of integration was not firmly established in the testimony, but a study was presented that indicated an increase in the number of distributing firms that had either complete or partial ownership of milk production units. Of 275 processors who had responded to a mail questionnaire, 24.8 percent said they had had some financial interest in milk production units in 1959 and 29.8 percent in 1964. Of these, 59 indicated financial interest in both years, while 21 indicated that they had developed a financial interest since 1959. Six processors who had had a financial interest in 1959 no longer had such an interest.²

Producers may enter the resale or distribution activity to obtain a better outlet. They have the milk supply—their desire is to obtain a better blend or average return by moving a larger percentage of their milk at the higher class I price. To accomplish this goal, they must develop an outlet.

¹ Jack E. Klein and L. R. Gray, "Drive-In Dairies in Central California," USDA, ERS, MED, Marketing Research Report No. 636, (Washington, D. C. 1963) p. 2.

² Special Study of the Bureau of Milk Stabilization, California Department of Agriculture. Data presented at the California Assembly Interim Subcommittee on Livestock and Dairies hearing, Modesto, California, November 15, 1964.

Distributors already have the resale outlet. They may enter production for a similar reason—to obtain high class I usage—but their starting position is much different. Under the current method of determining produce payments, producer-distributors can pay themselves the minimum class I price for all of their own production and purchase all of their class II and class III needs, if any, from other producers as needed. The integrated producer can thus obtain his class I supplies at his own cost of production and effectively have other producers supply his standby requirements at the class II and class III price. By this means, he can realize a higher blend return than can a nonintegrated processor.

The magnitude of the incentive for producer-distributor integration is quite significant. For example, if a dairyman with 150 cows currently has an arrangement that yields 50 percent class I usage and 50 percent class II usage, he can realize about \$1 more per cwt. if he can obtain a 100 percent class I outlet. This represents a \$16,500 difference in annual income, assuming his cows produce an average of about 11,000 pounds per cow per year. Producers with less than a 50-percent utilization, of which there are many as indicated by earlier figures, have even a greater financial incentive.

In summary, the current method of payment with its resulting disparity in blend returns to producers, establishes a climate in which strong incentives for integration exist in both directions. As a producer (or a group of producers) incurs the cost of integration, or as processors develop production units and thus preempt a certain share of the total class I market, other producers lose a proportionate share, all other things being equal; and instability in the industry is a consequence.

4. Usage Classification

Several producer representatives requested that perishable products as cottage cheese, sour cream dressing, cultured cream dressing, whipped cream topping, and eggnog be reclassified from class II to class I usage products. Normally, the class I price is higher than the class II price by \$1.50 to \$2 per cwt. Producers believed that the higher price would more appropriately reflect the value of these products and would, at the same time, bring them a higher blend return.

A report by the University of California to this committee in March 1963¹ indicated that during the period 1950–1962, processors perhaps could have paid approximately 30 cents more per cwt. for milk used in manufacturing. At higher prices, they would likely resort to importing alternative raw ingredients, such as butterfat and nonfat dry milk, from areas outside the state. However, neither the study nor testimony determined the exact feasibility of appropriateness of reclassifying these products. Since the above-mentioned report is available to the Department of Agriculture, and since they have resources available for evaluating this proposal, this committee requests that they study this proposal and consider either upgrading these products or increasing the minimum class II price.

¹D. A. Clarke, Jr., Olan D. Forker, and A. C. Johnson, Jr., "Pricing Milk for Manufacturing Purposes in California," California Agricultural Experiment Station Bulletin 801 (Berkeley: June 1964), pp. 37–39.

5. Two-pool Method of Producer Payment

The two-pool method of allocating the various class usages to individual producers in a plant or distributor pool was made mandatory throughout the state by marketing orders effective on April 1, 1964. It was claimed that this move disrupted the normal pattern of blend returns among producers for, in effect, it redistributed usage among producers in some plant and distributor pools. The two-pool method provides for the allocation of class I usage in a plant or distributor pool to each producer in proportion to contract quantities. The three-pool method used prior to April 1, 1964, allocated class I usage first to the "guarantee" quantity of each producer's contract. Any class I usage left over was allocated proportionate to contract quantities.

The two-pool method tended to equalize the blend return among certain groups of producers, while the three-pool method permitted distributors to make unequal payments to producers for contract quantities of milk. Those who were adversely affected suffered a financial loss, while those favorably affected realized a gain. And since this involved simply a reallocation, if one producer gained, another or others lost usage.

Several questions relative to the two-pool method of payment were asked of the committee's Legislative Counsel. The questions and answers follow:

"Question No. 1: Is the two-pool system for accounting for payments to producers of fluid milk which was required by the Department of Agriculture under stabilization and marketing plans made effective April 1, 1964, authorized under the present law?

"Opinion and Analysis No. 1: We are informed that under the two-pool method, very generally, two pools are established for the determination of the amount to be paid producers of milk, with one pool being a contract pool and the other being an over-contract pool. All producers are paid the same percentage of class I usage within the contract amount from the contract pool and the overcontract production is paid for by allotting the usage first to the lowest class usage and successively to the next higher class usage. A distributor's own production is required to be included in such pools.

"In contrast, there has been a three-pool method. The three-pool method is similar to the two-pool method, except that the three-pool includes class I guarantees. Under this method of payment, class I usage is allocated first to the class I contractual guarantees to constitute the first pool, the remaining class I usage is allocated between the class I guarantees and the contract amount to constitute the second pool, and the third pool consists of any milk which is over the contract amount.

"Section 4281 of the Agricultural Code requires that each stabilization and marketing plan must contain provisions whereby the Director of Agriculture designates and prescribes or provides methods for designating or prescribing minimum prices to be paid by distributors to producers for fluid milk in the various classes.

The director is authorized to prescribe minimum prices to be paid by distributors in accordance with a stabilization and marketing plan and to classify milk according to its usage by distributors (Sec. 4246, Ag. C.).

"The Director of Agriculture is granted broad powers in formulating stabilization and marketing plans in order to effectuate the stated purposes of Chapter 17 (commencing with Sec. 4200) of Division 6 of the Agricultural Code and is authorized to amend stabilization and marketing plans as necessary to effectuate the purposes of these provisions (Sec. 4248).

"Very generally, the principal objection to the two-pool requirements in the stabilization and marketing plans would seem to be based upon the economic effect that such a two-pool system will have upon the industry. The court stated in the case of *Marin Dairymen's Milk Co. v. Brock*, 100 Cal. App. 2d 686, at p. 693:

"... We are impressed with the statement of the court in *Queensboro Farm Products v. Wickard*, 137 F. 2d 969, 980, that "that interpretation of a statute by officers who, under the statute, act in administering it as specialists advised by experts must be accorded considerable weight by the courts. If ever there was a place for that doctrine, it is, as to milk, in connection with the administration of this act, because of its background and legislative history." We are inclined to believe that respondent agricultural director, who is the person empowered by the act to formulate and establish a stabilization and marketing plan, is in a far better position than either respondent or the court to determine the economic phases involved."

"We are not in a position to determine the economic effect of establishing such a two-pool system. The director, in establishing this system, has, in effect, determined such a system is necessary to effectuate the proper payment to producers under the stabilization and marketing plan. We believe that the court would uphold the validity of the plan as to its economic effect unless it determines that the director's determination of such action is clearly contrary to the declared purposes of the stabilization and marketing law.

"In our opinion the establishing of such a two-pool system is, as a matter of law, authorized under the authority granted the Director of Agriculture.

"Question No. 2: Is there a law which prohibits administrative regulations providing, in effect, for the same provisions as a defeated bill would have enacted, and if so, would the defeat of Senate Bill No. 1535 of the 1963 Regular Session prohibit the establishing of the two-pool system by the Director of Agriculture under stabilization and marketing plans?

"Opinion and Analysis No. 2: We are not aware of any law which prohibits regulations accomplishing what a defeated bill had proposed to enact assuming there is authority for such regulation independent of the bill. We note, in this regard, that Assembly Bill No. 1200 of the 1963 Regular Session which related to regulations to accomplish the effect of defeated bills, although

passed by the Legislature, is not in effect since it was pocket-vetoed by the Governor.

"S.B. 1535, very generally, would have required all contracts after May 1, 1963, by a distributor for the purchase of fluid milk to provide for the same percentage of payment as class I to all producers under contract to that distributor and would have required the distributor's own production to be accounted for payment as class I at the same percentage.

"As discussed above in the analysis to Question No. 1, the authority of the Director of Agriculture to require a two-pool system, as described in said analysis, existed prior to the defeat of S.B. 1535 and is independent of the provisions in that bill. Thus, even assuming that S.B. 1535, if enacted, would have accomplished the same purpose as the two-pool system established by the director, in our opinion this does not prohibit the director from acting under the other provisions of law authorizing the establishing of such a two-pool system."

6. The Problem of Increasing Costs

a. *Producers.* Increased costs of production were cited as a reason for increasingly acute problems in the industry. Complaints came mostly from producers, lending agencies, and dairy suppliers located in the metropolitan areas of Los Angeles and San Diego. One lender and one supplier indicated an increase in the number of producer accounts outstanding and in the length of time these have been overdue. Increased taxes, feed costs, wages and services were cited as factors.

Dairymen in and close to metropolitan areas are faced with large tax increases because of the rapid appreciation in the value of their property. This committee takes notice of the fact that the Assembly Committee on Agriculture is studying the problem of taxation of agricultural lands. It is also aware that the Committee on Agriculture plans to develop legislation relative to the assessment and taxation of agricultural land on the basis of use value.

In view of that committee's activity, the only action feasible for this subcommittee is to support whatever proposal is forthcoming from the Committee on Agriculture, providing, of course, it is in the best interests of the California dairy industry.

At the hearing in Dairy Valley on February 14, a question was asked concerning the feasibility of guaranteeing returns to producers above the cost of production. The legislature at the initial enactment of the act did not consider it feasible and on subsequent occasions indicated the need for supply criteria in addition to cost of production criteria. The same justification exists today as existed then.¹

b. *Distributors.* At the Berkeley hearing distributors complained that the cost determination procedures used by the Bureau of Milk Stabilization were too slow to provide distributors adequate relief from wage increases when they occurred. Sometimes 12 months elapse following a wage increase before hearings are held to consider margin

¹ See "Special Report of the Joint Legislative Committee on Agriculture and Livestock Problems on Fluid Milk Price Control in California," Senate of the State of California, (Sacramento: 1955) pp. 63-75.

increases. Distributors argued that this created an undue financial burden for them.

However, the committee notes that the Bureau of Milk Stabilization is currently developing new distributor cost estimates as rapidly as possible with available resources. It also notes that the resulting margin squeeze on distributors results in rapid adjustments in organization and technology so as to offset the wage increase effect on costs.

Nevertheless, this committee feels that the Bureau of Milk Stabilization should review their current distributor costing techniques and attempt to develop methods that will result in more rapid determination of the impact of wage increases on such costs.

APPENDIX A

SUMMARY OF TESTIMONY AND LEGISLATIVE ACTION PROPOSALS OF EACH HEARING

All of the statements and suggestions made at the various hearings were considered in the development of the recommendations of this committee. However, all important statements and suggestions are not referred to explicitly in the preceding discussion. Therefore, a summary of testimony and a list of the suggestions for legislative action as made at each hearing are presented in this chapter.

1. *San Diego, January 10, 1964*

Summary of Testimony. The purpose of this hearing was to consider House Resolution 498 relating to a study of milk stabilization. All witnesses spoke in support of H.R. No. 498. It was stated that the Department of Agricultural Economics at the University of California is currently conducting a research project as part of their regular work with the same principal purpose—to appraise and evaluate the milk price stabilization program that now is on the books. Purposes and objectives of the California Milk Stabilization Law as stated by witnesses included the following items:

1. To insure an adequate supply of pure, fresh, wholesome, fluid milk—to consumers—at fair and reasonable prices.
2. To eliminate speculation, waste, unfair trade practices and improper accounting for milk purchased from producers.
3. To bring about a reasonable amount of stability and prosperity to the fluid milk industry.
4. The legislature noted that the interpretation of these objectives in the stabilization law should not in any way be construed as permitting or authorizing conditions of monopoly.
5. "... In the establishment of the terms and conditions under which fluid milk and fluid cream shall be purchased from producers, and under which distributors and retail stores shall sell and distribute the same, such terms and conditions shall be those which will, in the several localities and markets of the state and under the varying conditions of production and distribution insure an adequate and continuous supply of pure, fresh, wholesome, fluid milk and fluid cream to consumers thereof at fair and reasonable prices."

Two basic questions were suggested: (a) Does there exist at the present time and in the foreseeable future an adequate supply of fluid milk, and (b) is the product (fluid milk) available to consumers at fair and reasonable prices?

These questions should be identified and considered with respect to three segments of society: (a) Fluid milk producers, (b) consumers, and (c) processors and distributors.

Problem areas specified by witnesses included: (a) sales to military installations, (b) producer-distributor integration, and (c) supply standards.

A general comment pointed up the belief that the public atmosphere was never better for such a legislative study because there are presently no identifiable pressures aimed at the act, and there appears to be excellent producer-distributor relations currently.

Suggestions for Legislative Action

1. The committee was urged to initiate a study into the question of "supply standards" of the milk act.
2. It was suggested that perhaps the state should require *producers* to submit a monthly form on income and usage.
3. It was suggested that all dairymen be *licensed* by the state to enter into grade A production, this to limit production and restrict entry into production. However, a warning was made that it was licensing of producers and restricting entry to the market that brought about the repeal of the Oregon milk law.
4. It was suggested that the committee chairman appoint a working industry committee of producers and distributors to consider the overall question posed by H.R. 498.

2. City of Dairy Valley, February 14, 1964

Summary of Testimony. The purposes and objectives of the California Milk Stabilization Law as reiterated by witnesses were: (a) To stabilize this industry from both the producer and distributor level so that the state does not become short in the supply of milk, (b) to provide a stabilized market for the dairymen's product, (c) to recognize consumer interest, and (d) to maintain an adequate supply of fresh, wholesome milk, by helping the producer enjoy a reasonable degree of prosperity in keeping with the objectives of the milk law.

Problem areas specified by witnesses included: (a) Producer-distributor integration, (b) unequal distribution of class I market among producers, (c) sales to military installations, (d) supply standards, (e) unequal raw product costs to processors, and (f) cost of production.

Suggestions for Legislative Action

1. The State Legislature should seriously consider amending the law to give the Bureau of Milk Stabilization the right to dictate the terms of the contract, particularly insofar as any requirement to produce milk over and above that amount that the distributor is willing to guarantee to purchase at the class I price.
2. Ways and means should be determined whereby all producers in the same production area would receive as equal a share of the market as possible.
3. Other methods of allocating the fluid milk market among producers should be considered. The alternative methods should have as their basis protection of present quotas, fair and equal treatment of all producers, allocation of new usage to lowest quotas, and establishment of a list of potential new producers on a priority basis.

3. Lake San Marcos, May 26, 1964

Summary of Testimony. Testimony presented at this hearing included such areas as producer contracts and access to class I market outlets, producer-processor integration, the two-pool method of determining producer payments, sales to military installations, excess class I supplies, and supply standards. In addition, the committee heard testimony concerning the local milk promotion program.

Proposals for Legislative Action. Three proposals suggested for the committee's consideration were:

1. That the committee consider a proposal whereby all grade A milk would be pooled and allocated to the dairyman on the basis of his share of the milk sold as fluid milk.
2. That individual contracts be continued, but that the Bureau of Milk Stabilization become a party in the negotiation of the contracts.
3. That the Bureau of Milk Stabilization ought to have the right to control the terms of the producer contract.

4. Modesto, September 14, 1964

Summary of Testimony. Only producers or producer representatives testified at this hearing. Generally, witnesses seemed to agree on most of the agenda issues. They seemed to concur that the milk supply was more than adequate now and probably would be through 1970; that the milk quality regulations were adequate to insure consumers of a pure, fresh, and wholesome supply; that the current class I and consumer price levels are fair and reasonable; and that the industry on the whole was efficient and progressive.

However, the witnesses testified that they thought the present system (a) was not equitable to producers; (b) results in unequal raw product costs among handlers; and (c) provides distributors who own their own herds—or producers who own their own processing facilities—a competitive advantage over those who are not so integrated.

The California consumer fluid milk price levels were considered reasonable relative to other sources of protein and relative to fluid milk in other United States markets.

Primary areas of concern involved the effect of contracts and integration on the wide variation in blend prices paid producers. This was emphasized by Mr. Van Maren's plea that "The milk contracts and the blend prices received by dairymen need your immediate . . . attention," and "make vertical integration less favorable as a way to market milk."

Agenda questions asked witnesses were as follows: (a) What is the supply of milk in California? Is it adequate now and will it be in the future? (b) Is the milk supply pure, fresh, and wholesome? (c) Is the current price level reasonable and is the method of payment to producers satisfactory and/or consistent with the intent of the law? (d) Is the goal of industry stability and prosperity in the production of milk being achieved?

Suggestions for Legislative or Committee Action

1. It was recommended that such perishable products as cottage cheese, sour cream dressing, cultured cream dressing, whipped cream topping, eggnog be reclassified from a class II usage to a class I usage. No evidence was presented as to the ability to pay or willingness of processors to take the milk at the class I price or any price higher than class II.
2. It was suggested (a) that the committee consider legislation to upgrade products listed above in 1. to a class I category, (b) that the bureau be given the administrative power to properly price these products, (c) that the supply standards define them as part of the adequate supply, and (d) that the bureau be asked to study the establishment of a standby equalization pool under the present administrative power of the stabilization act.
3. It was suggested that the committee be responsible for getting a group of experts together to make a completely objective study of the Milk Stabilization Act to reiterate the basics in the act.
4. One witness recommended a fairer share of the market (for each producer) according to past production with adequate standards for new producers and at the same time, growth for smaller quota producers. He made a strong plea for producer "economic equality."

5. Berkeley, October 5, 1964

Summary of Testimony. Only distributors or distributor representatives testified at this hearing. Generally, witnesses agreed that the milk supply was more than adequate now and probably would be through 1975, but that action under the Milk Stabilization Act was needed to assure adequate quantities, subsequent to that date. They indicated that the milk quality regulations were adequate and that consumers were receiving pure, fresh, and wholesome milk. In addition, the consensus was that current class I and consumer price levels are fair and reasonable. All were in agreement that the industry was efficient and progressive.

However, the witnesses testified that the present system results in unequal raw product cost among handlers in some instances; that integrated distributors have a cost advantage over nonintegrated distributors; too long a time lag exists between increases in labor wage rates and increases in margins; and the current military sales situation is a form of "leakage" in the regulation of price.

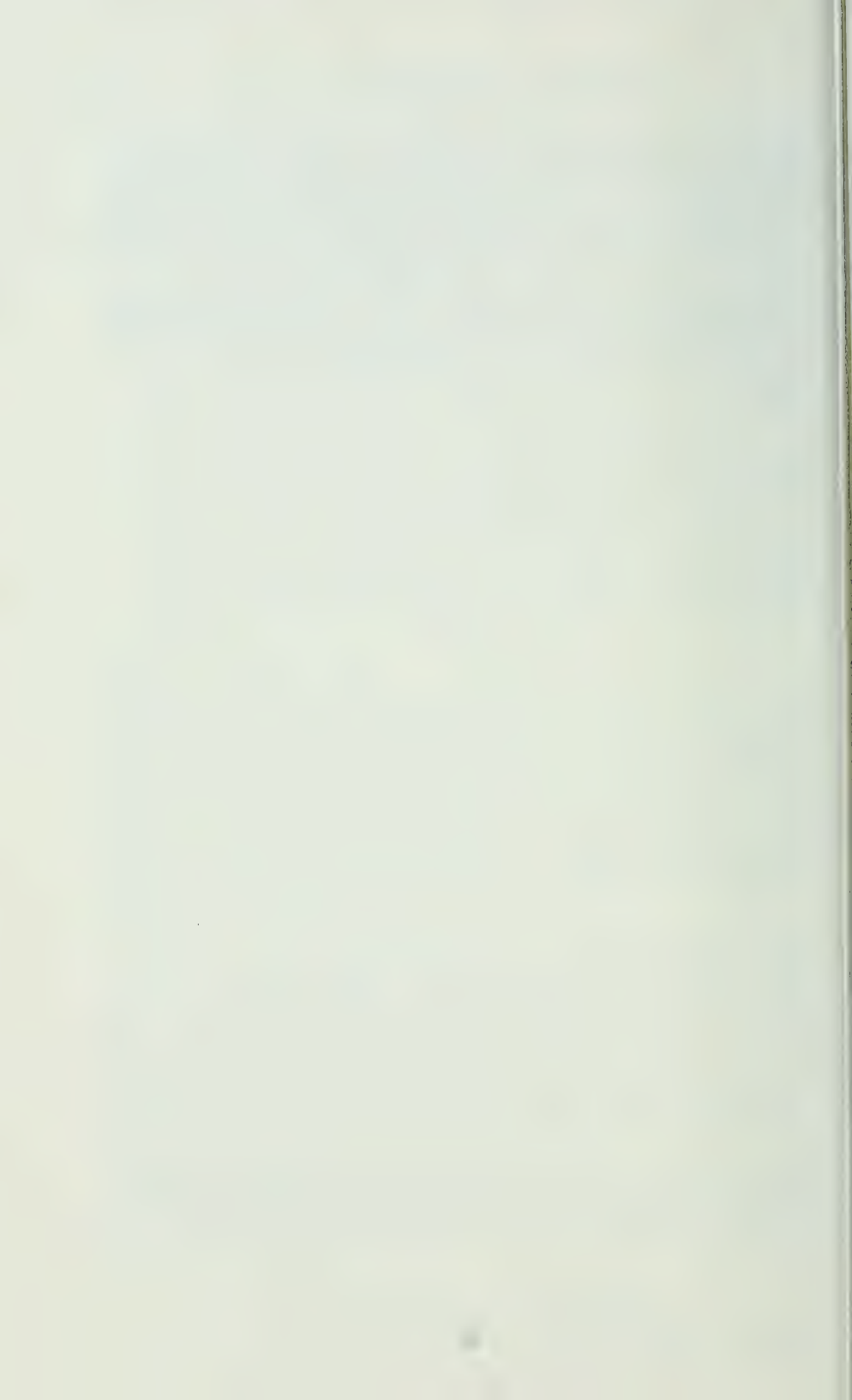
Agenda questions asked were: (a) Is the present supply of milk adequate? (b) Is the quality of milk adequate? (c) Are resale prices reasonable? (d) Is the stability and prosperity in the marketing of milk being fulfilled?

Suggested Legislative Proposals. The principal industry representatives indicated that they felt the current legislation adequate. They did not think it necessary to propose or consider any major legislative change to the current act.

Nevertheless, two proposals were suggested :

1. That there be created a statewide pool in which (a) all milk producers would be required to produce a sufficient amount of milk necessary for all three class uses, (b) each producer would be required to produce his share of each class, and (c) each producer would be guaranteed a reasonable profit.
2. That manufacturing milk plants be excluded from the bookkeeping provisions requiring the application of minimum class prices to their payments for market milk, and that, instead, they be allowed to pay a flat price for all manufacturing usage.

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WAYS AND MEANS

REPORTS ON
LEGISLATIVE REVIEW OF STATE HIGHWAY FUNDS
SUPPORT OF FIREBOATS IN SAN FRANCISCO BAY
STATE PARTICIPATION IN LONG BEACH WORLD'S FAIR
AUTOMATED DATA PROCESSING
PROGRESS REPORTS ON
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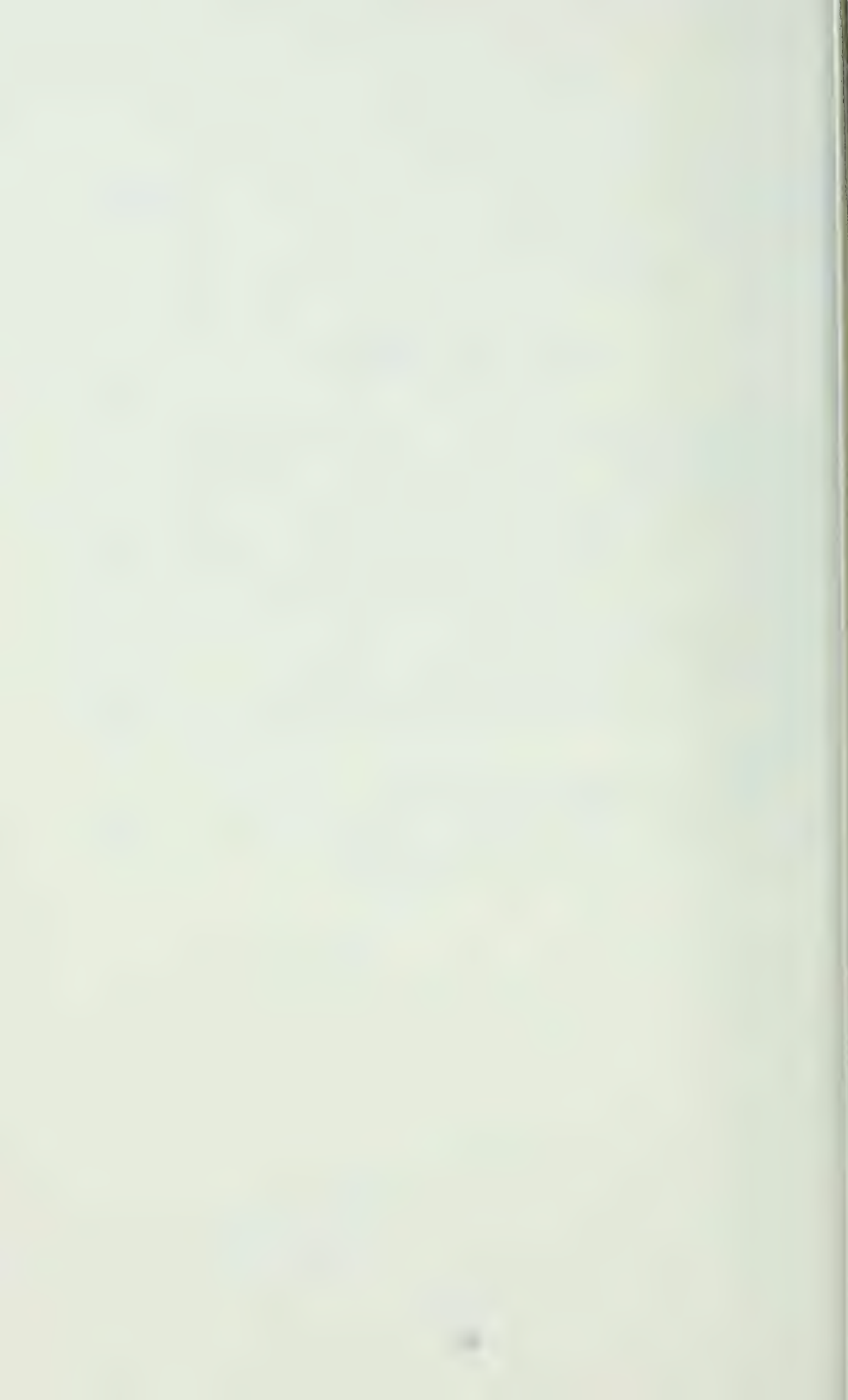
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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
CALIFORNIA LEGISLATURE

March 15, 1965

To the Speaker and Members of the Assembly

DEAR MR. SPEAKER AND MEMBERS:

Your Interim Committee on Ways and Means, in accordance with the provisions of House Resolution 500 (1963, Regular), herewith respectfully submits final reports on Legislative Review of State Highway Funds, Automated Data Processing, Support of Fireboats in San Francisco Bay, State Participation in the Long Beach World's Fair, and progress reports on Budget Reform and Standards, Procedures and Reporting.

The committee is indebted to the committee staff, consultants who served under contract, the offices of the Legislative Analyst and Legislative Counsel, and to the various state officers and private citizens who presented helpful testimony to the committee during the 1963-65 interim.

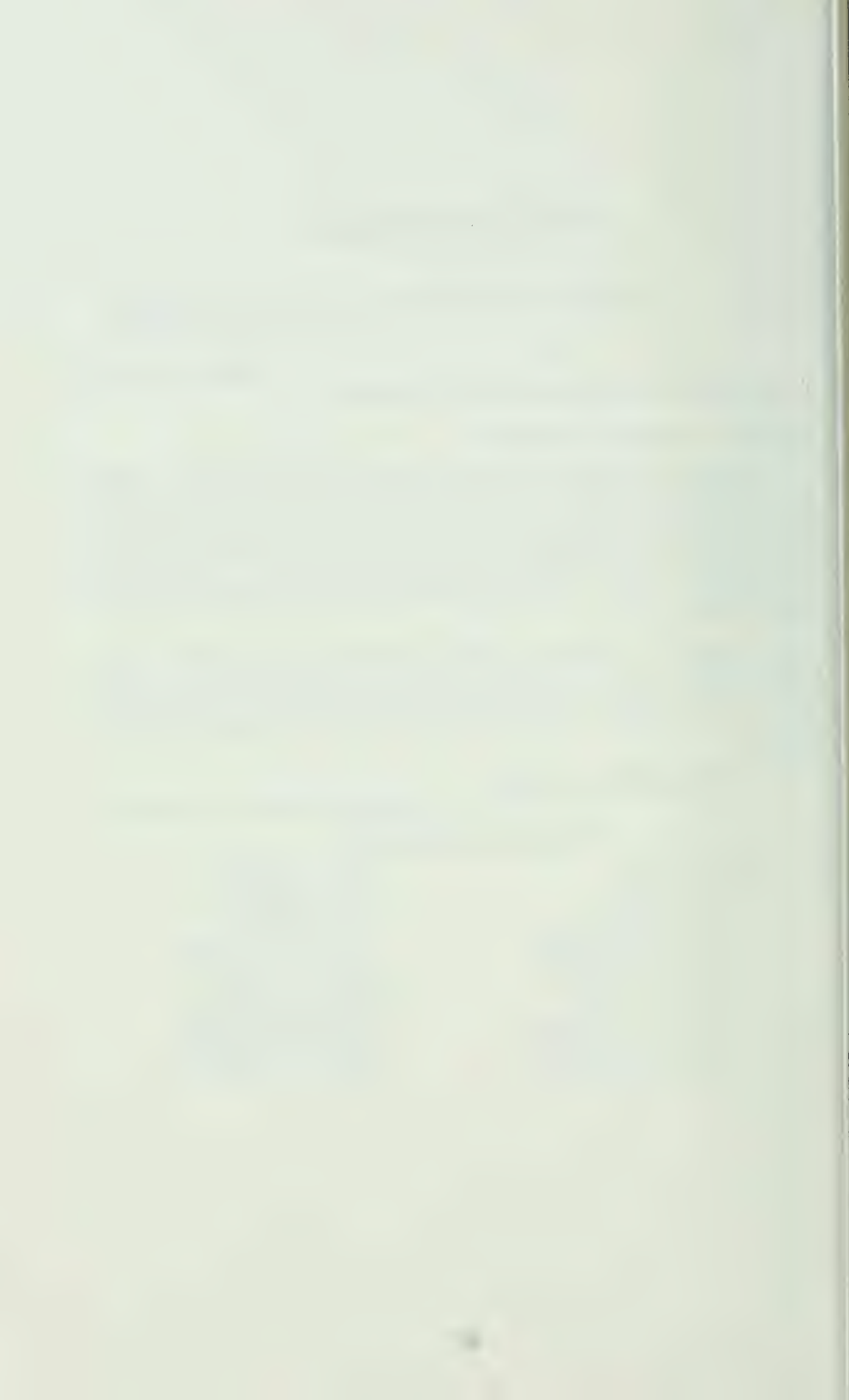
Respectfully submitted,

ROBERT W. CROWN, *Chairman*

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GENERAL INTRODUCTION

This report contains the findings and recommendations of the Assembly Interim Committee on Ways and Means and four subcommittees appointed by the chairman following adjournment of the 1963 Legislature. The subcommittees, whose reports were adopted by the full committee, were constituted as follows:

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SUBCOMMITTEE ON STANDARDS, PROCEDURES AND REPORTING

JOHN C. WILLIAMSON, *Chairman*

JOHN L. E. COLLIER	JAMES R. MILLS
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Other subcommittees and their respective chairmen appointed during the 1963-65 interim were: Economic Development, Robert W. Crown; Institutions, Nicholas C. Petris; Mental Health, Jerome R. Waldie; Omnibus Appropriations, John C. Williamson; Per Diems, Carlos Bee. The reports of these subcommittees have been submitted or will be submitted under separate covers.



ASSEMBLY INTERIM COMMITTEE ON
WAYS AND MEANS

ROBERT W. CROWN, *Chairman*

Report of the
SUBCOMMITTEE ON HIGHWAY FUNDS

CARLEY V. PORTER, *Chairman*

Members of Subcommittee

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Carl Britschgi
Charles Conrad
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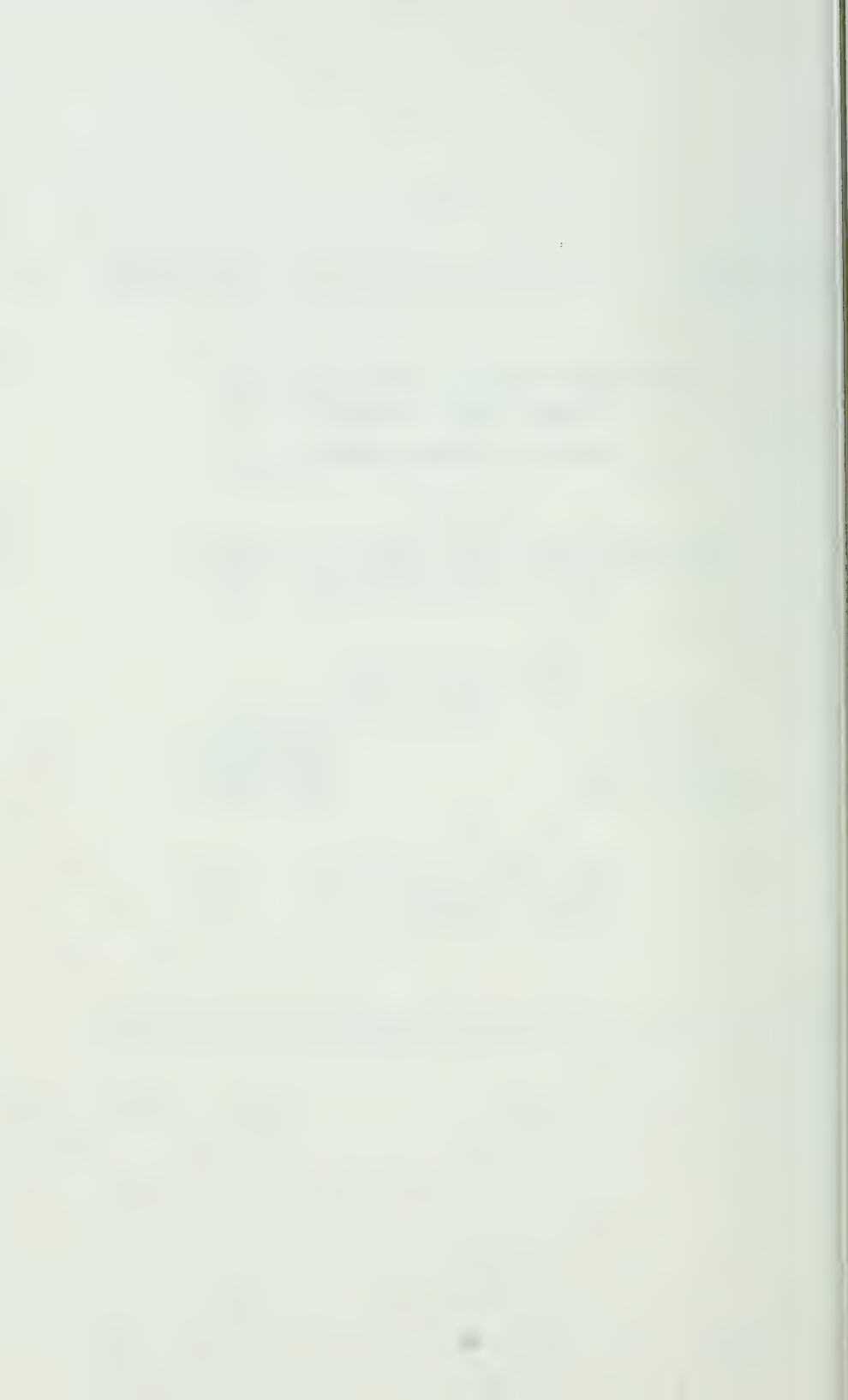
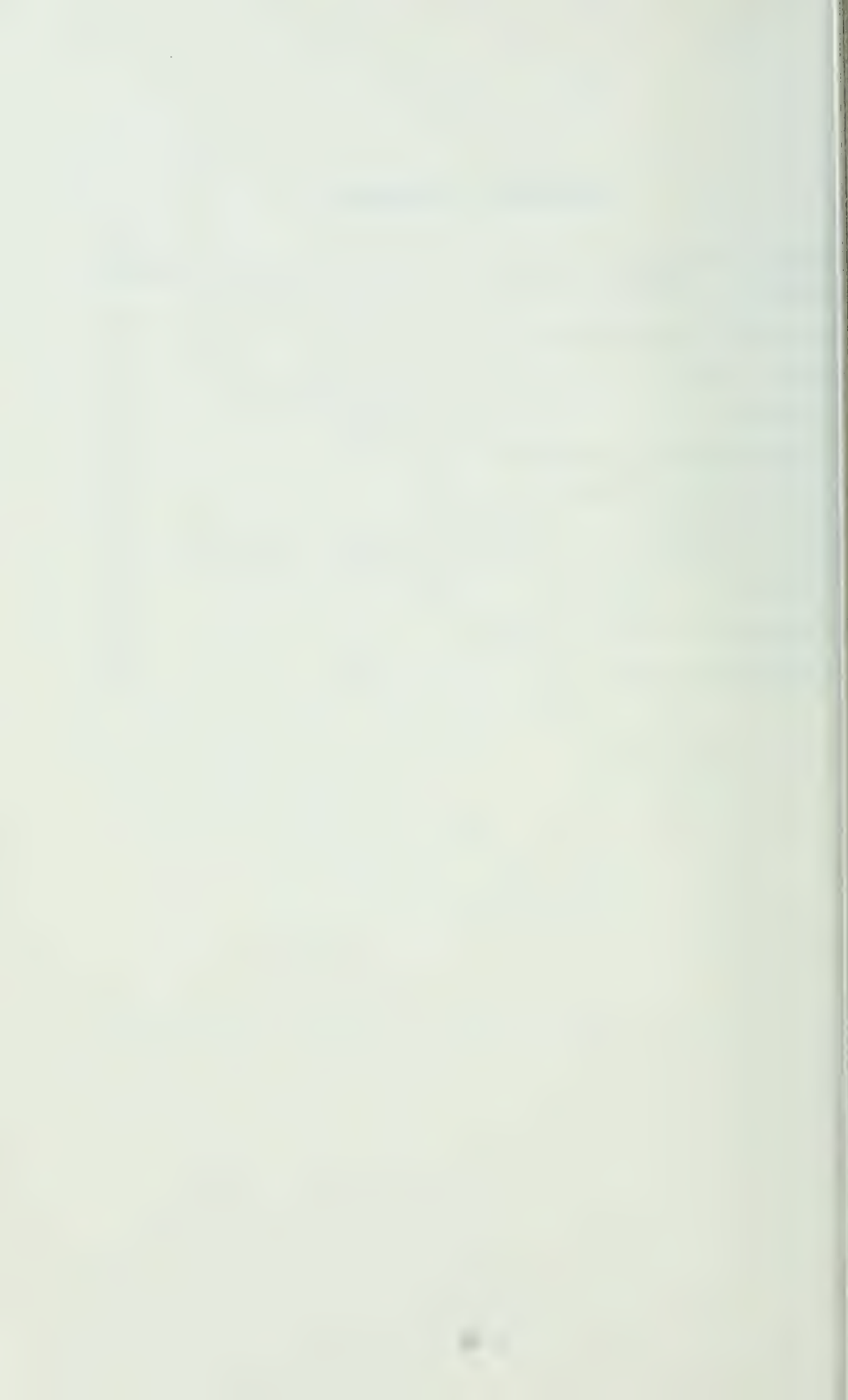


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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
CALIFORNIA LEGISLATURE

March 15, 1965

To the Speaker and Members of the Assembly

DEAR MR. SPEAKER AND MEMBERS:

Pursuant to Assembly Bill 2768 (1963, Meyers) and House Resolution 543 (1963, Meyers), transmitted herewith is the final report of the Assembly Interim Committee on Ways and Means on Legislative Review of State Highway Funds.

The committee is appreciative of the efforts of Assemblyman Carley V. Porter and the members of the Highway Funds Subcommittee who conducted hearings and presented the recommendations and findings contained herein.

Respectfully submitted,

ROBERT W. CROWN, *Chairman*

Members of the Committee

TOM BANE
CARLOS BEE
FRANK BELOTTI
CARL A. BRITSCHGI
JOHN L. E. COLLIER
CHARLES CONRAD
PAULINE DAVIS
EDWARD M. GAFFNEY
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JAMES R. MILLS
NICHOLAS C. PETRIS
CARLEY V. PORTER
HOWARD J. THELIN
ASSEMBLYMAN WALDIE
(with reservations)
JOHN C. WILLIAMSON
GORDON H. WINTON

LETTER OF TRANSMITTAL

HON. ROBERT W. CROWN

Chairman, Assembly Ways and Means Committee

Dear Mr. Chairman:

Transmitted herewith is the final report of the Subcommittee on Highway Funds pursuant to your instructions.

Assembly Bill 2768 (Meyers), 1963 Regular Session, constituted the vehicle for the subcommittee's study of this subject matter. However, this report also complies with the request in House Resolution 543 (Meyers) referred to this subcommittee.

It was a pleasure for me to have served as your chairman for this subcommittee and I wish to express my gratitude to the members, the staff, the office of the Legislative Analyst and others who assisted me in complying with our mandate.

Respectfully submitted,

CARLEY V. PORTER, *Chairman*

Members of the Subcommittee

CARLOS BEE

CARL A. BRITSCHGI

CHARLES J. CONRAD

JOHN L. E. COLLIER

PAULINE L. DAVIS

LESTER McMILLAN

HOWARD J. THELIN

GORDON H. WINTON, JR.

SUMMARY OF FINDINGS

1. With the exception of certain prescribed Constitutional and statutory formulas, budgeted expenditure of state highway funds rests solely with the State Highway Commission and these expenditures are immune from modification by the Governor, the Department of Finance, or the Legislature.
2. An obvious consequence of this immunity is the more or less cursory review of the budget of the Division of Highways as contrasted with the detailed analysis and scrutiny to which other departmental budgets are subjected.
3. Since the Highway Commission's staff is composed of employees of the Division of Highways, impartial review, at least, of the administrative budget for the division is lacking.

SUMMARY OF RECOMMENDATIONS

1. We recommend for adoption that portion of AB 2768 that would require the Legislature's authorization for expenditure of that portion of state highway funds for the purposes specified under heading (a) of Section 143.1, Streets and Highways Code, (Administration, including payments for services of the Division of Contracts and Rights of Way.)
2. Although we emphatically oppose bringing the controversies over freeway location and highway design into the legislative arena, we see no reasonable justification for exempting the division's administrative budget from rigorous examination by the Governor and the Legislature.
3. Notwithstanding the outcome of legislation embodying the recommendations contained in this report, we recommend that the administrative budget of the Division of Highways be given careful study and appraisal of work standards, staffing formulae and level of service criteria by the Ways and Means Subcommittee on Standards, Procedures and Reporting.

Basis for Study

Assembly Bill 2768 and House Resolution 543, both introduced by Assemblyman Charles W. Meyers during the 1963 Regular Session, were assigned by the Assembly Rules Committee to the Assembly Interim Committee on Ways and Means for interim study following adjournment of the 1963 Legislature. The subject matter, in turn, was assigned to the Ways and Means Subcommittee on Highway Funds.

Although HR 543 requested that the subject of legislative review of Highway Fund appropriations be referred to an appropriate interim committee for study, AB 2768 constituted the vehicle for the subcommittee's interim study. Inasmuch as this measure was patterned after

Assembly Bill 1868 (1961 Regular Session),¹ reference is made to the final reports of the Assembly Interim Committee on Transportation and Commerce (Vol. 3, No. 9, pp. 38-39), and the Assembly Interim Committee on Ways and Means (Vol. 21, No. 8, pp. 20-21), both submitted to the 1963 Legislature.²

AB 2768 would make the expenditure of money in the state fund for administration, contingencies, and other proposed expenditures for highway construction (excluding capital outlay for highway construction or improvement), subject to the same budgetary and fiscal controls as expenditures of other state funds. The bill would retain the continuing appropriation of money in the State Highway Fund for construction and improvement and maintenance of state highways and acquisition of rights-of-way, and would retain, as to such proposed expenditures contained in the annual budget of the Department of Public Works, the provision prohibiting the Governor from revising the budget as submitted by the department.

Background

The State Highway Commission retains exclusive control over expenditure of State Highway Funds. With the exception of certain prescribed formulas—either by statute or by constitutional provision—the responsibility for authorizing Highway Fund expenditures rests solely with the Highway Commission. This unparalleled immunity from either executive or legislative review has evolved over the years,³ and efforts to remove it have been resisted.

It is clear that the Highway Commission was invested with this unusual exercise of control in order to prevent so-called “logrolling” or “pork barreling,” and possible prolonged delays in the approval of expenditures and, hence, delays in the construction of highways. However, this intended independence on the part of the commission has not been without its critics. Many citizens, scholars, public officials and legislators view the commission as a public body, invested with vast powers of far-reaching magnitude, but responsible to no one. Even the Governor, who appoints the commission members, concedes that the commission is answerable to no one.

Existing Budgetary Procedures

Under Sections 143.1 and 143.2 of the Streets and Highways Code, the California Highway Commission allocates the money set aside by the Legislature for the state highway program. This is accomplished by sending a prepared budget annually to the Governor (who in turn transmits it to the Legislature) and including therein a detailed report of expenditures on the program for the preceding two years. This is included in the Governor's Report to the Legislature and, of course, is available to every legislator for analysis.

In preparing this budget, the California Highway Commission is not unlimited in authority and in effect is controlled by certain stand-

¹ AB 1868 was passed by the Assembly on May 18, 1961, and sent to the Senate where it was assigned to the Finance Committee, from which it was not reported favorably.

² The reports recommended further study of the proposed legislation.

³ For a comprehensive outline of this historical development see the transcript of the Subcommittee on Highway Funds, Assembly Interim Committee on Ways and Means, dated October 2, 1964, pp. 61-69.

ards prescribed by the Legislature. Included in these standards are the following requirements:

1. The so-called Breed formula, which requires that 55 percent of the revenue available for construction and related purposes in the state highway program be expended in the southern group of counties and the remaining amount in the northern group of counties.
2. The requirement that only the sum equal to 1 cent of the revenue on Motor Vehicle Fuel Taxes be expended for administration and maintenance purposes. This in effect is a ceiling which the Legislature has placed for administration and maintenance. The subcommittee was told that the amounts required for these two purposes are very close to the ceiling.
3. The ceiling of \$7.5 million for the maintenance of landscaping and functional planting.
4. The so-called Mayo formula, which requires that a prescribed percentage of the state highway funds be spent in each highway district.
5. The requirement that a minimum amount be expended in every county in the state.

In addition, the Legislature in 1959 established the California free-way and expressway system, a master plan of freeways and expressways for the state that serves as a guide in the overall development of the state highway system.

With these requirements in mind, the Division of Highways annually prepares a planning program. This program is drafted at the district level, reviewed by headquarters and finally submitted to the Highway Commission.

The budget is likewise prepared in various parts at the district level, reviewed in detail and put together by the headquarters of the Division of Highways at Sacramento and then submitted to the Highway Commission. It is adopted by the commission formally in the fall of every year.

Budget Making Contrasted

As distinguished from the usual budget preparation and review process, the budget of the Division of Highways in terms of content, format, and control features is fixed in the Streets and Highways Code.

Stated briefly, these sections require that the budget of the Division of Highways be included in the Governor's Budget *exactly* as submitted by the Highway Commission and prohibit any change by either the Governor or the Director of Finance. In addition, the Director of Finance cannot require any additional information other than that called for by the Streets and Highways Code nor can the director establish allotment controls in any greater detail than those specified by the Streets and Highways Code. As a matter of practical fact, the powers of the Director of Finance, with respect to the budget of the Division of Highways, appear to be restricted to the approval of changes in the major construction and improvement projects adopted by the commission during the year.

An obvious consequence of such an arrangement is the more or less cursory review of the budget of the Division of Highways as contrasted with the detailed analysis and scrutiny to which other budgets are ordinarily subjected. This is particularly true in such management areas as manpower requirements, the scope and kind of construction of highway office buildings and maintenance stations, analysis in depth of support operating expenses and equipment needs, and various levels of operation and activities of the division which are ordinarily subject to intensive and continuous examination by analysts of the Budget Division.

Support and Opposition to AB 2768

Much of the support for AB 2768 and similar legislation has come from disheartened and often angry citizens protesting the route determining policies and practices of the Highway Commission⁴ who feel that at least partial review of Highway Fund expenditures by the Legislature would result in making the commission more responsive to the public. However, there is support for the concept embodied in AB 2768 from legislators, public officials and educators. Legislative Analyst A. Alan Post, in a statement presented before the subcommittee on October 1 and again on December 8, 1964, declared in part:

"We agree entirely with the intended objective of this bill, namely, that there should be only one standard of budgeting and expenditure controls in state government and that the Legislature has a proper interest in the administrative expenditures of the Division of Highways. However, we believe that there are still administrative remedies and procedures which will satisfy the legislative interest in the administrative budget of the Division of Highways short of legislation which would apply to these expenditures the same procedures and Department of Finance controls as those applied to other agencies."

Although many supporters of the Meyers Bill regard it as a "modest" approach, serious opposition to AB 2768 came from representatives of the California State Automobile Association and the Oakland Chamber of Commerce who expressed the view that the proposed legislation if enacted would constitute the "foot in the door" which would ultimately result in increasing pressures on the commission from the Legislature. Testifying before the subcommittee at Lakewood on October 1, 1964, Mr. B. W. Robinson, representing the Southern California Automobile Club, asserted in part:

"... We believe that you cannot separate administration from the actual projects. You can control the project through the expense for administration. We believe it is not logical to try to separate administration from the remainder of the program itself."

One of the more valid arguments advanced by critics of the current budget-making process in the Division of Highways is that the Highway Commission is dependent upon the division's staff almost exclu-

⁴ See transcripts of hearings by the Assembly Ways and Means Committee on Highway Funds, December 8, 1964, available from the Assembly Ways and Means Committee Office, State Capitol.

sively for budgetary recommendations. There is, they argue, no opportunity for impartial review of the budgetary requests adopted by the Highway Commission. Consequently, the subcommittee agrees that at least those who have the responsibility for developing the budgetary program for the commission should be subjected to the impartial scrutiny of the Department of Finance, the Legislative Analyst and the Legislature.

Effect of AB 2768

Assembly Bill 2768 would authorize the Governor to revise the annual report submitted by the Department of Public Works with respect to proposed expenditures under headings (a), (e), and (g) of Section 143.1 of the Streets and Highways Code (i.e., administration, contingencies, and other proposed expenditures, including capital outlay expenditures other than for highway construction). Thus, these budgetary headings would be subject to the same fiscal review by the Department of Finance and the Legislature as is the case with all other state departments. Expenditures under headings (c), (d), and (f) of Section 143.1 (i.e., major construction and improvement of highways, minor improvement and betterment of highways, and purchase of rights-of-way) would not be affected by the measure.

Although representatives of the Division of Highways testifying before the subcommittee at the Lakewood hearing on October 1, 1964, asserted that AB 2768 does not define what is meant by "administration" and that therefore it could not be determined with certainty what activities in the highway program would be covered, the Legislative Analyst in a letter to the subcommittee declared that the bill does provide an adequate definition.

With respect to the proposed removal of "contingencies" from the control of the Highway Commission, the division witnesses argued that this could make very difficult or impossible, where unexpected problems arise, the completion of a given project until the Legislature met. Moreover, it could mean that where money is saved on a project, this money could not be put to work on some other project until reappropriated by the Legislature.

Although capital outlay for construction and maintenance is excluded from the provisions of the bill, the division representatives observed that the location and the extent of a maintenance station could well affect the operation of the division in maintaining a highway.

The desired effect of AB 2768, of course, would be that the administrative budget of the division would be subject to the same workload indices, staffing formulae, and level of service criteria now employed by the Department of Finance, the Legislative Analyst and the Legislature when reviewing departmental budget requests. Proponents of the Meyers Bill argue that no segment of state bureaucracy should be exempted from rigorous examination of its staffing requirements.

Although a spokesman for the Budget Division of the Department of Finance told the subcommittee that they believe the maintenance of administrative standards across the board for all state departments is basically a sound policy, they regard the subject of AB 2768 a matter of legislative policy. Consequently, the Department of Finance has not

made a positive recommendation on the measure either at the time it was heard in committee or during its interim study.

Alternatives to AB 2768

The alternatives to AB 2768 are essentially (1) total review of the division's budget, or (2) retaining the status quo. However, a third alternative was presented by Legislative Analyst A. Alan Post, who outlined a series of administrative remedies and procedures which he felt would satisfy the legislative interest in the administrative budget of the Division of Highways. These included:

1. Tighter administrative controls over the budgets and expenditures of the division entirely on an internal basis. A mandatory report to the Governor and Legislature on defined administrative matters could be required and subjected to review by the Department of Finance.

2. The full application of the "agency" concept under which the division is a part and which includes other separate but related functions under an agency administrator should contribute to improved internal departmental controls and lessen inclinations toward dual standards on budgeting.

3. The staff of the Legislative Analyst and Auditor General could devote greater emphasis than has been the case to a review of administrative controls of the division for the purpose of reporting to the Legislature.

4. The Legislature could institute tighter budget controls in selective areas, such as space utilization, automobile usage, etc., and special control sections could be instituted without subjecting all division expenditures to control by the Department of Finance.

Conclusions and Recommendations

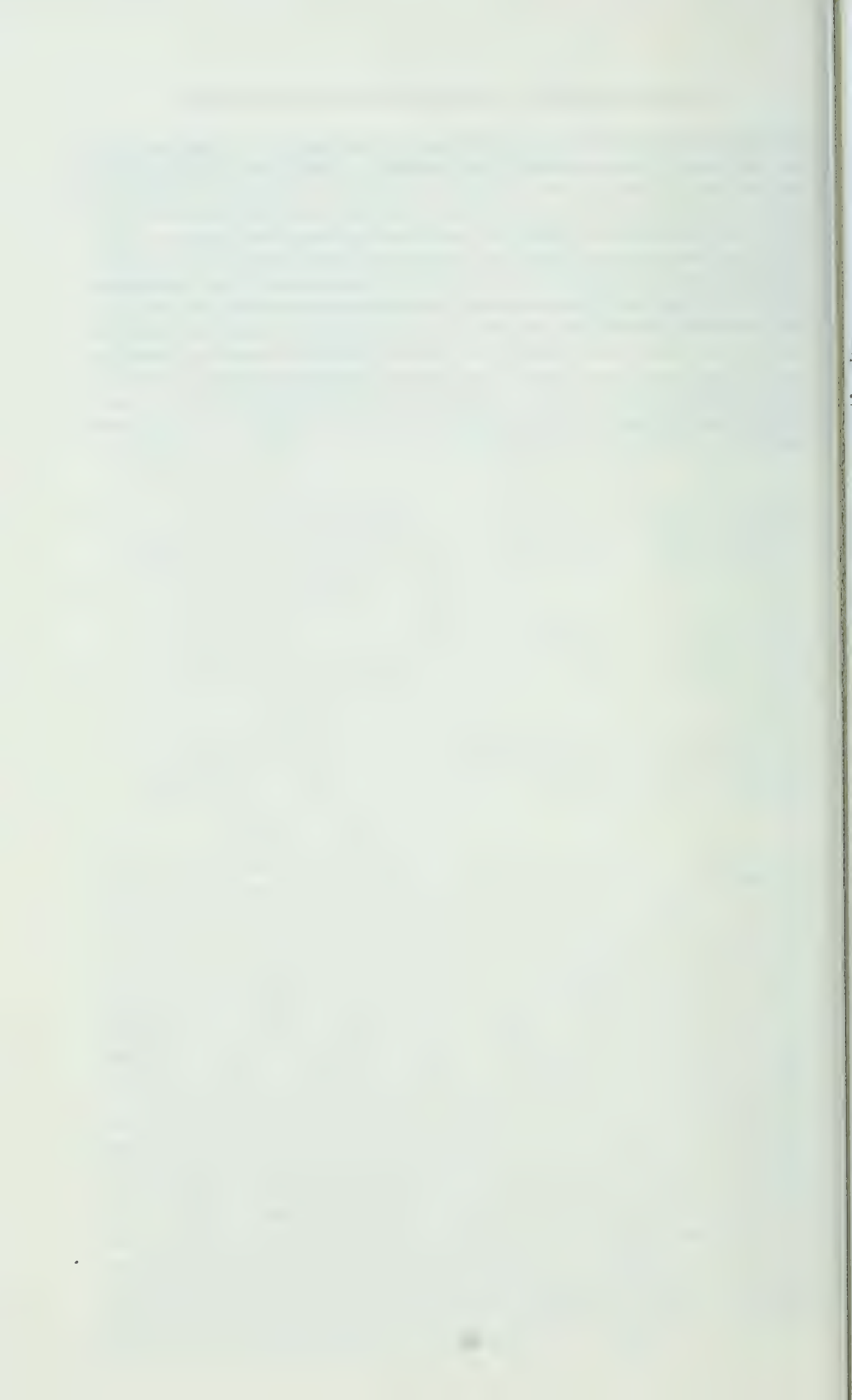
The subcommittee is mindful of the fact that much of the support for AB 2768 has been inspired by the many spirited conflicts over freeway routing in various sections of the state. The letters to the editor columns of virtually every newspaper in the state are liberally supplied with angry letters denouncing the Highway Commission and its technical staff from the Division of Highways for their "short-sightedness," "lack of esthetic design," and "disrespect for our natural and scenic resources," etc. The subcommittee does not desire to involve itself here with a discussion of these controversies. Neither does it wish to render judgment on the merits of AB 2768 based on this conflict.

The favorable recommendation of AB 2768 should rest, we feel, solely on its merits as a vehicle for sound fiscal review consistent with the procedures and practices employed by the Department of Finance, the Legislative Analyst and the Legislature in pursuing their responsibilities in the budgetary process. We conclude that insofar as AB 2768 would subject the Highway Division's administrative budget to the same careful scrutiny as other state agencies and departments are now required to undergo, we recommend the bill for passage.

Although we emphatically oppose bringing the freeway and highway design controversies into the legislative arenas, we see no reasonable justification for exempting the division's administrative budget from

the rigorous examination of the Finance Department's budget analysts, the Legislative Analyst and the respective fiscal committees of the Legislature. However, we further recommend that subdivisions (e) and (g) of Section 143.1 of the Streets and Highways Code be excluded from the provisions of any bill patterned after AB 2768.

Meanwhile, irrespective of the outcome of legislation embodying the recommendations above, the subcommittee recommends that the administrative budget for the Division of Highways be submitted to the Ways and Means Subcommittee on Standards, Procedures, and Reporting for appropriate study and appraisal of work standards, staffing formulae, and level of service criteria. The immunity from external control of the Highway Division's expenditure program does not, we feel, carry with it an immunity from reporting to the Legislature these basic elements of budgetary procedure.



APPENDIX

ASSEMBLY BILL 2768

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 2768

Introduced by Messrs. Meyers and Pattee

April 25, 1963

REFERRED TO COMMITTEE ON WAYS AND MEANS

An act to amend Sections 143.1 and 183 of the Streets and Highways Code, relating to the expenditure of funds available for state highways.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 143.1 of the Streets and Highways
- 2 Code is amended to read:
- 3 143.1. The department shall make at least 30 days before
- 4 each regular session of the Legislature a budget report to the
- 5 Governor.
- 6 The commission shall prepare for inclusion, and the depart-
- 7 ment shall include, in said report a statement of all estimated
- 8 State Highway Fund revenues and revenues available from
- 9 any other sources and estimated regular federal aid for the

LEGISLATIVE COUNSEL'S DIGEST

A.B. 2768, as introduced, Meyers (W. & M.). Expenditure of state highway funds. Amends Secs. 143.1 and 183, S. & H.C.

Makes the expenditure of money in the State Highway Fund for administration, contingencies, and other proposed expenditures, other than capital outlay expenditures for highway construction or improvement, subject to the same budgetary and fiscal controls as expenditure of other state funds.

Retains the continuing appropriation of money in said fund for maintenance, construction, and improvement of state highways and acquisition of rights-of-way and retains, as to such proposed expenditures contained in the annual budget of the Department of Public Works, the provision prohibiting the Governor from revising the budget as submitted by the department.

1 next succeeding fiscal year, together with a statement of pro-
2 posed expenditures or obligations to be incurred during the
3 next succeeding fiscal year for the construction, improvement,
4 and maintenance of the various highways or portions thereof
5 under the jurisdiction of the department under the following
6 headings:

7 (a) Administration, including payments for services of the
8 Division of Contracts and Rights-of-way.

9 (b) Maintenance.

10 (c) Major Construction and Improvement. Under this will
11 be shown all proposed expenditures or obligations to be in-
12 curred in each county group for major construction and im-
13 provement, *including preliminary engineering*, segregating the
14 route of each highway to be constructed or improved, the
15 county in which located, the number of miles involved, and a
16 description of the type of work to be done.

17 (d) Minor Improvement and Betterment. This heading
18 will show the total proposed expenditures and obligations to be
19 incurred for each county group for minor improvement and
20 betterment, *including preliminary engineering*.

21 (e) Contingencies.

22 (f) Rights-of-way. This will show the approximate amount
23 of money needed for the purchase of rights-of-way in each
24 county group.

25 (g) Other proposed expenditures, including *preliminary*
26 *engineering capital outlay expenditures other than for high-*
27 *way construction*.

28 The said report as submitted by the department, *as may be*
29 *revised by the Governor with respect to proposed expenditures*
30 *under headings (a), (e), and (g) above*, shall be included in
31 the printed fiscal year budget submitted to the Legislature by
32 the Governor. It shall constitute as submitted the complete
33 and detailed budget submitted to the Department of Finance
34 pursuant to Section 13320 of the Government Code. Said
35 budget shall be administered by the Department of Finance as
36 the Fiscal Year Budget of the Division of Highways under the
37 provisions of this section and of Article 2 of Chapter 3 of Part
38 2 of Division 2 of Title 2 of the Government Code. In the case
39 of any inconsistency, the provisions of this section shall con-
40 trol.

41 All changes or modifications in the budget shall be by vote
42 of the commission, approved by the Director of Finance where
43 required by this section.

44 Funds may be transferred from Item (e), Contingencies, to
45 other item by vote of the commission, but no increase or de-
46 crease shall be otherwise made in any of Items (a) to (g),
47 inclusive, of said budget without the approval of the Director
48 of Finance. No project shown under Item (e) shall be elimi-
49 nated and no new project shall be added to Item (e) of the
50 budget without the approval of the Director of Finance. If it
51 is necessary to eliminate or postpone any project shown under

Item (e) to meet an emergency caused by floods, earthquake or other like cause or on account of decreased revenue or on account of increased costs on other work, the commission may eliminate or postpone such project upon the written approval of the Director of Finance.

In the event, during an annual period, the budgetary amount approved and allocated by the commission for any purpose exceeds the amount actually necessary therefor, with a resultant available surplus, such surplus may be allocated by the commission to any other purpose or supplemental project upon the written approval of the Director of Finance.

Except as otherwise provided in this section, the department shall be subject to control by the Department of Finance with respect to expenditure of funds in the same manner and to the same extent as any other state department.

In administering ~~said~~ the fiscal year budget of the Division of Highways, the Director of Finance shall not limit expenditures or incurrence of obligation ~~thereunder~~ under headings (c), (d), and (f) above to quarterly, semiannual or other periods of the fiscal years and shall not require any greater detail than that specified in this section and in Section 143.2.

Contracts for any highway construction and improvement projects for which funds are available during any fiscal year may be awarded on and after the first day of January preceding the beginning of the fiscal year.

SEC. 2. Section 183 of said code is amended to read:

183. All money available for the acquisition of real property or interests therein for state highways, or for the construction, maintenance or improvement of state highways or highways in state parks shall be deposited in the State Highway Fund. The moneys in said fund are appropriated and shall be allocated and expended for the purposes and in the manner provided in this code, *except that no expenditures for the purposes specified under headings (a), (e), or (g) of Section 143.1 may be incurred until the Legislature has specifically appropriated money from the fund therefor.*

SEC. 3. This act shall become operative with respect to expenditures authorized for the fiscal year commencing July 1, 1964 and thereafter. Expenditures made, and to be made for encumbrances incurred, for prior fiscal years to that commencing on July 1, 1964 shall continue to be effective as if this act had not been enacted.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is essential for ensuring transparency and accountability in the organization's operations.

2. The second part outlines the specific procedures for recording transactions, including the use of standardized forms and the requirement for double-checking entries to prevent errors.

3. The third part addresses the role of the accounting department in monitoring and reporting on the organization's financial health. It highlights the need for regular reviews and the importance of providing timely and accurate information to management.

4. The fourth part discusses the challenges faced by the organization in implementing these procedures, such as limited resources and the need for staff training. It suggests several strategies to overcome these challenges, including the use of technology and the establishment of clear roles and responsibilities.

5. The fifth part concludes by reiterating the importance of these procedures and the commitment of the organization to maintaining high standards of financial management.

ASSEMBLY INTERIM COMMITTEE ON
WAYS AND MEANS

ROBERT W. CROWN, *Chairman*

Report of the
SUBCOMMITTEE ON STATE PURCHASING
on AB 2690 (1963, Meyers)

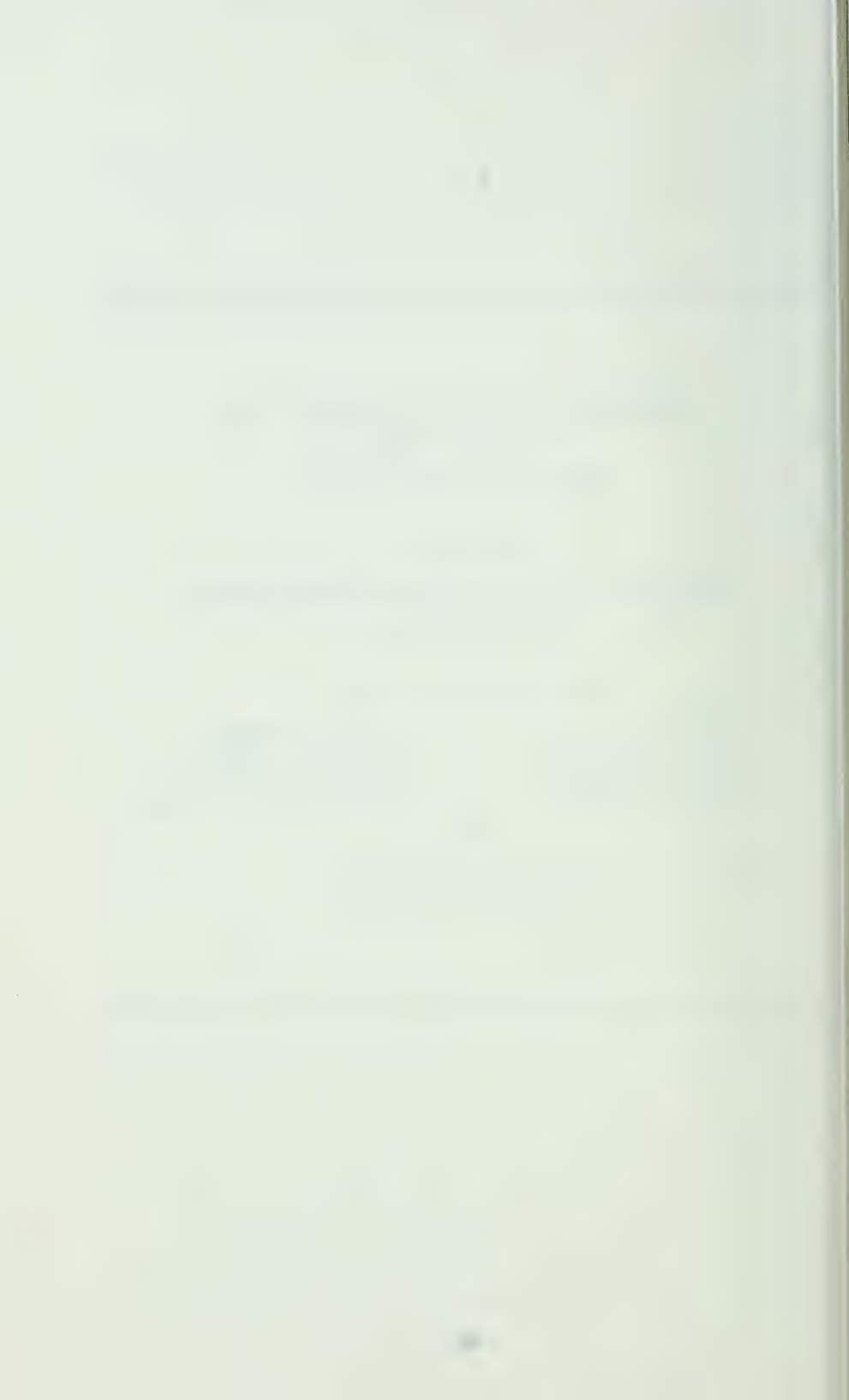
Members of the Subcommittee

CARLOS BEE
CARL A. BRITSCHGI
CHARLES CONRAD
FRANK LANTERMAN

CARLEY V. PORTER
HOWARD J. THELIN
GORDON H. WINTON
JAMES R. MILLS, *Chairman*

Staff

LOUIS J. ANGELO, *Coordinator*
GAIL VESSELS, *Secretary*



LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
CALIFORNIA LEGISLATURE

March 15, 1965

To the Speaker and Members of the Assembly

DEAR MR. SPEAKER AND MEMBERS:

Pursuant to a request of the Assembly Rules Committee, transmitted herewith is a report of the Assembly Interim Committee on Ways and Means relating to support of fireboat operations in San Francisco Bay.

Assembly Bill 2690 (1963, Meyers) provided the vehicle for the study made by a special three-member factfinding team of the Subcommittee on State Purchasing. The committee is appreciative of the efforts of Assemblymen Winton, Thelin and Britschgi, who conducted the investigation culminating in the report contained herein.

Respectfully submitted,

ROBERT W. CROWN, *Chairman*

Members of the Committee

TOM BANE
CARLOS BEE
FRANK BELOTTI
CARL A. BRITSCHGI
JOHN L. E. COLLIER
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JOHN C. WILLIAMSON
GORDON H. WINTON

LETTER OF TRANSMITTAL

HON. ROBERT W. CROWN, *Chairman*
Assembly Interim Committee on Ways and Means

Dear Chairman Crown:

Transmitted herewith is the report of the Subcommittee on State Purchasing on AB 2690 (Meyers), 1963 Regular Session, relating to support of fireboat operations in San Francisco Bay.

I am particularly appreciative of the efforts of Assemblyman Gordon Winton, who headed a three-man team of the subcommittee which included Assemblyman Carl Britschgi and Assemblyman Howard Thelin, who conducted the investigation of the subject matter.

Respectfully submitted,

JAMES R. MILLS, *Chairman*

Subcommittee members

CARLOS BEE

CARL A. BRITSCHGI

CHARLES J. CONRAD

FRANK LANTERMAN

CARLEY V. PORTER

HOWARD J. THELIN

GORDON H. WINTON

SUMMARY OF FINDINGS

1. There is clearly a demonstrated need for the maintenance of fireboat operations at both the Port of San Francisco and the Port of Oakland.
2. The subcommittee finds no justification for state support of such fireboat operations as proposed in AB 2690 (Meyers).
3. State participation in the cost of operating fireboats in San Francisco Bay would probably invite similar requests from several other ports in the state, the cost of which would be great.

SUMMARY OF RECOMMENDATIONS

1. The subcommittee strongly urges the Cities and Ports of San Francisco and Oakland to continue their support of existing fireboat operations.
2. The subcommittee recommends that no action be taken by the Legislature on the subject matter continued in AB 2690, 1963 Regular Session.

Introduction

Assembly Bill 2690 (Meyers), introduced during the 1963 legislative session, was referred by the Assembly Rules Committee to the Assembly Interim Committee on Ways and Means following the adjournment of the 1964 legislative session. The subject matter was subsequently assigned to the Subcommittee on State Purchasing. A special three-man team from the subcommittee conducted a formal hearing in San Francisco on December 21, 1964.

The Meyers Bill, in essence, requested the Legislature to appropriate a sum of \$480,000 from the General Fund for the support of fireboats operated by the Cities of San Francisco and Oakland. The measure would have allocated \$360,000 for expenditure by the San Francisco Port Authority and \$120,000 for expenditure by the City of Oakland.

Findings

On the basis of the testimony presented to the factfinding team at the December 21 hearing in San Francisco, the subcommittee finds a demonstrated need for the operation of a fireboat for the Port of Oakland and at least one fireboat for the Port of San Francisco. Testimony from the respective fire chiefs, the fire insurance rating bureau, the Marine Exchange and other interested witnesses clearly indicated the need for port protection by the fireboats.

However, the subcommittee finds no justification for state support of the fireboats or their operation at either port. In reaching this conclusion, the subcommittee was mindful of the precedent such state financial participation would establish. Moreover, realizing that there are at least three other major ports which could also seek state support,

the subcommittee saw in Assembly Bill 2690 an inherent danger. If other port cities were to prevail upon the state's General Fund for fireboat support, the cost could be staggering.

With respect to existing financial arrangements at other major ports, the subcommittee found that the full cost of fireboat operations at both Long Beach and Los Angeles ports is borne entirely by each city's treasury. In San Diego, the Unified Port District pays all fireboat operational costs except one-fourth of the total cost of salaries, which is assumed by the City of San Diego.

Additionally, testimony was received from officials of the fire rating bureau that fire insurance rates of the entire city could be affected if there was found to be insufficient fire protection in the harbor. If this happened, fire insurance rates might be increased in the entire city costing all property owners increased premiums many times the cost of adequate fire protection afforded the harbor area by the fireboats. Enlightened self-interest would indicate citizen support of this activity by the general taxpayers as a necessity.

In view of the above, the subcommittee recommends that no action be taken by the Legislature on the proposal embodied in AB 2690 (Meyers), 1963 Regular Session.

ASSEMBLY INTERIM COMMITTEE ON
WAYS AND MEANS

ROBERT W. CROWN, *Chairman*

Report of the
SUBCOMMITTEE ON FAIRS AND EXPOSITIONS
JEROME R. WALDIE, *Chairman*
on the
PROPOSED STATE PARTICIPATION IN THE
LONG BEACH WORLD'S FAIR

Members of the Subcommittee

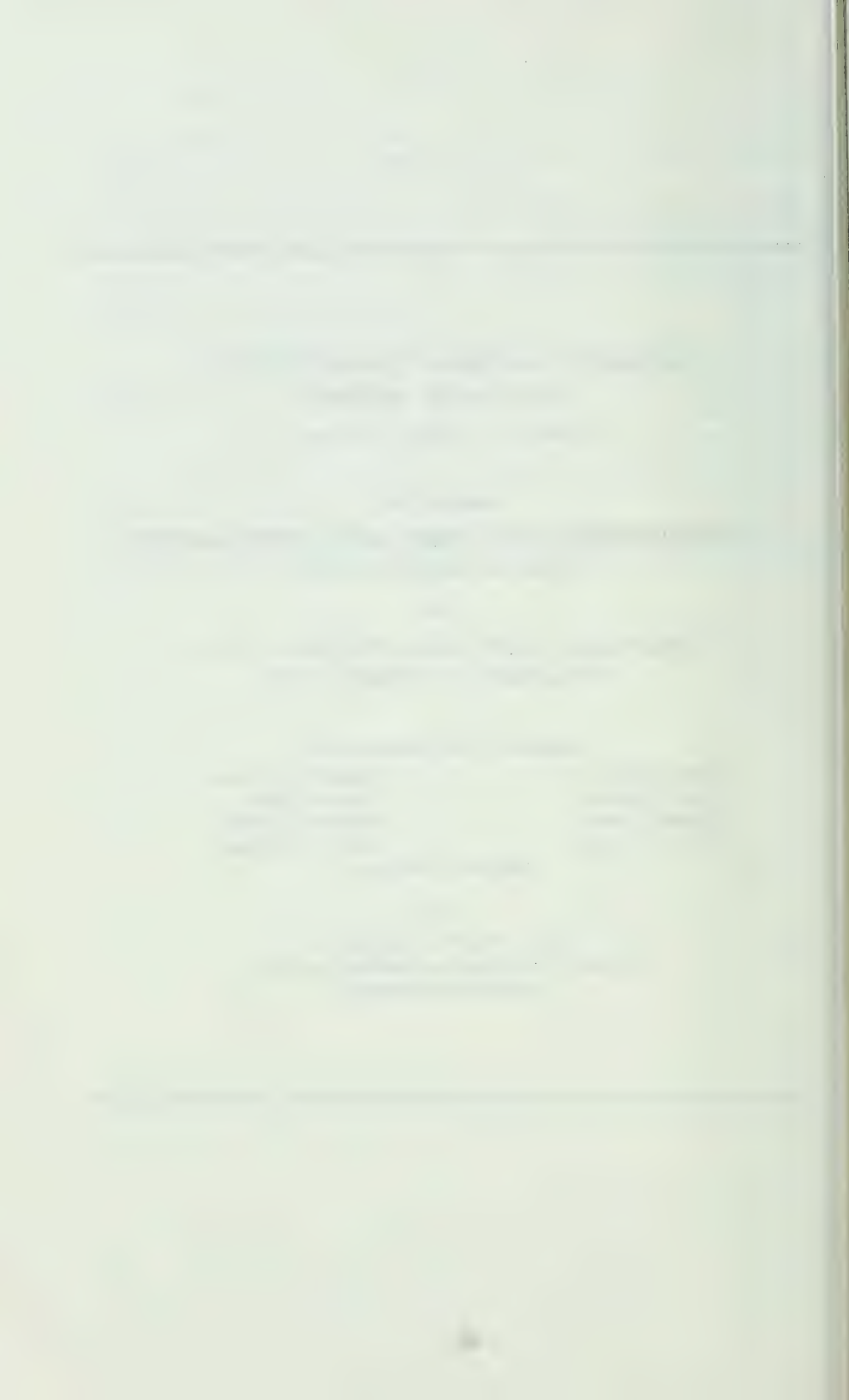
Frank Belotti
Carl A. Britschgi
Charles Conrad
James L. Holmes

Joseph M. Kennick
James R. Mills
Howard J. Thelin
John C. Williamson

Gordon H. Winton

Staff

Louis J. Angelo, *Coordinator*
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Gail Vessels, *Secretary*



LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
CALIFORNIA LEGISLATURE

March 15, 1965

To the Speaker and Members of the Assembly

DEAR MR. SPEAKER AND MEMBERS:

Pursuant to House Resolutions 107 and 390 (1963, Kennick) and House Resolution 372 (1964X, Mills), transmitted herewith is the final report of the Assembly Interim Committee on Ways and Means, Subcommittee on Fairs and Expositions on the subject of proposed state participation at the Long Beach World's Fair which was to be held in 1967-68.

The committee is grateful to Assemblyman Waldie and the members of his subcommittee who conducted hearings and research that lead to the conclusions contained herein.

Respectfully submitted,

ROBERT W. CROWN, *Chairman*

Members of the Committee

TOM BANE
CARLOS BEE
FRANK BELOTTI
CARL A. BRITSCHGI
JOHN L. E. COLLIER
CHARLES CONRAD
PAULINE DAVIS
EDWARD M. GAFFNEY
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JOHN C. WILLIAMSON
GORDON H. WINTON

LETTER OF TRANSMITTAL

HON. ROBERT W. CROWN, *Chairman*
Assembly Interim Committee on Ways and Means

DEAR CHAIRMAN CROWN:

In accordance with House Resolution 107, 1963 General Session, the Subcommittee on Fairs and Expositions herewith submits its report.

Specifically, the resolution directed that study be given to the question of state participation, as an exhibitor, in the World's Fair proposed to be held in Long Beach in 1967 and 1968.

The subcommittee is appreciative of the assistance rendered by the many individuals and organizations contacted in the course of the study.

Respectfully submitted,

JEROME R. WALDIE, *Chairman*
Subcommittee on Fairs and Expositions

Subcommittee members

TOM BANE
CARLOS BEE
FRANK P. BELOTTI
CARL A. BRITSCHGI
CHARLES J. CONRAD
EDWARD M. GAFFNEY

JAMES L. HOLMES
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GORDON H. WINTON

INTRODUCTION

HR 107 (Kennick and Deukmejian), calling for an interim study of the state's participation, as an exhibitor, in the proposed World's Fair at Long Beach, was referred to the Interim Ways and Means Committee. In turn, it was referred to the Fairs and Expositions Subcommittee.

During the two-day hearing held by the subcommittee in Long Beach (August 12-13, 1964), a number of serious questions were raised concerning the organizational structure of the nonprofit corporation promoting the fair and its financial support. Not all of these questions were satisfactorily answered, as evidenced by the transcript of the hearing.

Subsequent to the hearing, complications arose which resulted in the City of Long Beach withdrawing the previously selected fair site, leaving the proposed fair in a highly uncertain position. It is understood the promoters of the fair are seeking another site in the Los Angeles area.

I. FINDINGS

- A. Inadequate justification was presented to support the contemplated cost to the state to participate, as an exhibitor, at the proposed World's Fair.
- B. The question of state participation in the proposed World's Fair is moot. Arrangements to hold it in Long Beach have failed.

II. RECOMMENDATIONS

- A. Since the proposed World's Fair will not be held at Long Beach, no committee recommendation can be made with regard to the precise point of HR 107.
- B. In considering any future authorization of state participation in a similar venture, the committee recommends extremely close scrutiny of the promotional organization and its financial support structure.

NOTE: Persons desiring additional background information concerning the findings and recommendations above may request a copy of the transcript of the hearing by the Fairs and Expositions Subcommittee, August 12-13, 1964, from the Ways and Means Committee Office, Room 2140, State Capitol, Sacramento 95814.



ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS

ROBERT W. CROWN, *Chairman*

PROGRESS REPORT ON BUDGET REFORM

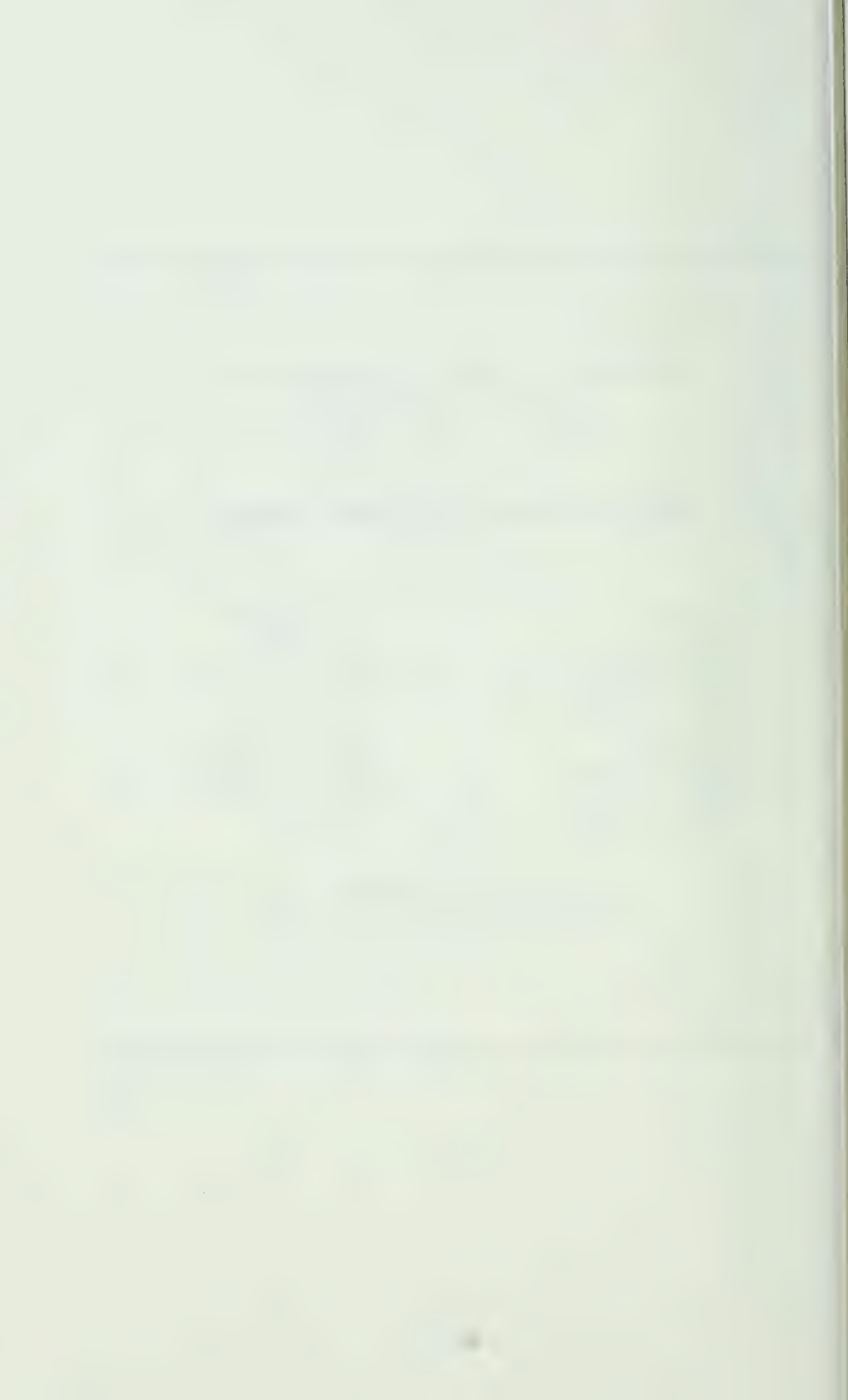
Members of the Committee

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Gail Vessels, *Secretary*



LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
CALIFORNIA LEGISLATURE

March 15, 1965

To the Speaker and Members of the Assembly

DEAR MR. SPEAKER AND MEMBERS:

Pursuant to House Resolution 359 (1963, Crown), transmitted herewith is the progress report of the Assembly Interim Committee on Ways and Means on State Budget Reform.

The report is aimed at implementing the recommendations of the Assembly Interim Committee on Ways and Means (1961-63) report on long-range program and budget planning. The committee is grateful to those individuals who gave us the benefit of their knowledge and suggestions.

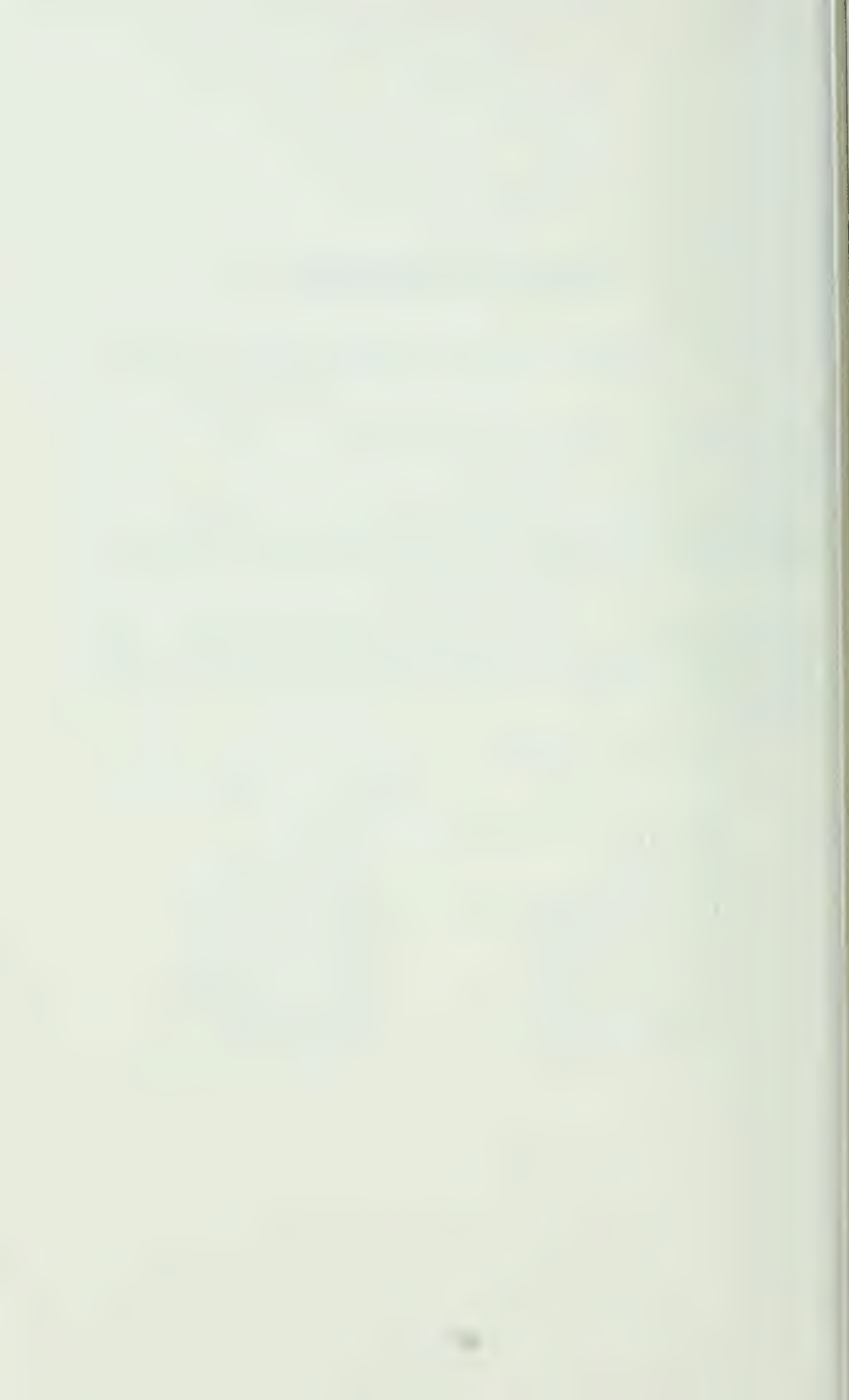
Respectfully submitted,

ROBERT W. CROWN, *Chairman*

Members of the Committee

TOM BANE
CARLOS BEE
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JOHN L. E. COLLIER
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CARLEY V. PORTER
HOWARD J. THELIN
JEROME R. WALDIE
JOHN C. WILLIAMSON
GORDON H. WINTON
PAULINE DAVIS
(with reservations)



PROGRESS REPORT

For several years, the State Assembly has recognized the inadequacy of the present budget process. The responsibilities of state government have expanded to the point where a line-item budget can no longer serve the primary function it must serve—the presentation of a comprehensive and integrated plan for government action. To the extent that a line-item budget emphasizes the individual items of expenditure, it obscures the essential information which decision makers must have—what is to be done, how it is to be done, and at what cost.

In response to this recognized inadequacy, the State Assembly, through the Ways and Means Committee, has spearheaded the development of a new form of budget. A program and performance budget based on long-range planning will best meet the needs of California.¹ A program budget is organized according to the individual objectives of expenditure rather than the individual items of expenditure. A budget written in terms of the objectives of government, the programs designed to accomplish those objectives, and the costs of those programs will thrust the important policy issues to the surface.

A performance budget is the necessary complement of a program budget. It augments the program budget through the development of performance evaluation techniques. It makes possible the comparison of actual accomplishments to program objectives. It focuses on what a dollar buys in any given program. Long-range planning is clearly necessary to meet future needs. Five- or 10-year projections of programs, their costs, and the state's revenues are basic to the anticipation of future needs and the planning to meet them.

In 1961, the Assembly passed HR 361 (Crown), which directed the Ways and Means Committee to study the problem of the inadequacy of the budget and recommend remedial action. In 1963, the committee submitted its *Report on Long-range Program and Budget Planning* to the Legislature. This report specified certain legislative requirements in budgeting and suggested several alterations in the budget process to meet those requirements, particularly a program and performance budget based on long-range projections.

After considering this report during the 1963 session, the Assembly passed HR 359 (Crown), which directed the committee to continue its study through the application of the principles and concepts contained in the 1963 report to the budgets of one or more executive agencies. In cooperation with the Department of Finance, sample program budgets were prepared by the Departments of Motor Vehicles, Fish and Game, and Youth Authority for the committee's consideration. These sample budgets were analyzed by the committee at a hearing on June 22, 1964. The present report is based on the committee's findings at that hearing.

The committee wishes to express its appreciation for the cooperation of the Department of Finance and other participating executive agencies. While the sample program budgets presented at the hearing were deficient in several respects, they represented a commendable begin-

¹ See the *Report on Long-Range Program and Budget Planning*, Assembly Interim Committee on Ways and Means, 1963.

ning.² The committee is confident that the Department of Finance will continue and indeed intensify its efforts to develop a usable program and performance budget.

Also, the Legislative Analyst has designed his *Analysis* of the 1965-66 Budget in terms of program and performance budgeting. In addition to its usual functions, the *Analysis* attempts to describe each agency's objectives or programs, link objectives to the agencies' performance in fiscal year 1963-64, and suggest criteria of evaluation. The committee appreciates the initiative and cooperation which this revision of the *Analysis* represents.

The most significant conclusion reached by the committee as a result of this past interim's study is that the development of program and performance budgeting has now progressed as far as theory alone will take it. Theory has set the broad outlines well enough, but it will not serve to sharpen the focus or fill in the details. The further development of program and performance budgeting is now confronted with a host of middle-range problems which can only be solved through experience. The Legislature, as the branch whose needs the budget must primarily serve, must define the solutions to these problems of development through active participation.

For example, the committee has determined that each program must be broken down into a certain number of component subprograms if the Legislature is to retain meaningful control over the activities of state government. This articulation of program will permit policy decisions to be better effected in the budget. It will permit the Legislature to make adjustments in programs and selective augmentations or decreases. But the point is that the Legislature is yet unsure what constitutes a sufficient number of subprograms nor under what criteria they should be broken down in each case. The Legislature can only determine the solutions to these kinds of problems by actually dealing with each program.

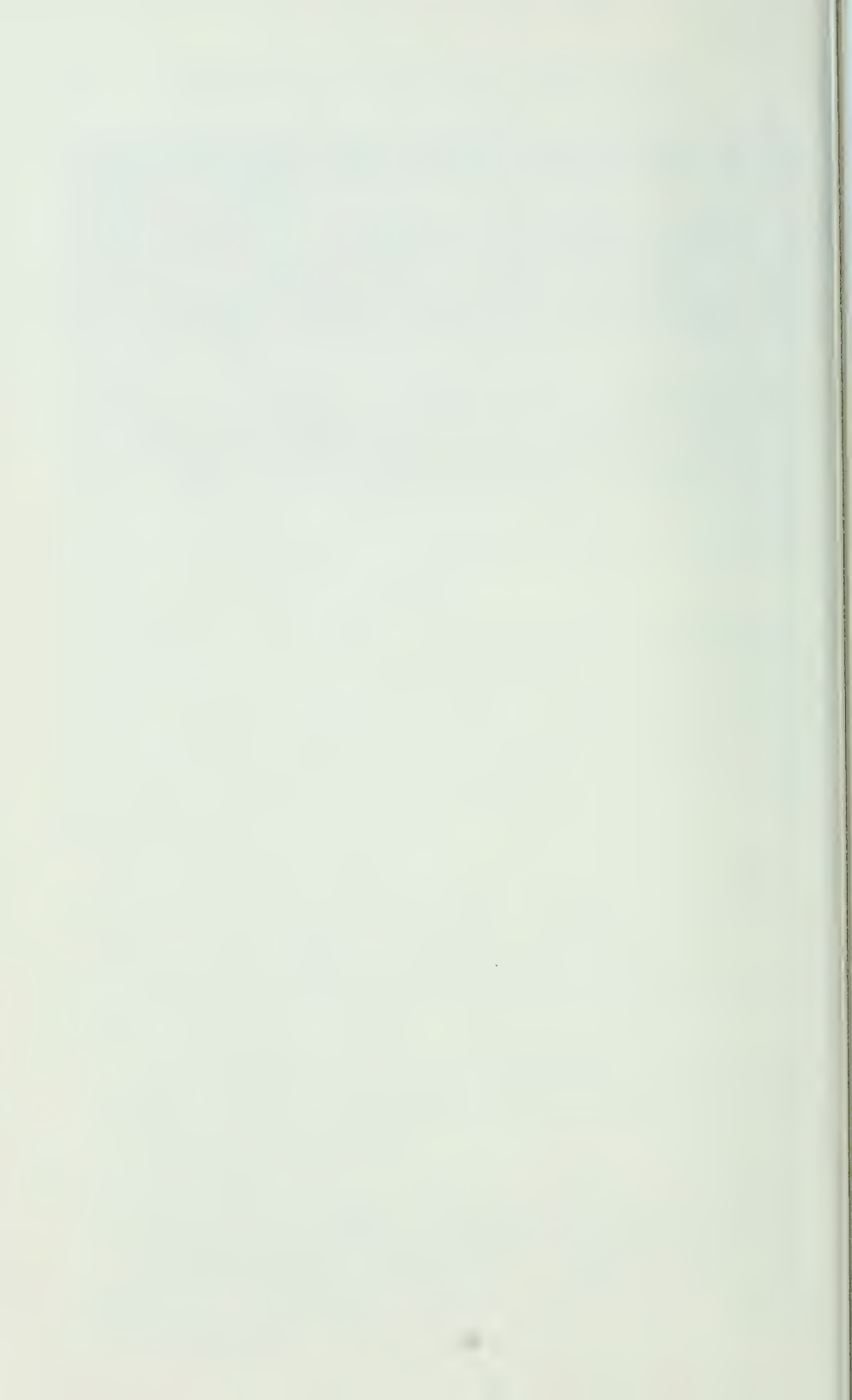
Other middle-range problems are what kinds of performance standards are necessary, how much data is necessary to support these standards, what kinds of cost accounting systems are appropriate, and what criteria of evaluation should be built into each program.

This gap between theory and application should be closed as the next step in the development of a usable program and performance budget. To close this gap, the committee recommends the following:

1. The administration, which the committee has been informed intends to submit at least 10 program budgets during the 1965 session, should be encouraged to pursue the development of program and performance budgeting and to cooperate even more closely with the Legislature and the Legislative Analyst in this development;
2. The Legislative Analyst should be encouraged to continue the development of a budget analysis in terms of program and performance budgeting and to advise the Legislature and the administration on the development of a usable program and performance budget;

² See transcript of hearing by Ways and Means Committee on Long-range Budgeting dated June 22, 1964.

3. The Committee on Ways and Means will actively participate in the development of a program and performance budget during the present session. The primary purpose of this participation will be to determine the most appropriate solutions to the host of middle-range problems that now confront us. The budget subcommittee chairmen will meet regularly with the Chairman of the Committee on Ways and Means throughout the session to discuss their experience and to make such adjustments in the budget process as this experience suggests. Emphasis will be placed on experimentation to discover the techniques which best meet the needs of the Legislature.
4. The committee recommends that it be authorized to continue its study of program and performance budgeting during the next interim. Particular emphasis will be placed on the development of techniques for the evaluation of performance and for comparison of performance to objective.



ASSEMBLY INTERIM COMMITTEE ON
WAYS AND MEANS

ROBERT W. CROWN, *Chairman*

Report of the
SUBCOMMITTEE ON STANDARDS, PROCEDURES
AND REPORTING

JOHN C. WILLIAMSON, *Chairman*

Members of the Subcommittee

John L. E. Collier

James R. Mills

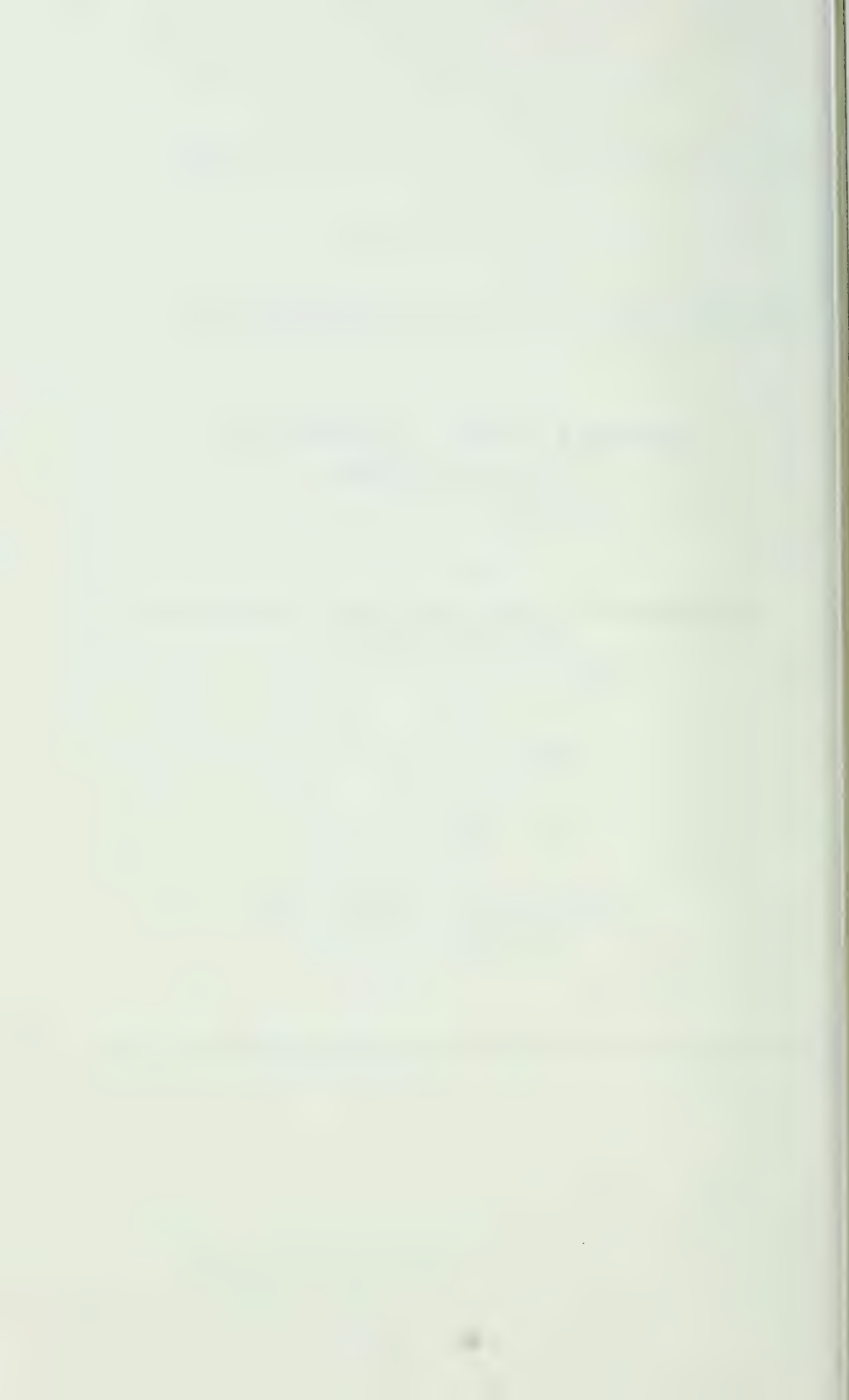
John C. Williamson, *Chairman*

Staff

Louis J. Angelo, *Coordinator*

John Stephen Spellman, *Special Consultant*

Gail Vessels, *Secretary*



LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
CALIFORNIA LEGISLATURE

March 15, 1965

To the Speaker and Members of the Assembly

DEAR MR. SPEAKER AND MEMBERS:

In March 1964 the Assembly Rules Committee authorized a special Ways and Means Subcommittee on Standards, Procedures and Reporting. The subcommittee will continue to serve as both an interim and standing subcommittee of Ways and Means.

I am pleased to transmit herewith a progress report of the subcommittee headed by Assemblyman John C. Williamson. I wish to thank Assemblymen Williamson, Collier and Mills for their contribution to more meaningful budgetary review.

Respectfully submitted,

ROBERT W. CROWN, *Chairman*

Members of the Committee

TOM BANE
CARLOS BEE
FRANK BELOTTI
CARL A. BRITSCHGI
JOHN L. E. COLLIER
CHARLES CONRAD
PAULINE DAVIS
EDWARD M. GAFFNEY
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JOHN C. WILLIAMSON
GORDON H. WINTON

LETTER OF TRANSMITTAL

HON. ROBERT W. CROWN, *Chairman*
Assembly Interim Committee on Ways and Means
State Capitol
Sacramento

Dear Mr. Crown:

Pursuant to Rules Committee action in March 1964, your special subcommittee on Standards, Procedures and Reporting was authorized and I was pleased to serve as its chairman, at your request.

Transmitted herewith is a progress report of the subcommittee. I hope that our work will prove of some benefit to the full Ways and Means Committee. I am indebted to all who cooperated with the subcommittee during the interim.

Respectfully submitted,

JOHN C. WILLAMSON, *Chairman*

PROGRESS REPORT

In its consideration of the Executive Budget for several past sessions, the Committee on Ways and Means has been dissatisfied with the quality of justification various departments have offered in support of their budget requests. Justification often rests solely on dramatic examples of problems. Partial information, usually onesided, is offered rather than the whole story. In other cases, only the most superficial information, lacking depth, is offered. The Legislature is often asked to rely completely on the administrator's judgment of departmental needs, lacking meaningful factual evidence. All too often the justification offered does not in fact justify the request. The personnel or supplies requested may or may not be necessary to the proper functioning of government. If the justification offered is seriously deficient, neither determination can be conscientiously made.

The availability of information is central to the budget process. Good legislative decisions on the budget depend on good information on the operations of state government. It is the responsibility of each department to provide the Legislature with the necessary information. Failure to adequately justify a budget request is indicative of poor administration and often results in legislative denial of the request.

At the conclusion of the budget hearings in the 1964 session, the Chairman of the Committee on Ways and Means requested authorization from the Committee on Rules to create the Standing Subcommittee on Standards, Procedures, and Reporting to deal with this problem. Authorization was granted on March 26, 1964, and the subcommittee has been functioning continuously since that date.

The subcommittee's assigned purpose is to **raise the quality of** budgetary justification throughout the departments of state government to a minimum level defined by the informational requirements of the Legislature. In general, the Legislature requires information which is directly *relevant* to a specific request, which is *comprehensive* in the sense that it reflects the whole of the governmental operation to which the request refers, and which is *objective* in the sense that any competent observer studying the operation would come to a proximate *conclusion* with regard to the request.

The subcommittee has found that the inadequacies of budgetary justification in most departments stem from the lack of the proper internal techniques for producing the required information: empirically based work standards, regularized operational procedures, and accurate reporting systems. These techniques of budgetary justification must be fully developed in every department to ensure that future budgets will be properly prepared in the first instance and that the Legislature will have available to it all of the information necessary to make good budgetary decisions.

The subcommittee determined that the best way to proceed would be to notify every department of the subcommittee's assessment of the general problem and its definition of the minimum level of ade-

quacy in budgetary justifications. This was followed by a questionnaire designed to elicit information on each department's currently employed standards, procedures and reporting systems. The questionnaire was also designed to instruct the departments further on the subcommittee's concept of proper budgetary justification.

Using the departments' responses to the questionnaire as a basis, the subcommittee intends to take up every department, one by one, in public hearing to review their techniques of budgetary justification, to identify the areas of deficiency, and to instruct them on remedial action. These hearings are also useful to instruct the departments on better methods of budget presentation before the Legislature. The subcommittee has a target date of 1970 for completion of its whole review. It is expected, however, that the impetus of the subcommittee's work will carry beyond just the departments the subcommittee has dealt with and that a general improvement will be effected by the other departments on their own initiative.

The subcommittee works closely with the office of the Legislative Analyst and the Budget Division of the Department of Finance. It also makes substantial use of staff level conferences. Each hearing is usually preceded by several conferences between the subcommittee staff, the Legislative Analyst, the budget analyst from the Department of Finance, and the budget officer of the department to be examined. The purpose of these conferences is to aid the departments in developing adequate techniques of budgetary justification for proposal to the subcommittee at the hearing.

Thus far, the subcommittee has received responses to the questionnaire from 35 departments. There is a June 1, 1965, deadline on the responses from the remaining departments. Staff level conferences have been held with 24 departments. The subcommittee has held four hearings; one on the efforts of the Department of Finance to improve the quality of justifications throughout the administration; two on the Department of Justice; and one on the Department of Mental Hygiene. Hearings are tentatively scheduled four months in advance on three additional departments.

In the Department of Justice, workload standards have been developed for most operations. The subcommittee counts as a major achievement the development of a time-reporting system which will be the basis of a workload standard for attorneys. In the Department of Mental Hygiene, the subcommittee is working on the development of standards for direct care personnel which are based on the results of departmental "cohort studies" and other experimental techniques of patient care.

The subcommittee has developed two major means of communication to the full Committee on Ways and Means and to the Legislature. First, upon arriving at the agreement with the department, the office of the Legislative Analyst and the Department of Finance on the specific techniques of budgetary justification to be employed, the subcommittee will prepare a report for the use of the Ways and Means budget subcommittee which considers the department's budget during the session.

Second, the subcommittee invites the chairman of that budget subcommittee in the previous session to sit with the subcommittee as an ex officio member.

In conclusion, the subcommittee believes that this method of dealing with the problem of regularly inadequate justification will prove successful. It should be pointed out, however, that not all of the problems of justification stem from inadequate standards, procedures, and reporting systems. A notable exception is the type of request which is the result of a policy determination by the Governor. Hopefully, knowledge of the general informational requirements of the Legislature will lead to more conscientious justification in the exceptional areas.

It should also be pointed out that the greatest stimulant to improvement will be an exacting and critical approach by the Committee on Ways and Means in its annual budget hearings and the reflection of this approach in its budget recommendations to the Legislature. The subcommittee suggests as an operating principle: if a department cannot prove, with relevant, comprehensive and objective evidence, to the satisfaction of a group of reasonable men that its request is necessary to the proper functioning of the department, the request is to be denied.

Finally, as the subcommittee has become better informed and has perfected its methods of operation, it has become aware of the close relationship between its regular task and the development of program and performance budgeting. Concurrent with its attempts to develop adequate techniques of budgetary justification in the departments of state government, the subcommittee is also attempting to develop the techniques of performance evaluation which will be required by a program and performance budget.

For further information, see the transcripts of the hearings of the Subcommittee on Standards, Procedures and Reporting on May 20, 1964, June 23, 1964, August 7, 1964, and December 14, 1964, available from the Committee on Ways and Means, Room 2140, State Capitol.



ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS

ROBERT W. CROWN, *Chairman*

Report on AUTOMATED DATA PROCESSING

Members of the Committee

ROBERT W. CROWN, *Chairman*

Tom Bane	Frank Lanterman
Carlos Bee	Lester McMillan
Frank Belotti	James R. Mills
Carl A. Britschgi	Nicholas C. Petris
John L. E. Collier	Carley V. Porter
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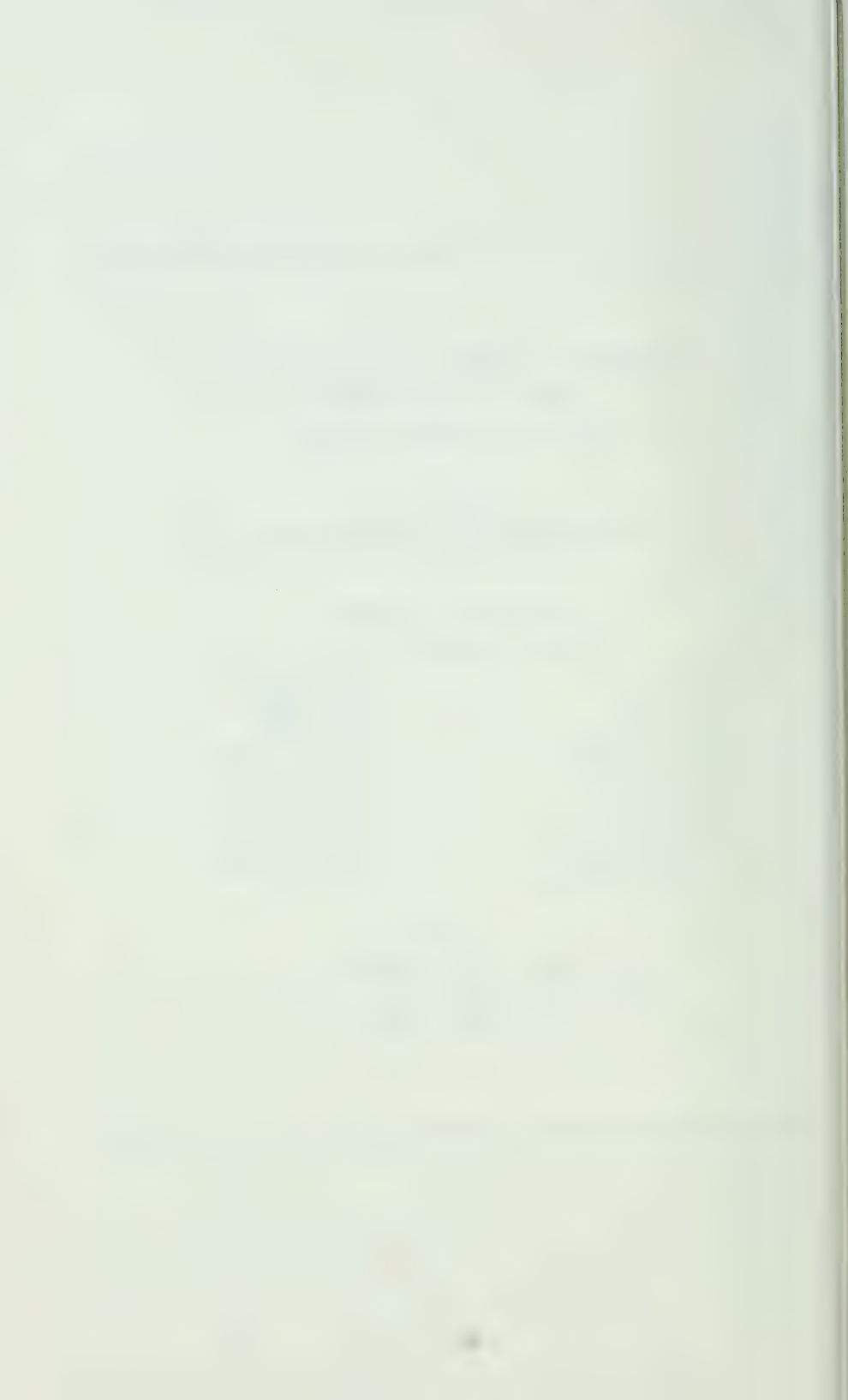
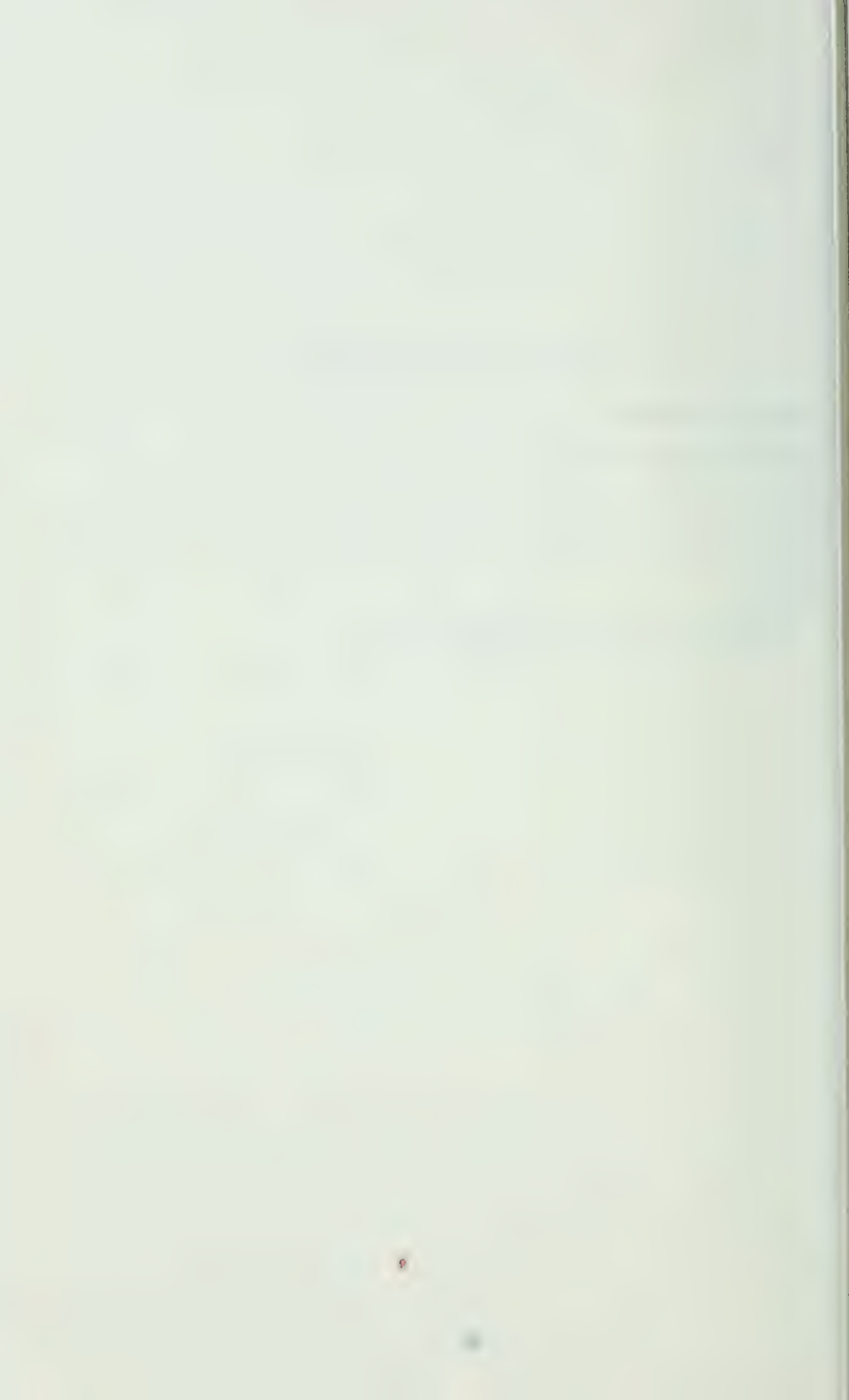


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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
CALIFORNIA LEGISLATURE

March 15, 1965

To the Speaker and Members of the Assembly

DEAR MR. SPEAKER AND MEMBERS :

Pursuant to House Resolution 472 (1963, Crown) and House Resolution 373 (1964, Williamson), transmitted herewith is the final report of the Assembly Interim Committee on Ways and Means on the uses of automatic data processing and on a proposal to update the statewide law enforcement teletype system.

The committee is appreciative of the many individuals and organizations, both public and private, who gave us the benefit of their knowledge and suggestions.

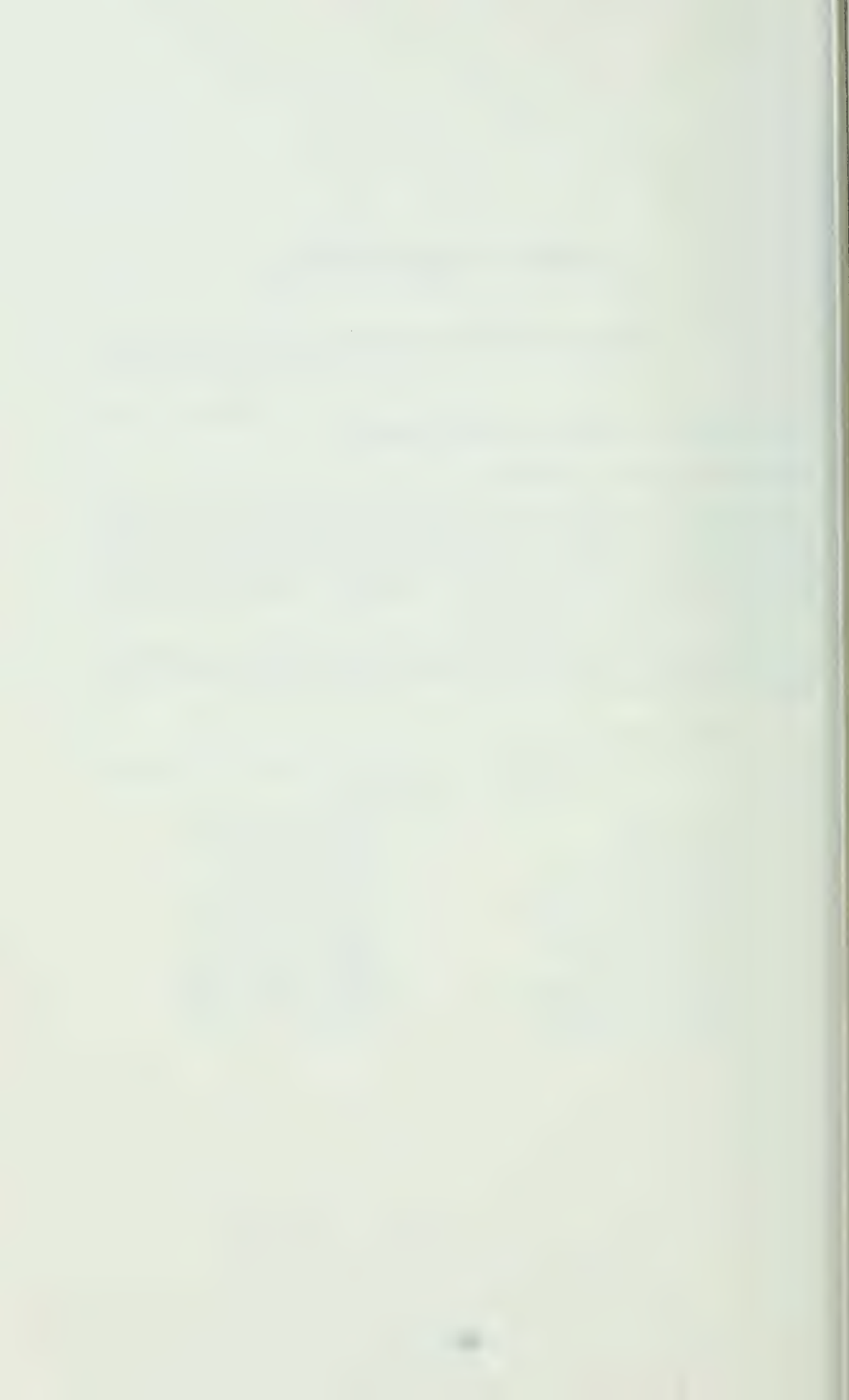
Respectfully submitted,

ROBERT W. CROWN, *Chairman*

Members of the Committee

TOM BANE
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GORDON H. WINTON



Two resolutions were assigned to the committee: HR 472 (1963, Crown) directed a study of the uses of automatic data processing in state government, and HR 373 (1964, Williamson) directed a study of the reported inadequacies of the statewide law enforcement teletype system.

Recommendations Pursuant to HR 472:

1. The committee recommends that a Division of Data Processing be created within the Department of General Services and that it be headed by an appropriately high-ranking and responsible official.

2. The committee recommends that three functions be centralized in this division:

- a. Long- and short-range planning for the use of automatic data-processing systems and equipment on a statewide basis and assistance to and coordination among the individual using departments in planning.
- b. A wide range of technical services available to the using departments for the development of the most efficient systems, maximum coordination between systems, the development of integrated systems, and the maximum usage of data.
- c. A centralized service bureau to perform automated data-processing tasks for those departments whose workload does not justify an installation of their own.

3. The committee recommends that sufficient funds be made available to staff this division and that steps be taken to ensure that high professional competence is achieved.

4. The committee recommends that the Director of the Department of General Services be assigned the primary responsibility for implementing overall policies for the orderly development of automatic data processing in state government, such policies to be thoroughly consistent with a "Statewide Master Plan for Automatic Data Processing" proposed below.

5. The committee recommends that an appropriate interim committee be directed to continue the study of the uses of automatic data processing in state government and that it be directed to cooperate with representatives of the executive branch in the development of a "Statewide Master Plan for Automatic Data Processing," such plan should include but not be limited to:

- a. Specification of the systems which should be developed in the succeeding five-year period and explicit criteria upon which such specification is made, such criteria to be developed around the concept of the total needs of the state.
- b. Provisions for achieving sound economic criteria of systems development, including criteria to guide the determination of whether equipment should be bought or leased.

- c. Provisions for achieving maximum operational efficiency in each individual system including the establishment of regular standards of performance.
- d. Provisions for achieving maximum coordination between systems.
- e. Provisions for achieving maximum feasible integration of systems.
- f. The establishment of a central data index which will meet the informational needs of departmental administrators, the Governor, and the Legislature.

6. The committee recommends that preparatory to the development of the "Statewide Master Plan for Automatic Data Processing" an appropriate executive department be directed to immediately begin an inventory of state-collected data, its location, its availability, its present use, and its future planned use.

Findings:

The committee has found that automatic data-processing installations have proliferated throughout state government in a largely uncontrolled manner. There has been no statewide planning for the orderly development of automatic data processing nor any statewide policy to guide this development. As of November 15, 1963, the state had 55 installations which cost an estimated \$15 to \$18 million annually. This expenditure had more than doubled in the preceding five-year period and the Department of Finance expects it to reach more than \$40 million by 1970.

The lack of central control over this development has resulted in systems which are generally designed to perform according to the requirements of one program or, at best, of one department. And most expert observers agree that few of the state's systems perform efficiently even in terms of those single programmatic or departmental requirements. There is at present substantial waste of machine and personnel capacity and also substantial duplication of effort. The state's present configuration of automatic data processing systems is characterized by parochialism. There is almost no coordination between systems. There has been very little development of the multiple uses of data. There are no systems which have been integrated on an interdepartmental basis.

Finally, systems have not been designed to meet the total needs of the state. In particular, systems have not been designed as the tool of management, neither at the departmental level nor at the executive or legislative level.

In short, the committee has found that the state has not achieved the maximum benefit for the money invested in this field. Efficiency and economy in automated data processing require planning, a high degree of centralized control, and competent personnel. The committee's recommendations are intended to provide this. The executive branch's Steering Committee on Automated Data Processing, which has conducted a yearlong study of this subject, generally concurs with this assessment of the problem but has not expressed itself on the above recommendations.

For additional information on this subject, see the transcript of the hearing of the Assembly Interim Committee on Ways and Means on automated data processing held on December 2, 1964. The transcript

is available from the Ways and Means Committee, Room 2140, State Capitol.

Recommendations Pursuant to HR 373:

1. The committee adopts as its recommendations the recommendations of the Advisory Body on the Statewide Law Enforcement Teletypewriter System as detailed in its report entitled, "A Proposal to Improve the California Law Enforcement Teletypewriter System." In summary, this report recommends:

- a. Technical modernization of the California law enforcement communications system according to the specifications of the Communications Advisory Committee of the Peace Officers Association of California. This modernization will include the establishment of a statewide network with one central terminal in each county and the installation of automatic equipment at all terminals.
- b. The total cost of the improved system is estimated to be approximately \$1,136,772 the first year and approximately \$994,972 each year thereafter, as compared to the present state expenditure of \$467,244.
- c. The creation of a commission to operate the system and to make and enforce such rules and regulations as are necessary to its efficient operation.
- d. The repeal of several sections of the law which have added over a hundred special terminals to the present system at state expense over the past 30 years.

Findings:

The committee was informed that law enforcement agencies throughout California have complained for six years that their communications network is no longer adequate to their needs. Upon making this finding, the Chairman of the Committee on Ways and Means asked representatives of several law enforcement and other governmental organizations to form an Advisory Body to the Committee on Ways and Means for the purpose of identifying the present inadequacies of the network and making recommendations to correct them. The advisory body met three times with the committee staff and various additional law enforcement officials between July and November 1964 and on December 2 presented their report to the committee.

Basing its study on this report, the committee has found that the California law enforcement teletypewriter system, which is the primary means of communication between the law enforcement agencies in California, is indeed outmoded and inadequate to serve current law enforcement needs. The system was created in 1931 and has not benefited from any significant technological improvement since then. Law enforcement officials, from all levels, speaking as individuals or through the Peace Officers Association of California, agree that their work is substantially hampered by the present technological backwardness of the system.

In addition, law enforcement communications have suffered from the lack of any discipline on the system. It is probable that substantial improvements in efficiency and economy can be obtained through the crea-

tion of an administrative commission with rulemaking and enforcing powers.

Finally, the more than 100 stations added by special legislation at state expense have contradicted the original purpose of the system and have made state policy in this area confused and ambiguous. The result has been a general frustration on the part of law enforcement agencies and progressive neglect of the system itself. Repeal of this special legislation will clarify state policy and will rationalize the system and its financing.

For additional information, see the transcript of the hearing of the Assembly Interim Committee on Ways and Means on automatic data processing held on December 2, 1964. As an appendix, the report of the advisory committee appointed by Chairman Crown follows.

APPENDIX

A PROPOSAL TO IMPROVE THE CALIFORNIA LAW ENFORCEMENT TELETYPEWRITER SYSTEM

BY

ADVISORY COMMITTEE ON STATEWIDE LAW ENFORCEMENT TELETYPEWRITER SYSTEM

Summary

Police work in this state is being impeded because the present California teletypewriter system is inadequate for the following reasons:

1. Manually operated
2. Multistation circuitry
3. Too slow
4. Not expandable
5. Uneconomical to renovate

Effective law enforcement is dependent upon an improved California law enforcement teletypewriter system which must have the following essential components:

1. Automation
2. Independent circuits
3. Fast
4. Expandable
5. Economical

Law enforcement in California must have an improved system of communications for the typewritten exchange of vital police information with speed and accuracy.

The Peace Officers' Association of the State of California, through its Communications Coordinating Committee, has endeavored to bring the subject of teletypewriter improvement to the attention of state officials for approximately six years. Specifications for minimum improvements were drafted by the committee and approved by the Association Executive Committee but no constructive measures were accomplished. The association, in April 1964, passed a resolution to the Legislature which effected House Resolution 373 (by Williamson and Unruh) of the California State Assembly. As a result of House Resolution 373, a committee of officials was appointed to research the teletypewriter improvement plan and report to the Ways and Means Committee of the Assembly a recommendation for constructive action at the 1965 Session of the Legislature.

This ad hoc committee was named the advisory body on the statewide law enforcement teletypewriter system and is composed of the following:

- Two representative(s) from the Peace Officers' Association
- One representative from the Sheriffs' Association
- One representative from the League of California Cities
- One representative from the California Supervisors' Association
- One representative, Chairman, Governor's Communications Advisory Commission
- One representative from the Department of Justice
- One representative from the Department of Motor Vehicles
- One representative from the Department of General Services
- One representative from the California Highway Patrol

This report represents the study of the ad hoc committee and endeavors to describe the requirements drafted and justified by law enforcement officials and the Peace Officers' Association. This improvement plan, based upon today's technical knowledge, will meet the typewritten communication needs in police work for the next 10 years. The report contains and emphasizes the essentials with no attempt at sophistication or modernization for the purpose of something new or unproven.

The present system has served law enforcement faithfully but has undergone no major change since its inception in 1931. The original network was established with 22 stations which has now grown to a system of law enforcement agencies numbering 152, which have been, for the most part, added by legislative enactment. The system has grown as a normal result of expansion rather than as a result of scientific advancements in the media of wire or line communication. Teletypewriter service has become an efficient tool in police work by communicating with offices in adjoining states, districts or areas and nationally. In addition to the California subscribers, the network serves approximately 550 stations through subordinate county networks and connections with the western states. This total of some 700 stations can be augmented by service to some 40 other states.

State statutes and court decisions have made it imperative that the law enforcement officer be provided written data such as:

1. Criminal records of individuals
2. Transcripts of Motor Vehicle records and violations
3. Warrants of arrest
4. Lists and reports of lost or stolen property

Voice transmission of such data is no longer sufficient for the exchange of information due to the possibility of human error.

The system today transmits in excess of two million messages annually, or approximately 7,000 per day at a speed of 75 words per minute with more than eight hours of the day devoted to all points broadcasts. Technical advancements, appropriate to the present design, have been employed to the advantage of the network to the degree that it is no longer possible to expand the system in its present status. Speed cannot be increased without a major change in the equipment at most stations. The change of such equipment will be costly and of no particular advantage without a change in the concept of the network.

The modern criminal depends on speed, not only in the commitment of an unlawful act, but also in escaping apprehension and disposing of the result of the criminal activity. Law enforcement must employ even faster measures to cope with the mobility of the criminal of today. Police agencies can no longer depend on the limitation of their own office records but must have a central source of current information or a direct avenue of inquiry to other departments. Faced with the population explosion, the increase in the number of police agencies and the increased rate of crime, the new concept of law enforcement is the centralization of information, the up-to-date or current status of such records and the speed with which data can be obtained.

These conditions are recognized by the principle law enforcement officers within the state, especially in southern California, from which 65 percent of the traffic over the system originates. In that area there are two independent networks, connected to the state system, that are far more advanced than the state system in that they are fully automated, employing a minimum of communication personnel, using speeds up to 100 words per minute, and equipped with technical machinery capable of interconnection with modern day computers. The improved system must be able to transport typewritten information from any connecting network or manufacturer's method of transmitting the typewritten word.

The proposal provides for the application of data-processing computers in police work. The California Highway Patrol commences computer operation of the automated statewide auto theft inquiry system (AUTO STATIS) in April 1965, and the County of Alameda has a computer center. Plans are going forward for early installations at the Department of Justice and other agencies.

There are essential features within the proposed improvement plan that will be factors in the final contract with any chosen vendor. No attempt will be made in this report to discuss the specifics but the following must be requirements of any agreement:

1. Equipment capability to measure traffic
2. Contractor training of user personnel
3. Dependability of equipment maintenance
4. Future capability of facsimile transmission

An appropriation will be essential to the establishment of the improved California law enforcement teletypewriter system. Various economies may equal or exceed the expenditure, but the greatest economy will result from more effective law enforcement. Without this consequence, this proposal would not be submitted.

The following recapitulates, for quick review, the principle features that distinguish the present inadequate service from the proposed improvement plan.

Present system

1. Manually operated
2. Multistation circuitry
3. Too slow
4. Not expandable
5. Uneconomical to renovate

Proposed improvement

Automation
Independent circuits
Fast
Easily expandable
Economical

1. *Manual operation versus automation*

The present system is inadequate to the needs of law enforcement in that it can no longer handle the volume of traffic generated by police work with the speed which must be designed into the improvement plan.

The current network operates under the concept of a "manual store and forward" operation on multistation circuits at a speed of 75 words per minute.

A typical message from Alturas to El Centro, under the present system, would require the following: "Off-line" tape-cutting equipment is not a part of the installation at Alturas, and, therefore, an operator would have to secure the circuit and type the message direct into the active line. Operators at such a remote office often cannot type at the speed of which the system is capable of receiving traffic (75 words per minute). For the purpose of this demonstration assume the operator is capable of typing 25 words per minute. The machine is activated and the message is typed at 25 words per minute with the circuit open, thereby preventing six other stations from using the line. In the meantime, a citizen may appear at the reception area of the office and the operator must leave the machine to attend the caller. Likewise, a radio call might be necessary and the operator must leave the line to service the radio call. All of this time the circuit is open and the remaining six stations are unable to use the network. The message must enter the Sacramento relay center, where, when it is concluded, the tape is torn from the receiver, put into a grid in the priority order of its receipt. An employee takes the message from the grid and places it in a transmitter for relay to the Los Angeles relay center. The same operation is manually handled in the Los Angeles relay center and ultimately the message reaches El Centro. This manual operation is cumbersome because of the many times a message must be handled and inefficient because only one station of seven may use the circuit.

This same message, under the proposed improvement plan, would be handled in the following manner: The message (tape) is typed on the teletype machine "tape cutter," which operates without activating the circuit. When the tape has been cut, it is inserted into the transmitter which is activated by a dialing arrangement or coding that brings in the "receive" signal of the addressee machine and, properly coded, will route the message automatically to El Centro at the improved speed of 100 words per minute. As a result, there is a maximum use of the equipment, there is no delay of the transmission, and no other subscriber is prevented from using the network.

The present system requires personnel to handle each message at each relay center, ascertain the addressee station and appropriately assign the tape to the proper circuit for relay.

The proposed improvement of the system provides semi-automatic (activation of the transmitter by the sending station) acceptance of traffic within the network and the fully automated ability of routing this traffic to its ultimate destination.

Outdated teletype machines (models 14, 15, and 19) are still used by some offices generating a minimum of traffic. These models are obsolete and manufacture has been discontinued.

Under the improvement plan all state stations will be equipped with model 33 and model 35 machines which will permit the preparation of tape by what is called "off line," meaning that the machine can receive traffic while "tape-cutting" equipment is used for the preparation of tape for outgoing messages. When tape has been prepared, it is inserted into a transmitter for immediate dispatch into the network. No delay of waiting for an available circuit will be encountered at the point of origin. Once the message has been accepted by the network, it will be switched to its destination automatically.

A most important feature of this topic of multistation operation vs. automation is the security of transmission.

The present system depends on message numbering for transmission security. Communication personnel are required to use a "tally sheet" when assigning a number to a message and any deviation from the continuity of sequence alarms either station of a possible "lost message."

Built into the improvement plan must be certain transmission securities. The equipment must be able to secure a machine signal from the destination station that it is available to receive the message and an answering signal will inform the originating station that it may send. Such certainty will be accomplished in a matter of seconds. This gives the assurance, within the system, that both stations are connected and that traffic transmission is guaranteed between those points.

2. Multistation Circuitry Versus Independent Circuits

Multistation circuits, by which the present system operates, is very similar to the old "party line" telephones of many years ago. This is indicative of the obsolescence and inadequateness of the current network. The present circuits are designed to accommodate no more than seven stations. The "party line" plan is no longer compatible with today's law enforcement needs.

The concept of automation makes it necessary that there be dedicated circuits—that is, circuits that are individual between a county center and the state switching center, which makes available the full, "on line" use of that circuit for the traffic of any member station. The minimum specifications of the Peace Officers' Association Communications Coordinating Committee includes the requirement that the improvement plan provide sufficient circuits to handle overloads during the busy hours. Sufficient circuits will also insure the movement of great volumes of traffic in order that not more than 1 in 100 messages will be held at an intercept or storage point longer than $1\frac{1}{2}$ minutes.

3. Too Slow Versus Fast

The system, as it now operates, cannot fulfill the needs of law enforcement—it is too slow. Though it is repetitive there is no simpler way of stating the facts than reemphasis of the inadequacy.

1. Manual operation slows the continuous flow of traffic and reduces the network capacity.
2. Multistation circuitry slows the constant availability of transportation facilities for transmitting messages.
3. Speed cannot be increased in the present equipment.
4. An increase of 75 to 100 words per minute is not of itself the answer to the problem.

5. The present equipment is not technically capable of the automation essential to fast police agency service, i.e., computer applications.

The proposed improvement plan is to eradicate the inadequacies and speed the service.

1. Automation will contribute to speed because personnel inefficiencies will be reduced to a minimum. Also, the relay center message handling will be eliminated.
2. Independent circuits will provide immediate transportation of traffic, a decisive speed factor.
3. Equipment speed will be increased one-third, but more importantly the machines will accommodate those factors that combine to the overall requirements.
4. Point-to-point traffic will be transported one-third faster.
5. Computers can be serviced by the system which will speed the service and provide for the volume of traffic police work faces today. An example of such volume is found in the 154-percent increase in the southern California area broadcasts of August 1964 over August 1961.

4. *Not Expandable Versus Easily Expandable*

Renovation of the present system is impractical in the face of technical advancements in the art of teletypewriter communication. Furthermore, the circuits are filled to capacity with respect to stations and usage, the equipment operates at the maximum speed and new space would be required if like equipment were added. The present inadequacies would remain.

The system now in service is:

1. Antiquated in manual switching
2. Obsolete in multistation circuitry
3. Incompatible with subordinate modern systems
4. Unimprovable without major, costly alterations
5. Unadaptable to electronic data processes
6. Outdated in view of modern developments
7. Slow, cumbersome and unexpandable
8. Serviceable but inadequate to police needs

It is the consensus of the law enforcement officials and the members of the ad hoc committee advisory to the Ways and Means Committee on this subject of teletypewriter improvement that the state service should extend to each county seat in the state. Therefore, the new concept of the California law enforcement teletypewriter system is to provide service only to such locations. As a consequence of this policy, an expansion of the network would be confined to the furnishing of additional circuits in the advent of increased volume.

Service to be furnished by the state must necessarily be based upon a 10-year expansion plan and be able to accept traffic from many other types or methods of typewritten communication. The state service must use eight-channel tape now accepted by major manufacturers as the basic method of fast, written exchange of information. These same manufacturers have agreed to accept the American Standard Code for

Information Interchange, reduced to the letters ASCII, which can be transmitted on eight-channel tape. Any system using five-, six-, or seven-channel tape will be acceptable to the state network through converters which can be installed for the purpose of making any other teletypewriter system adaptable to the state transportation line. It has been necessary to plan in this manner because, within the State of California, we have a great variation in the size of law enforcement agencies.

5. *Uneconomical to Renovate Versus Economical*

Any renovation of the present teletypewriter system would be a temporary measure and therefore uneconomical. No one feature of the system could be selected for improvement to the neglect of the others and be of material benefit to police work.

Economies are most difficult to measure with any definiteness when so many other agencies are concerned so the following will only identify the tangible and intangible opportunities for savings as a result of the improvement plan:

Tangible

1. State personnel is estimated to be reduced by an annual saving of \$50,000. It would be impossible to estimate the number of personnel who could be released to other duties within local agencies as a result of the proposed improved system.

2. Decrease in recordkeeping personnel

It will be necessary for certain police or civilian employees to be retained by the local agencies to see that information reaches the centralized information center. However, a number of such employees, paper stock, files, and space can be released to considerable savings if such improvements as herein proposed replaces the need for local record operations.

3. Stable state expenditures

Within this item is compared the philosophy of an improved California law enforcement teletypewriter system which would be a "spinal" network of service to each county seat to the present method of legislating agencies into the system at state subsidy. Under the present program some 600 stations might eventually be subjects of state support. Should the state continue its present program it could lead to the state assuming much of the cost burden of local agencies.

4. Local law enforcement agencies are now subscribing to private lines direct to the Department of Justice for special records of urgent need. Similar expense will apply soon to the California Highway Patrol. The improvement plan would obviate the need for this added expense to the result of further economies.

5. Information centralization

This item affords another opportunity to emphasize the need for centralized information and the resultant reduction of maintaining local records. The three major state agencies to serve local enforcement would be the Department of Justice, California Highway Patrol, and the Department of Motor Vehicles.

6. Saving of peace officer time

This item best can be demonstrated by the officer holding a suspect at a remote area when fast response to his inquiry might have resolved the problem and released the officer to pursue his duties. Also, the booklet entitled *Centralized Electronic Information System*, which is a description of "The Key to Effective Law Enforcement in Alameda County," portrays a system of "warrant checks." It takes approximately 39 minutes 15 seconds to inquire of some 12 law enforcement agencies regarding a warrant, whereas the proposed Bay area counties "warrant check" through the "centralized electronic information system" would take approximately 1 minute 45 seconds.

7. Peace officer protection

To attempt to evaluate a saving within this subject is to attempt to place a value on the life of an individual. The proposed improvement seeks to arm the officer with information so fast that he may be forewarned of any precautions necessary in the pursuit of his duty.

8. Confidentiality of information

There is no way to measure the value of being able to communicate information regarding criminals without the criminal intercepting such data and thereby using it to advantage. It is difficult to measure, in terms of money, the security that comes from the message being safe from accessibility by the criminal or other unauthorized person. It is the nature of the teletype, the message must go from a machine in a particular law enforcement location to similar equipment in another law enforcement location. There is no probability that the criminal can intercept such traffic as is possible in radio, telephone or other voice means of police communication.

9. It can be estimated that the present cost per message based upon state expenditures would approximate 25 cents as compared to 40 cents some 10 to 12 years ago. Current estimates are that the proposed improved system would make possible such large volumes of traffic that our costs could approximate 10 cents per message and that a driver's license inquiry of the Department of Motor Vehicles would approximate 7½ mills.

Intangible

1. More effective law enforcement

To put a monetary value on the efficiency of a law enforcement agency as a result of information being more readily available at faster speeds would be most difficult.

2. Saving of citizen inconvenience

One can only imagine oneself in the position of being delayed by an officer for a period of time, subject to arrest, held in detention or generally kept from normal pursuits for lack of prompt information to put an appropriate self-evaluation of saving in this item.

Conclusion

The population explosion, the resultant increase in crime, the increase in law enforcement agencies, the modern methods of transportation which facilitate the mobility of the criminal, the additional statutes and court decisions necessitating written evidence of the criminal record make it mandatory upon law enforcement to centralize its source of information. Such centralization is a most valuable asset to police work when there is speed in retrieving this information that it may be effectively acted upon by the officer. It is necessary that law enforcement be provided a system of typewritten communication which will service all peace officer agencies from a central source rather than inquiring of numerous local record bureaus.

The present teletypewriter system cannot service law enforcement in this new concept of speed, accuracy and availability of information. Law enforcement today must have information available almost instantaneously from records such as those maintained by the Department of Justice, the Department of Motor Vehicles, and the California Highway Patrol, and this data is becoming so voluminous that it cannot be maintained efficiently on a manual basis but must be mechanized and treated with dispatch that only the modern-day computers can cope with. What is being proposed in the improvement plan is a system that is so dependable and reliable, without human intervention, that law enforcement will be more effective through the readily accessible sources that defy the mobility and shrewdness of the criminal element.

Effective law enforcement needs the best tools available and the proposed improvement contained in this article is a serious attempt in providing this need.

	Improvements	Current budget	Total annual cost	Nonrecurring (installation)	First annual appropriation
General Fund					
Justice	\$388,608	\$276,000	\$664,608	\$122,500	\$787,108
Corrections ¹	32,400	1,644	34,044	1,500	35,544
Youth Authority	2,400	9,600	12,000	700	12,700
Total, General Fund ²	\$423,408	\$287,244	\$710,652	\$124,700	\$835,352
Motor Vehicle Fund					
California Highway Patrol	\$49,300	\$167,900	\$217,200	\$10,500	\$227,700
Department, Motor Vehicles	55,620	12,100	67,720	6,600	73,720
Total, Motor Vehicle Fund	\$104,920	\$180,000	\$284,920	\$17,100	\$301,420
TOTAL STATE COST	\$527,728	\$467,244	\$994,972	\$141,800	\$1,136,772
Other Costs					
FBI	\$16,200	\$7,800	\$24,000	\$1,100	\$25,100
Connecting states	60,000	11,400	80,400	2,200	82,600
Total, other costs	\$82,200	\$19,200	\$104,400	\$3,300	\$107,700
TOTAL SYSTEM COST	\$612,928	\$486,444	\$1,099,372	\$145,100	\$1,244,472

¹ Now paid in Justice budget—\$14,736 (total present cost \$16,580).

² Other quasi-law-enforcement agencies not included.

These costs have been exploratory, since no letter of intent has been issued to any specific vendor. It has been necessary to confine any estimate to the current contractor. Adjustments will have to be made for any additions or decreases within existing networks at the time of final decision.

REPORT OF COMMUNICATIONS ADVISORY COMMITTEE

PEACE OFFICERS' ASSOCIATION OF CALIFORNIA SEPTEMBER 4, 1964

FUNCTIONAL SPECIFICATIONS OF A STATEWIDE LAW ENFORCEMENT INTERAGENCY AUTOMATED MESSAGE AND INFORMATION MANAGEMENT SYSTEM

The following is a description of the organization and the functional requirements essential to the establishment of an adequate automated message and information control system for the exchange of intelligence among the law enforcement agencies in the State of California. These specifications have been drawn and submitted in support of the action taken by the Peace Officers' Association of California, which resulted in the passage of House Resolution No. 373 authorizing the creation of an Assembly interim committee to study the limitations of the present state law enforcement teletype system as a basis for upgrading said communication system in the interest of public safety and to provide electronic data communication facilities for the interagency exchange of police information among those agencies having such requirement.

SYSTEM SPECIFICATIONS

Establishment and Control of LEAMIS

The State of California shall provide and maintain a statewide law enforcement interagency automated message and information control system to facilitate and support the performance of law enforcement services and to coordinate functional responsibility among agencies at the state and local government levels.

- A. LEAMIS shall be under the administrative control of the Attorney General of the State of California.
- B. A commission shall be established to determine operating standards and procedures to be followed by agencies participating in the system. Said commission shall be responsible for the maintenance of operating discipline on the system. The commission shall consist of representatives of the users of the system. The commission shall prepare and issue an annual report of LEAMIS operations together with such recommendations pertaining to the improvement and maintenance of the system as it deems appropriate. A copy of the annual report and recommendations shall be directed to the attention of the Governor, the Attorney General and to each agency participating in the system.

NOTE: For the sake of identification and brevity, the system proposed in these specifications shall be referred to under mnemonic symbol LEAMIS (law enforcement automated message and information system).

II. Scope of Service

LEAMIS shall provide and maintain service among the following agencies but need not be limited thereto:

A. The primary purpose of the LEAMIS program is to provide for the communication of messages and information between law enforcement agencies on the state and county levels, and such related government agencies dealt with extensively by law enforcement. The program should provide for the requirements of:

1. *State Agencies*

- a. Department of Highway Patrol
- b. Department of Motor Vehicles
 - (1) Division of Drivers' Licenses
 - (2) Division of Vehicle Registration
- c. Department of Justice
 - (1) Criminal Investigation and Identification
 - (2) Bureau of Narcotics Enforcement
- d. Department of Fish and Game
- e. Department of Corrections
- f. California Youth Authority
- g. Department of Mental Hygiene
- h. Department of Alcoholic Beverage Control
- i. California Disaster Office
- j. Department of Parks and Recreation,
 - Division of Small Craft Harbors (boat registration)
- k. Foreign state agencies
 - (1) Arizona Highway Patrol
 - (2) Nevada state, county, and local law enforcement agencies
 - (3) Oregon State Police

2. *County Communication Control Point.* The state shall establish and maintain a LEAMIS communication control point in each county of this state. Each county communication control point shall be provided sufficient communication circuits and associated terminal equipment to permit county and local participation in the system.

3. *Local Law Enforcement Participation.* The LEAMIS program shall permit participation in the system by established law enforcement agencies at the municipal level subject to such conditions as the commission shall establish for such participation.

4. *Federal Agencies.* The LEAMIS program shall provide for participation of the following offices of the Federal Bureau of Investigation:

- a. Los Angeles office
- b. San Diego office
- c. San Francisco office
- d. Las Vegas office

B. *The LEAMIS design shall provide for projected system expansion* to maintain an adequate level of service for a minimum of 10 years after activation. The expansion and/or modification of the system shall be subject to the recommendations of the LEAMIS

Commission and approval of appropriate authority. Such recommendations for expansion and/or modification shall be based upon trends in population, criminal activity, activity of the system in operation and the particular requirements of law enforcement service.

II. *Physical Provisions*

- A. *Standardized Equipment at All Stations.* Law enforcement is deeply concerned as to the degrading of operations by the installation and use of manual on-line terminals in a system designed for automatic operation, hence:
1. *All stations participating in the LEAMIS program shall be equipped for automatic transmission and operable at the transmission speeds set forth in Section 3 below.*
 2. *The system shall be engineered to permit all stations full duplex circuit operation capable of simultaneous sending and receiving. The initial installation shall provide for full duplex circuits between all principal stations on the system where such need is evident on the basis of communication traffic records and current trends in operation requirements.*
 3. *The minimum transmission requirements for the system are:*
 - a. Circuit quality that will permit a transmission speed of at least 1,050 words per minute, and
 - b. Terminal equipment that will operate at a speed of 100 words per minute.
3. *The system design to provide automatic switching facilities that will assure the following:*
1. Individual stations in the system shall be able to transmit messages with minimum delay and of different categories and classifications interspersed.
 2. System to provide adequate safeguards to assure that a message correctly directed will arrive at the point of destination.
3. *System design shall provide for alternate routing of backbone circuits serving the principal areas of the state in event of major disaster or failure of a cable or associated equipment. Provision should be made for sufficient backup facilities to assure continuity in law enforcement communication services.*
- D. *Supervision of the System.* The system design shall provide for the establishment of at least one system control center to supervise the system in operation and provide the basis for administrative control.
1. The system control center(s) shall be housed on a site located on state property. Said site to be selected to provide adequate security against enemy air attack and/or sabotage as recommended by the California Disaster Office.
 2. The system control center(s) shall be staffed and operated by state employees with the exception of routine and preventative maintenance services or the repair to equipment which shall be performed by the contractor for said services.

3. The system control center(s) shall be equipped with adequate standby power equipment and facilities as recommended by the California Disaster Office.
4. The switching equipment controlling the communication circuit shall be housed at suitable locations based upon the system design and user requirements and provide for the:
 - a. Automatic or electronic routing of messages from originating station to addressee station(s).
 - b. Interception and temporary storage of messages, if necessary, to insure the completion of transmission when an addressee station is initially found to be busy.
 - c. Interception, storage and holding of scheduled group messages on basis of either statewide or designated area or combination of areas and further be capable of transmitting those group messages automatically according to a prearranged schedule.
5. The LEAMIS equipment and facilities shall be equipped with built-in alarm guards to indicate disorders and malfunctions in equipment and circuitry and identify the terminal(s) and/or circuit(s) effected.
6. LEAMIS circuits and/or equipment shall be equipped with meters of suitable design to provide an accounting and measurement of traffic loads, either on a word-count or lapse-time-in-use basis.
7. LEAMIS circuits shall be capable of carrying effectively any sudden increase in traffic volume. The circuitry shall be engineered to accept and maintain emergency traffic loads up to 10 percent over the normal maximum rated load for any period.
8. LEAMIS circuits and trunks shall be capable of expansion and modification as the normal requirements of the system increase and improvements in transmission methods become available.
9. The system shall be capable of the transmission of integrated data for electronic processing, storage and retrieval.

IV. Maintenance Requirements

The entire system is to be maintained in adequate working order.

- A. A preventative maintenance program shall be established on a regularly scheduled basis to insure that all machines and equipment are in satisfactory working order.
- B. Repair services shall be of high priority and available to all stations participating in the system without delay following the report of trouble.
- C. Maintenance services shall not be disrupted due to labor disputes.

V. Other Considerations

- A. In practical operation a law enforcement interagency message and information control system is not a two-party communication system. In most instances the transmission is of a three-party variety hence in the design of a system this concept must be recognized.
- B. Any proposal to design and establish a law enforcement interagency message and information control system must give due consideration to the personnel requirements and training necessary to assure

effective operation of the system. This evaluation encompasses not only the personnel assigned to duty at the system control center(s) but includes the personnel performing duty at the county communication point(s) and the public safety employees required at each local station in the system.

- C. The LEAMIS program shall be designed and implemented in such manner as to support existing local county law enforcement communication networks and maintain coordination of services among adjacent jurisdictions.
1. The system design shall consider the status of existing county networks and associated communication equipment.
 2. If the proposed system design requires the use of code-conversion equipment to permit automatic integration of various terminal devices, said code-conversion devices shall be incorporated in the terminal control equipment provided at the county communication control points or the system control center(s).
- D. The LEAMIS specifications indicated above describe the minimum standards that must be provided at all levels of law enforcement in the State of California to assure an efficient and rapid interagency communication service. Definite control responsibility must be placed with the state agency most logically constituted to coordinate the communications of all user agencies. Discipline must be maintained on the system if it is to provide efficient service. The creation of a commission representative of the users would be an effective control device. If the system is to remain effective it must be subject to operational review improvement and adjustment commensurate with current public safety demands and the technical improvements in the art and practice of communication and information control.

CALIFORNIA LAW ENFORCEMENT TELETYPEWRITER SYSTEM SUGGESTED ORGANIZATION

The Department of Justice shall maintain a statewide teletypewriter system of communication for the use of police (law enforcement) agencies.

The system shall be under the direction of the Attorney General who also is the Director of the Department of Justice.

The Attorney General shall appoint a committee to advise and assist him in the management of the system with respect to operating policies, service evaluation, and system discipline. The committee shall serve at the pleasure of the Attorney General without compensation except for reimbursement of necessary travel expenses and shall consist of representation of the following organizations:

- Two representatives from the Peace Officers' Association
- One representative from the Sheriffs' Association
- One representative from the League of California Cities
- One representative from the California Supervisors' Association
- One representative, Chairman, Governor's Communications Advisory Commission

One representative from the Department of Justice
One representative from the Department of Motor Vehicles
One representative from the Department of General Services
One representative from the California Highway Patrol

The Department of Justice shall provide an executive secretary to the committee.

The committee shall elect a chairman for a term to be determined by the committee.

The committee shall meet at least twice each year at a time and place to be determined by the Attorney General and the chairman. Special meetings may be called by the Attorney General or the chairman by giving at least 10 working days' notice to the members.

The Attorney General shall publish, for distribution to the system subscribers and other interested parties, the operating policies, practices and procedures, and conditions of qualification for membership established by the committee and approved by the Attorney General.

The system shall provide efficient and modern teletypewriter communication service in each county seat in the state at a place and with such circuitry and terminal equipment as shall be recommended by the committee and approved by the Attorney General.

The system shall maintain relay centers with qualified state personnel to insure the efficiency of the service.

The system may connect and exchange traffic with compatible systems of adjacent states and otherwise participate in interstate operations.

The system shall provide service to any police (law enforcement) agency qualified by the committee which, at its own expense, desires connection through the county terminal.

The system shall be maintained at all times with equipment and facilities adequate to needs of law enforcement. The committee shall recommend to the Attorney General any improvements of the system to meet the requirements of the subscribers and to take advantage of advancements made in the science of teletypewriter communications.

The system shall be engineered to serve automated data-processing equipment.

Any subscriber to the system shall file with the Attorney General an agreement to conform to the operating policies, practices and procedures approved by the committee under penalty of suspension of service or other appropriate discipline by the committee.

Current statutes pertaining to the state teletypewriter system would need revision to effect this program of organization.

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ASSEMBLY INTERIM COMMITTEE ON
WAYS AND MEANS

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LETTER OF TRANSMITTAL

Assembly Interim Committee on Way and Means
California Legislature

March 31, 1965

To the Speaker and Members of the Assembly

Dear Mr. Speaker and Members:

In accordance with House Resolution 64, 1963 General Session, your Interim Committee on Ways and Means herewith submits its final report on state mental health services.

The committee is indebted to the many persons, both private citizens and public officials, who were of invaluable assistance in the course of this study.

Respectfully submitted,

ROBERT W. CROWN, *Chairman*

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Report of the
**ASSEMBLY INTERIM COMMITTEE ON
WAYS AND MEANS**

Robert W. Crown, Chairman

SUBCOMMITTEE ON MENTAL HEALTH SERVICES

**A REDEFINITION OF STATE RESPONSIBILITY
FOR CALIFORNIA'S MENTALLY RETARDED**

MEMBERS OF SUBCOMMITTEE

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FRANK LANTERMAN
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GAIL VESSELS, *Committee Secretary*

Assembly
California Legislature

JEROME R. WALDIE

ASSEMBLYMAN, TENTH DISTRICT

CONTRA COSTA COUNTY

MAJORITY FLOOR LEADER

March 3, 1965

HONORABLE ROBERT W. CROWN, *Chairman*
Assembly Interim Committee on Ways
and Means

Dear Mr. Crown:

The Subcommittee on Mental Health Services was appointed following adjournment of the 1963 General Legislative Session in accordance with House Resolution No. 64.

The subcommittee wishes to express its appreciation to the professional personnel of various agencies and to the thousands of private individuals who provided information and opinions for the committee's consideration.

Respectfully submitted,

JEROME R. WALDIE, *Chairman*

FRANK LANTERMAN

NICHOLAS C. PETRIS



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INTRODUCTION

About 5 percent of California's mentally retarded population have traditionally been a responsibility of state government. These are the ones who require care and services their families are unable to provide. Since 1850, the state has maintained state hospitals for these people.

This is the first of two reports about these retarded persons, their families, and the state system designed to meet their needs. This first report describes an organizational weakness.

The second report, to be published later this year, will review the state's hospitals for the retarded and will include suggestions for improving the services in these state facilities.

* * * * *

In 1963, House Resolution No. 64 created an interim committee to study mental health services in California. Three assemblymen have served as a special subcommittee of the Assembly Ways and Means Committee to conduct this study.

The interim committee members are: Jerome R. Waldie (D), of Antioch, Chairman; Frank Lanterman (R), of La Canada, and Nicholas Petris (D), of Oakland.

The first few months of the subcommittee's activities were devoted to investigating general problems in the Department of Mental Hygiene, culminating in a public hearing on October 22, 1963. In December 1963, the subcommittee selected the field of mental retardation for intensive study and since then has been conducting an analysis of the state's program for the retarded.

There were several reasons for concentrating on mental retardation:

a *Federal funds had recently been made available to speed the development of state programs for the retarded, and the Legislature would have to be prepared to make effective use of these funds.*

b *In 1962 the Department of Mental Hygiene, at the request of the Legislature, prepared a "Long Range Plan for Mental Health Services in California." That plan suggested a sharp change of direction in state services for the retarded, but the Legislature had not yet taken steps to enact laws to accomplish the recommended changes.*

c *In 1963, the California Study Commission on Mental Retardation was created to suggest additional legislation to the 1965 General Session. The Legislature should be prepared to evaluate the commission's proposals.*

d *From time to time questions have been raised regarding conditions in our state hospitals. Previous legislative committees had probed specific incidents, but a comprehensive review of hospital programs and policies was needed.*

e *The Legislature has long been frustrated in its efforts to solve the chronic problem of families with children on the "waiting list" of state hospitals. Despite the rapid expansion of the state hospital system and the development of community mental health programs, the "waiting list" remains a constant problem. The subcommittee determined to focus a major portion of their energy in an effort to understand and solve this problem.*

The subcommittee conducted its activities in a somewhat unique manner and a brief chronology of their work may be interesting to students of the legislative process in California:

Step No. 1—(December – January)

A questionnaire was submitted to each of the state hospitals serving the mentally retarded. The 48-page questionnaire covered every major aspect of program from admission policies to "after-care" services. Responses to the questionnaire were thorough and complete. They were analyzed and a number of problems were noted. During this same period, hospitals were visited and discussions were held with hospital employees, parents with children in the hospitals, and representatives of professional and citizen groups interested in problems of the retarded.

Step No. 2—(February – March)

Two public hearings were held (February 21st and March 26th). These hearings were concerned with some of the problems uncovered in visits to the hospitals and through the questionnaire. The hearings focused on: educational services, uniformity of standards and policies, aftercare services, training of psychiatric technicians and several other administrative problems.

Step No. 3—(April – June)

In the early spring the subcommittee decided to prepare and publish a preliminary report describing their initial findings and conclusions regarding the problem of the "waiting list." The report was issued in June under the title "*A Preliminary Proposal to Eliminate Waiting Lists for State Hospitals for the Mentally Retarded.*" The report was mailed to over 1,000 individuals and organizations for the purpose of soliciting reactions and suggestions.

Step No. 4—(July – October)

During the summer months, the subcommittee conducted a survey of the 225 private facilities licensed to care for the mentally retarded in California. The results of the survey were published in October under the title "*Supplementary Factual Report No. 1.*"

On October 2nd the subcommittee held a public hearing in Los Angeles to give citizens from southern California an opportunity to react to the preliminary proposal.

Step No. 5—(November – December)

Because the subcommittee's preliminary proposal suggests major changes in the state's pattern of services for the retarded, it was vital to determine the reactions of those who would be most directly affected. A questionnaire was therefore submitted to every family in California with a retarded child on the "waiting list" to a state hospital. Through the questionnaire and numerous letters the subcommittee was able to communicate with over 1,200 families facing this problem. (There are over 1,800 on the "waiting list.") In December the results of this survey were published under the title "*Supplementary Factual Report No. 2.*"

On December 5th a public hearing was held at Santa Cruz to enable citizens from northern California to react to the preliminary proposal.

The report that follows summarizes the results of the subcommittee's investigation of the "waiting list" problem.

SUMMARY OF FINDINGS

- 1 Procedural weaknesses in existing state programs to aid the mentally retarded have resulted in an inability to provide badly needed services on a timely basis.
- 2 By making admission to state hospitals the sole route to gain state support for the costly care of the mentally retarded, lengthy waiting lists have resulted which have worked undue hardships on the afflicted and their families.
- 3 Many mentally retarded persons not requiring hospital care are unnecessarily forced to seek state hospital placement rather than being placed directly in community facilities or receiving other services more suited to their individual needs.
- 4 Public and private community-based services, including residential facilities, are not used to full advantage. While state hospital facilities for the mentally retarded are filled to capacity and lengthy waiting lists exist, state-licensed private facilities have substantial numbers of vacant beds.
- 5 Private residential facilities and professional home care services may be more suited to individual needs and in most instances can be secured at a cost less than the \$300-\$400 monthly cost of maintaining a mentally retarded patient in a state hospital.
- 6 Mentally retarded children, who can receive proper care in the community and whose parents prefer such service, should remain in the community whenever possible. Few families can now afford this.
- 7 Expanded state support for community residential care of the mentally retarded, in addition to supplying more appropriate care to the patients involved, would ease the strain on state hospital facilities and would reduce the need for the extremely costly construction of new facilities.
- 8 Privately operated facilities providing care for the mentally retarded are hampered by conflicting policies regarding licensing, inspection and standard setting administered by different state agencies.

SUMMARY OF RECOMMENDATIONS

1 State responsibility for the mentally retarded should be shifted from the time the patient enters a state hospital to the earlier point when expert diagnosis determines that special care is needed that the family is unable to provide.

2 The State Department of Public Health should be given the responsibility for contracting with appropriate community-based medical agencies to provide regional services, including the initial diagnosis determining whether special care beyond that available in the home is necessary.

3 The regional centers, in addition to diagnostic services, should:

- a. Provide counseling services to affected families;
- b. Determine eligibility for state support of patients in community facilities;
- c. Assist families in selecting appropriate community services;
- d. Provide continuing supervision and case management services for patients receiving state supported care;
- e. Periodically inspect community service facilities for compliance with established standards.

4 In addition to the above actions, the budget for 1965-66 of the Department of Mental Hygiene should be augmented in whatever amount necessary, up to \$500,000, to expand its private placement program to open space in the hospitals for some of the more urgent cases on the waiting list.

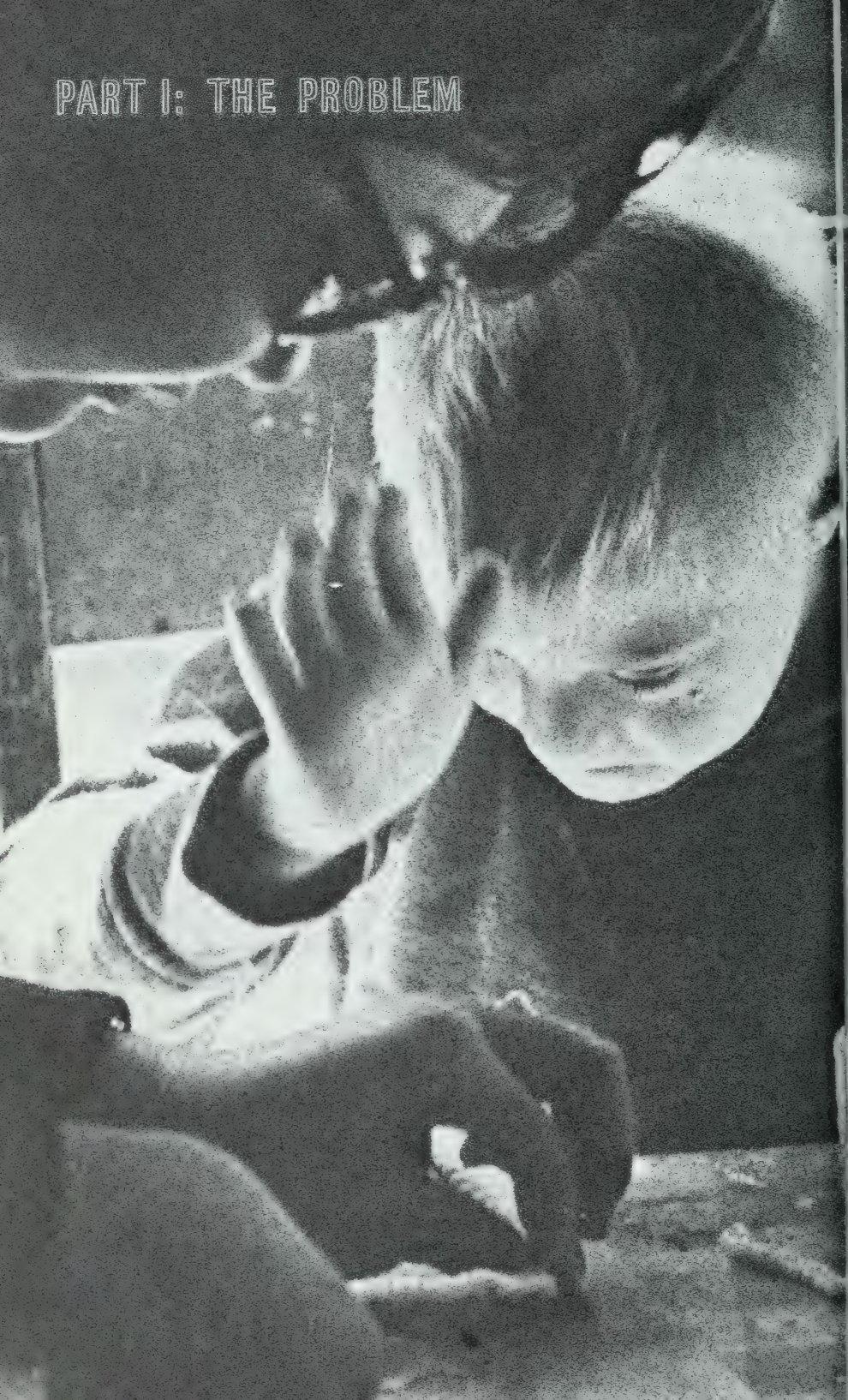
5 A position "Director of Mentally Retarded Care Standards" should be established in the Health and Welfare Agency having the responsibility to:

- a. Set licensing standards for institutions contracting with regional centers to provide care to the mentally retarded;
- b. Set rates which will permit licensed institutions to meet and maintain established standards.

6 An advisory body should be established composed of representatives of agencies rendering services to the retarded and representatives of families of retarded patients to review and advise on standards established for various kinds of care.

7 Families of the mentally retarded should be permitted to transfer personal guardianship of their children to the Director of the State Department of Public Health after appropriate screening by a regional center.

PART I: THE PROBLEM



A Greek myth tells of Sisyphus, an evil king of Corinth, condemned in Hades to roll up a hill, a huge stone which constantly rolled back.

Each year, hundreds of families plead for help when the problems of caring for their mentally retarded children become overwhelming. And each year the State of California increases the capacity of its hospitals in response to this pressure. But as California's population grows, and as medical science finds new ways of keeping retarded infants alive, the problem of the "waiting list" stubbornly remains. We've grown accustomed to a "waiting list" for our state hospitals. The ever-present "waiting list" is tragic testimony to an organizational weakness in state services.

The State of California and its elected officials have been responsive to this problem. The state has always accepted its responsibility for the care of retarded children. Year after year the Legislature has appropriated additional funds to eliminate the problem. Since 1955 the support budget for state hospitals for the retarded has increased from \$15.2 million to \$44.7 million. Nevertheless at almost any time during the past 10 years a "waiting list" of 2,000 or more retarded persons was knocking at the door.

There are now over 13,000 retarded persons in our state hospitals. To meet the total need for residential care in the traditional manner, the Department of Mental Hygiene has estimated the state should build over 3,000 new hospital beds during the next four years. The estimated capital outlay for this expansion would be \$47.6 million.¹

(Plans are already in motion to construct such facilities. The Department of Mental Hygiene now recommends the construction of 2,000 of these new hospital beds and the Department of Finance has already been granted \$75,000 for working drawings for one 500-bed facility.)²

Should the *only* response to the problem be to construct 3,000 new beds, by 1968 there would be 16,000 retarded persons in our state hospitals. In addition to the \$47.6 million the state would have spent on construction, the yearly support budget for hospitals for retarded would be at least \$11 million more than the present \$44.7 million.

But, as this is done, a new "waiting list" would accumulate and by 1968 it would be necessary to build again!

¹ See appendix for complete discussion of hospital bed projections and costs.

² Tentative Proposal for a Five-Year Program, California Department of Mental Hygiene, October 5, 1964.

The dilemma is not unique to California. New York State has twice the number of state hospital beds that we do, but they are also involved in a Sisyphean struggle with a "waiting list."

AN ORGANIZATIONAL WEAKNESS

The state now assumes responsibility for the care of a retarded child *only after that individual enters the state hospital. As a result, the number of beds available, posed against the steadily growing population, creates an ever-present bottleneck.* As the system now operates, the pathway to state-supported service can be reached only through the state hospital door whether or not hospital care is needed or desired.

The Department of Mental Hygiene has determined that *less than half of the children on the present "waiting lists" require care in a state hospital.*³

Of the 2,171 retarded persons on the "waiting list" on April 30, 1963, only 924 were found to be in need of hospital care after thorough clinical diagnosis. Nevertheless, all 2,171 were placed on the preadmission list for state hospital placement.

The fact that more than half of our present state hospital population and more than half of our "waiting list" must be channeled unnecessarily through state hospitals is testimony to a basic flaw in the way state responsibility is structured. Other alternatives simply are not available to parents of these children.

For over a century the narrow definition of state responsibility has meant that children who cannot be maintained at home must be fitted into the state hospitals.

The state hospitals are required to be "all things to all people" and provide a wide range of services for their varied clientele. In fact, for over half the "patients", these hospitals do not really serve as hospitals at all. For some, the hospital attempts to be a school, for others a nursing home, for some a home for the aged, for others a sheltered workshop and boarding home, and for some "patients" the hospital is a way station before transfer to a foster home or other community facility.⁴

³ Department of Mental Hygiene, *Survey of Patient Needs for Residential Care and Assistance*, Bulletin No. 34, August, 1963, p. 8.

⁴ *Ibid.*, 33, The Department of Mental Hygiene has studied the needs of the present population in our state hospitals for the retarded and concluded that "only 36.3 percent require hospitalization for medical, surgical, or psychiatric reasons." Also see appendix for more complete discussion of characteristics of the retarded population.

In 1963, the state financed care for 1,600 moderately retarded persons in foster homes and 115 profoundly retarded "crib cases" in small private nursing homes. All these people had to go from the "waiting list" into the state hospitals before being placed in their present homes. This peculiar arrangement makes "waiting lists" inevitable. Under the present arrangement, hundreds of children are moved from their own homes into the large wards of state hospitals, only to be moved again into foster homes or nursing homes. And in many cases, the present procedure results in years of hospital living for people who should never have been placed in a state hospital in the first place.

The heart of the problem is that most families who are unable to care for their retarded child at home have no choice other than to place the child in a state hospital.

MANY FAMILIES WANT ALTERNATIVES

The subcommittee's survey indicates that about half the families with children on the current waiting list for state hospitals for the retarded would not place their children in a state hospital if other alternatives were available.⁵

These families state they would prefer to hire help to assist them in caring for their children at home, or would elect to place their children in private care facilities such as foster homes or private institutions if funds were available to help them pay for these services.

The present state system does not offer such alternatives to state hospital care. The following quote from one of the many letters to the committee illustrates the dilemma:

"Our son is four years old, and living for the past few months in a foster home licensed by the State Department of Mental Hygiene.

"He was diagnosed by Dr. _____, at the Birth Defect Center at Children's Hospital in San Francisco, as neurologically damaged and severe sensory receptive aphasia. We were advised to make an application for him at Sonoma State Hospital The hospital told us that he was eligible but not suitable—that they could not duplicate the care and education he was receiving in San Francisco.

"Naturally we were delighted that he can be here in San Francisco where we can visit him, and that he is

⁵ Special Committee on Mental Health Services, Assembly Ways and Means Committee, Supplementary Factual Report No. 2, December, 1964.

showing progress in the classes for aphasic children at the San Francisco Hearing and Speech Center.

"But, I'm afraid we are classic examples of the middle-income family unable to afford the \$150 a month for his care. My husband makes an adequate salary for a family of seven with normal expenses . . . we are not eligible for any aid from public welfare . . . We're a bit stymied at this point. We are praying that funds will be made available as a result of new legislation and it is on that premise that we are taking a loan to help us take care of our son for the next several months."

For children needing special care, the only present way to circumvent the state hospital is through privately financed placement in a school, foster home or nursing home. About 2,500 retarded persons are now cared for in this manner. Unfortunately only the wealthy can afford this alternative for long periods—or the very poor whose children qualify for public welfare support in private institutions.

At the present time there are many vacancies in private facilities specifically licensed by the California State Department of Mental Hygiene to provide residential care for the mentally retarded.⁶ The evidence indicates that lack of funds is a major reason preventing families from placing their children in these facilities.⁷ (Another important fact is that over 55 percent of the families who have placed retarded children in private facilities are receiving some form of public assistance to help them pay for all, or part of, the cost of care. This fact suggests that low income families who are eligible for financial assistance and upper income families who can better afford the long-term expense are able to make greater use of private placements than middle-income families who cannot manage a continual drain on their family resources.)⁸

THESE FINDINGS CLEARLY SHOW THAT FAMILY INCOME IS A PRIMARY FACTOR LIMITING THE USE OF PRIVATE COMMUNITY FACILITIES FOR THE RETARDED. FEW FAMILIES CAN AFFORD TO HIRE HELP AT HOME OR PAY THE FEES IN PRIVATE FACILITIES AND HALF OF THOSE NOW IN PRIVATE FACILITIES WILL EVENTUALLY BE SHIFTED TO THE STATE HOSPITALS WHERE THE FAMILIES ARE REQUIRED TO PAY ONLY \$20 A MONTH.⁹

⁶ *Special Committee on Mental Health Services, Assembly Ways and Means Committee, Supplementary Factual Report No. 1, October, 1964.*

⁷ *Supplementary Factual Report No. 2, op. cit., p. 10.*

⁸ *Supplementary Factual Report No. 1, op. cit., p. 15.*

⁹ *See Appendix, Table VIII, for information regarding movement of retarded persons from community to state hospital facilities.*

As one parent put it: "Upon admission to the state hospital the parent's contribution to the care of the child drops to \$20 per month and remains at that figure even after the child is placed back in the community by the hospital . . . the state is, in fact, providing a financial reward to the family for the utilization of state hospital services."

In summary, a major cause of the lengthy state hospital "waiting lists" stems from the fact that despite the needs of children or the desires of their families, the state offers no alternatives other than the state hospital for these retarded children. Each year almost 1,000 retarded children are being funneled into a single system and family finances are a primary factor in determining where these children will go.

A HIGH PRIORITY MUST BE GIVEN TO CHANGING THE SYSTEM WHICH FORCES FAMILIES AND THEIR CHILDREN TO WAIT FOR A SERVICE WHICH IS OFTEN INAPPROPRIATE.

THE EFFECTS OF INSTITUTIONALIZATION OF CHILDREN

There is a massive body of professional knowledge and opinion that clearly documents the effects of institutionalization in large facilities remote from the natural family and the normal community.

Typical of research findings on this matter is the recent comparison of two groups of equally retarded children in California—one group residing in the community and the other at Sonoma State Hospital. The researchers conclude:

"The fact that the institution groups showed significant decreases in their social competency scores over the two-year study period, whereas the community groups showed significant increases, would indicate that the general environmental situation within the institution was not conducive to the development of trainable retarded children. The school within the institution apparently cannot counteract the pervasive lack of stimulation by providing a few hours of training each day.

"It is questionable whether the school within the institution can carry out a consistent and systematic program for trainable mentally retarded children, as institutions are presently constituted. Although no formal observational procedures were employed, the general impression of the institutional wards in which the children participating in the study resided, was that there was little opportunity for developing social competence. The children, when seen on the wards, were wearing hospital-

type smocks, no shoes and no socks, thus minimizing many learning experiences relative to dressing. A review of the items included in the San Francisco Social Competency Scale with one of the institution's administrative staff members indicated that there are a number of social competency skills that cannot be learned on the wards by the children because of restrictive institutional policies or limited environmental opportunities. For example, the children living on the wards involved in this study are permitted to use only spoons for eating, and learning to eat with a fork or cut with a knife is therefore not possible.

"The data of this study supports the point of view that the institution is not as desirable a setting as is an adequate home environment for the development of trainable mentally retarded children. It would appear that the present trend to keep such children at home is desirable despite the varied services available within the institution. There is also evidence to support the premise that a similar investment on the part of communities in providing professional services for trainable children would lead to an increased preference by parents for keeping their children at home."¹⁰

There is no doubt that we will better serve the interests of trainable retarded children, and perhaps even other more severely retarded children, if we redesign our system to provide home care help and other community-based alternatives to state hospital placement for those families who desire such choices.

The committee wishes to make it quite clear that its purpose is to *expand* the choices available to families. This does not exclude the state hospital choice. For families who prefer state hospital services (50 percent of those on the waiting list indicate this preference) and for families whose children may *require* state

¹⁰ Leo F. Cain and Samuel Levine. *A study of the Effects of Community and Institutional School Classes for Trainable Mentally Retarded Children*, (San Francisco State College, 1961), Study done under contract number S.A.E. 8257, U. S. Office of Education, Department of Health, Education, and Welfare.

See Also: William Goldfarb, "The Effects of Early Institutional Care on Adolescent Personality," *Journal of Experimental Education*, Vol. 11-12, 1942-1944, pp. 106-129.

N. O'Connor and J. Tizard, *The Social Problem of Mental Deficiency*, (London: Pergamon Press, 1956).

Gerhart Saenger, Ph.D., *Factors Influencing the Institutionalization of Mentally Retarded Individuals in New York City, A report to the New York State Inter-Departmental Health Resources Board*, January, 1960.

Philip Marden and Bernard Farber, "High-Brow versus Low Grade Status Among Institutionalized Mentally Retarded Boys," *Social Problems*, 8 (1961), pp. 300-312.

hospital services, state hospitals should be available. It is the committee's intention to publish another report within the next year analyzing state hospital programs with a view toward improving the services in these institutions.

It will take time to develop adequate alternative services to hospital care. In view of this, it is most important that those interested in services for the retarded avoid the mistake of placing this issue in "either/or" terms. The state hospitals have, and will continue to have, a significant job to do. But they are not the *only* way in which the state should honor its obligation to this group of children.

HOW DO THE PARENTS FEEL ABOUT INSTITUTIONAL PLACEMENT?

In addition to analyzing information provided by agencies, professional persons, and organizations, the subcommittee has probed another dimension. Of major importance is the attitude of the individuals who use these services. What do parents of retarded children want the state to do? How do they view their problem, and what solutions are they seeking? The subcommittee attempted to find answers to these questions through correspondence with over 100 families with retarded children and a questionnaire answered by more than 1,200 families with children on the waiting list for state hospitals.

The results indicate that half the families most directly affected would like to have the state provide alternatives which are not now available.

Fortunately, and quite coincidentally, at almost the same time the subcommittee was conducting its research, another study was being carried out. On December 5th, Dr. Carolyn M. Fowle reported to the subcommittee the results of her study of 140 parents of retarded children.¹¹ Half of the families concerned had children on the waiting list and half had placed their children in Porterville State Hospital during the past five years. Dr. Fowle's observations provide further confirmation of the committee's findings.

In the face-to-face interviews conducted by Dr. Fowle almost 75 percent of the families stated a preference for a community-centered residential facility. In view of the timely significance

¹¹ Carolyn Fowle, *"The Effect of the Severely Mentally Retarded Child on His Family"* (unpublished doctoral dissertation, University of the Pacific).

of this new information, we will quote portions of Dr. Fowle's testimony:¹²

"... Of the 70 parents interviewed who had hospitalized their retarded child, 56 said they would prefer a community-centered residential facility. Of the other 70 parents interviewed who had their retarded child at home, 40 stated that they would like a small 24-hour facility closer to home than the present state hospital. It should be noted that the question was not worded, 'Do you favor such and such?', but rather the question was, 'What additional services would *you* like to have?' The responses were spontaneous, and seemingly this item generated more force than many of the others.

"In summary, the need for *community* residential care was the need most frequently mentioned by the 140 parents interviewed.

"It was my impression that for the most part retarded children are loved children; their families seem to care for them just as much as they do their other children—if not more. The parents are pained when they must send them off 150 to 200 miles to a large hospital; many parents do *not* want to forget their retarded children—they want to see them frequently—they want them in their own communities. Many parents are plagued by the fear that they are shirking their parental duties when they place their retardate miles away; if the child or young adult could remain in the families' own community, I feel the separation would not be so difficult.

"Generally speaking, the parents seem to want to include their retarded children in their family life whenever possible—and only if the child were in a community facility, would this be possible.

"Listen to a few excerpts from the parents' statements:

'It's so far to Porterville . . . we can't go very often . . . and I feel so guilty . . . sometimes it's so long in between that S. doesn't even recognize me.'

'I'll tell you institutions are not the answer—as institutions are now. If there were more and smaller, it would be different. We want S. to come home—but there's nothing for him here.'

'We didn't want S. to go to Porterville, but we couldn't take the expense. We didn't always live this way; before this all happened, we had a good home and five rooms of furniture. Just one year cost us over \$5,000; I finally had to take bankruptcy.'

¹² Testimony given by Carolyn Fowle before the Assembly Ways and Means Subcommittee on Mental Health Services. The hearing was held December 5, 1964, in Santa Cruz.

'I don't like huge institutions—you just feel you're letting someone else take care of your problems. Better to have smaller community facilities.'

'Well, there's no hesitation for me on what I'd like to see—community 24-hour care. We would like to see S. more often. The trip is really hard on us. We're older. Our car is older. There's so much traffic on Highway 99. If it were only 40 to 50 miles, we could go for a Sunday, or bring him home for a weekend.'

The second need most often stated by the interviewed parents was that of counseling. The occurrence of mental retardation in a family is usually an event in which the parents have had no previous experience in adapting to the problem. The dilemmas produced by the incident do not end but rather continue throughout the entire life of the retardate and his family members. Counseling only at the time of the diagnosis of the child seems to be insufficient. This was evidenced by the expressed need for counseling services by a significant number of the parents.

"It is believed that with available counseling services some parents would be able to cope with the presence of a retarded child without resorting to placement outside of the home. Parents sometimes stated that they just didn't know what to do, so they institutionalized; occasionally they were influenced by neighbors or relatives to do this. Again some statements:

'There was just no one to talk to—we took her to Porterville because we didn't know what to do. In two weeks we brought her home again.'

'You go down to the probation office . . . just fill out the forms . . . nothing is explained . . . you don't know if you're doing right or wrong. Even another parent would help . . . but they won't give out any names. So you're all alone.'

'A lot of times I just wish I had someone to talk to . . . It really helps me, but there is no one . . . I'd like to ask about Porterville. Do they ever get to come home again?' (Their child is one of those on the current waiting list.)

'People talk about you if you keep the child and they say you're sacrificing the other children. And then other people think you're awful if you put the child away, so you just don't know what to do.'

'There's nothing more hopeless than to have no place to go. We need a place for authoritative advice.'

"I knew very little of the plight of the parents of severely retarded children when I began this study; I inadvertently stumbled on to their overwhelming need for

community residential facilities, such as your committee is proposing. Perhaps, as one parent expressed, this study will indicate to you in some small way, the desire of many parents for community residential care for the retarded."

The evidence clearly indicates that many families would prefer and would use alternatives to the state hospital if they were made available.

FINANCIAL IMPLICATIONS OF THE PRESENT SYSTEM

The cost of constructing and the cost of operating state hospitals is the most expensive of all the alternatives the committee has investigated.¹³

THE COST OF CONSTRUCTION

The cost of building a state hospital facility for one patient is between \$15,000 and \$20,000.

In contrast, several excellent private agencies serving the retarded have reported to the subcommittee that their construction costs range from \$3,500 to \$7,000 per bed.¹⁴

Private agencies are able to build these facilities at lower cost than the state for several reasons: They can eliminate state administrative overhead, and because they are located in the community their "patients" are able to use community hospitals for acute illnesses, thereby eliminating the need to construct separate surgery, laboratory, and other very costly medical facilities now required in state hospitals. State hospitals are designed to meet the total needs of their patients and the resulting laundries, repair shops, surgeries, schools, etc., boost the cost of construction.

THE COST OF CARE

The average cost of caring for a retarded person in a state hospital is \$300-\$350 per month. (This figure does not reflect the cost of construction.)¹⁵

¹³ See appendix for a discussion and breakdown of hospital costs.

¹⁴ Testimony given by Dr. Dennis Marks before the Assembly Ways and Means Subcommittee on Mental Health Services at a public hearing at Sonoma Hospital, February 21, 1964, pp. 104-105.

¹⁵ See appendix, Table V, for detailed analysis of hospital operating costs prepared by Legislative Analyst.

In contrast we quote some statistics gathered in the subcommittee's survey of private agencies:

"Eight out of every 10 persons presently placed by their families in private facilities are being cared for at a cost of less than \$300 per month. The monthly rates being paid to the private institutions for the care of 1,429 children were broken down as follows:

- (a) 371 (25.9 percent) are maintained in private institutions at a cost of less than \$150 per month;
- (b) 790 (55.4 percent) are maintained at a cost of \$150 to \$300 per month;
- (c) 268 (18.7 percent) of the children are maintained at a cost in excess of \$300 per month.

Therefore, 1,161 (81.3 percent) are being maintained in private institutions at a cost of *less than \$300 per month*—the minimum cost necessary to maintain a child in a state hospital.¹⁶

The cost of care in nurseries and foster homes—even for profoundly retarded crib patients—was less than \$300 per month in over 90 percent of the facilities surveyed.¹⁷

Even though the retarded who are on the waiting list represent the more severely retarded in a community, over three-fourths of them are living at home. The cost of care very likely prevents many parents from placing their child in a private facility. However, the fact that such a large percentage are cared for at home may also indicate that with some type of assistance to the parents some of these children could continue to live at home, utilizing such services as day care centers and homemaker service, rather than being placed away from the family.¹⁸ (The cost of employing a "homemaker" 30 hours a week would cost about \$125 a month and a licensed vocational nurse about \$300 a month.)¹⁹

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It is clear that the cost of community care is generally the same or less than the cost of state hospital care.

¹⁶ See appendix for detailed review of costs in community residential facilities.

¹⁷ Supplementary Factual Report No. 1, *op. cit.*, p. 13.

¹⁸ Supplementary Factual Report No. 2, *op. cit.*, p. 5.

¹⁹ Information provided by State Department of Employment.

A HIDDEN STATE EXPENSE

At the present time the state provides and pays the total cost of all medical, recreational, educational, and child care services utilized by a child in the state hospital.²⁰

In contrast, retarded children living in the community are eligible for child welfare, medical, surgical, recreational and educational services provided by local public and private agencies.

Even more important than the cost savings to the state, the retarded child who is in a position to receive the same community services as all other children benefits from being assimilated into the mainstream of community life.

Most experts agree that services for the retarded should be in the community:

Stuart Knox, M.D.:

*"The medical profession feels that to be most effective, services must be continuous, close to home, and given as early as possible."*²¹

Mrs. Vivian Walter:

*"Even the most profoundly mentally handicapped (those requiring 24-hour nursing care) could be near to home in a wing of a private or county hospital."*²²

Richard Koch, M.D.:

*"By forcing parents to face state hospital placement, we predispose them toward emotional disturbances . . . we must not require hospitalization as a prerequisite for state services."*²³

California Department of Mental Hygiene:

*"The mentally retarded should receive general medical and psychiatric services from local resources as do other members of the community."*²⁴

There is general agreement, and the facts support the conclusion, that whenever possible *retarded children, who can be properly served in the community and whose parents prefer community services, should remain in the community.*

Financial and human welfare considerations all point to the need to extend state responsibility to include the provision of community-based alternatives to state hospitalization.



²⁰ Families or counties do contribute a token fee of \$20 per month.

²¹ Testimony given before the Assembly Ways and Means Subcommittee on Mental Health Services on behalf of the California Medical Association at a public hearing held in Los Angeles, October 2, 1964.

²² Testimony given before the Assembly Ways and Means Subcommittee on Mental Health Services on behalf of the California Council for Retarded Children at a public hearing held at Sonoma State Hospital, February 21, 1964.

²³ Testimony given before subcommittee at the Los Angeles hearing, October 2, 1964, *op. cit.*

²⁴ Department of Mental Hygiene, *A Long Range Plan for Mental Health Services in California*, March, 1962, p. D-18.

PART II: AN ALTERNATIVE SYSTEM



WE PROPOSE THAT THE STATE SHIFT ITS RESPONSIBILITY
FROM THE TIME WHEN THE CHILD ENTERS THE STATE
HOSPITAL TO THE TIME WHEN EXPERT DIAGNOSIS
ESTABLISHES THE FACT THAT SPECIAL CARE IS
NEEDED THAT THE FAMILY CANNOT PROVIDE

The result of the redefinition of state responsibility will be to expand the number of state-supported choices available to that group of children who are placed on the "waiting list" under current procedures. This group of children, about 5 percent of the retarded, has traditionally been accepted as a state responsibility. This proposed change will alter the *manner* in which the state provides help. It substitutes a flexible system for a rigid one.

The essential question to be answered in determining eligibility for state-supported services in the alternative system will be: "Is this a child whose needs and problems are such that he would normally be placed in a state hospital if no community based services are provided?" (It is further suggested that at the beginning, first priority will be given to those on the state hospital waiting list as of January 1, 1965.)

Under the provisions of the recommended arrangement, certain families would receive professional guidance and financial aid to help them in placing their children in privately operated and state-approved community residential facilities. Financial aid for visiting nurses, homemakers, and baby sitters, and day care services would also help many families to keep their children at home.

The subcommittee has received endorsement of this concept from many segments of the professional community as well as from the overwhelming majority of parents of retarded children who corresponded and testified.

The remainder of this report will discuss the specific steps necessary to develop the alternate system.

THE REGIONAL DIAGNOSTIC-COUNSELING-SERVICE CENTERS

WE PROPOSE THAT THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH BE GIVEN RESPONSIBILITY FOR ESTABLISHING STANDARDS AND FOR CONTRACTING WITH APPROPRIATE COMMUNITY BASED MEDICAL AGENCIES WHICH WOULD PROVIDE REGIONAL SERVICES, AND FOR TRANSMITTING STATE FUNDS TO THESE REGIONAL CENTERS FOR DISBURSEMENT ON BEHALF OF THOSE FAMILIES WHOSE CHILDREN ARE FOUND TO BE ELIGIBLE

In testimony before the committee, the Department of Public Health indicated its reactions to the committee proposal: ²⁵

"The Department of Public Health favors the first principle of the above proposal, namely 'that the state shift its responsibility from the time when the child enters the state hospital to the time when expert diagnosis establishes the fact that he needs special care his home cannot now provide.' This would be a major step forward, both toward curtailing unnecessary hospitalization and toward getting appropriate guidance to families and care to patients when these are urgently needed. Following this principle would also permit making the maximum, planned use of all private and public resources available for care of the mentally retarded.

"State support of regional diagnostic-counseling-service centers would provide on a statewide basis the highly skilled early diagnosis and counseling for such patients now available only on a limited basis. This type of comprehensive service has demonstrated its value as a means of meeting the need for prompt, definitive diagnosis and counseling as to proper care. It aids in minimizing the 'shopping around' which plagues so many families with a mental retardation problem.

²⁵ Testimony given by Dr. Breslow before the Assembly Ways and Means Subcommittee on Mental Health Services, Department of Public Health, at a public hearing in Santa Cruz, December 5, 1964.

"Administration of these regional centers would properly fit, as the proposal suggests, in the Crippled Children Services of the Department of Public Health. Placement here would permit taking maximum advantage of experience in developing specialized facilities for several types of handicapping conditions such as congenital heart disease, cerebral palsy and others. Developing of a high-quality service uniformly throughout the state is the pattern to be followed."

It has been estimated by public health officials that 10 such centers could provide service to the number of retarded persons needing service each year. The regional approach is the best way to, guarantee a uniform standard of service throughout the state and—as has been demonstrated by the Child Development Clinic of Los Angeles—traveling teams can effectively "reach out" to serve remote rural areas.²⁶

It is further recommended that at least two of the regional centers be based in medical schools and serve as research centers and manpower training programs for mental retardation specialists in the various disciplines.

The importance of the role of these centers in the development of the alternative system cannot be underestimated. Skillful *early* diagnosis and careful planning with the family is essential. The regional centers would provide diagnosis for *any* child suspected as being retarded.²⁷ *They would also carry responsibility for establishing the eligibility of retarded children for state-supported services and would assist families in placing these children in community facilities, state hospitals, or in caring for the child at home.*

Since publication of the committee's preliminary proposal in June 1964, several questions have been asked with regard to the organization of the proposed regional centers. While it is not possible in this report to deal with all the professional and administrative issues that have been posed, some of the major questions will be briefly discussed since the regional centers are of such critical importance in developing the alternative system.

²⁶ *For a description of the "traveling clinic" see "California Health", Vol. 19, No. 24, June 1962.*

²⁷ *The details and values of such clinical services are well established. See Public Health Programs for the Mentally Retarded in California (California Department of Public Health, March 1964). Also, The Evaluation and Treatment of the Mentally Retarded Child in Clinics, National Association for Retarded Children, 1956.*

QUESTION: *Why is the committee recommending that the centers be established under the jurisdiction of the Department of Health's Crippled Children's Services Division?*

In making this recommendation, the committee has been guided by the views of the majority of professional persons who have studied this matter.

The *California Medical Association* has indicated its concurrence; the *California State Department of Public Health* believes they are well equipped to do the job; the *American Academy of Pediatrics* has supported this proposal of the committee, as has the *California Council for Retarded Children* and the *California Study Commission on Mental Retardation*. The *California Department of Mental Hygiene* also recommended that this service be developed under Public Health auspices in their *Long-range Plan for Mental Health Services in California* (March 1962) and reaffirmed this position in 1963 in their special report to the Legislature, "*Legislation to Implement a Long-range Plan.*"

All these authorities indicate that the retarded should be integrated into the general health services of the community and that the Department of Public Health is ideally suited to accomplish this objective in the most effective and economical way. Some authorities have also cautioned against setting up a separate stream of psychiatrically oriented health services for these children, believing that to do so would further isolate the retarded from general health services and perpetuate a long-standing confusion between mental illness and mental retardation.

QUESTION: *Why does the committee use the term "centers"? Doesn't this term imply that the Department of Health would create new and separate clinics that may duplicate other existing community medical services?*

The committee uses the term "center" to express the concept of a *unified and coordinated* service in each region of the state. The Department of Public Health would not construct or operate any new clinics but would contract with existing agencies to perform the diagnostic counseling and other services required. These services may be coordinated under one roof or may be conducted through contractual arrangement with a federation of agencies—depending on the resources available in each region. Regardless of the arrangement employed, it would be the responsibility of the Department of Health to clearly determine the functions of each participating agency to avoid duplication and to assure that families will be served swiftly and without red tape.

QUESTION: *Are the regional centers just for the retarded?*

"Yes" and "no."

It must be kept in mind that the committee is primarily concerned in this proposal with the development of an alternate system for that 5 percent of the retarded who have been and will continue to be a state responsibility. Therefore state funds would be appropriated to contract for services which would enable the state to expand the types of services offered to this group of retarded children. In order to accomplish this objective, it is essential that the centers be staffed with people whose major activity would be devoted to this problem.

The difficult and complex problems of diagnosis, counseling, and servicing the retarded require specialized knowledge and interest on the part of professionals.²⁸

This does not mean that the regional centers cannot now or in the future be part of general purpose clinics which provide similar services for other handicapped children. But if they are integrated with general purpose clinics they must designate certain persons whose primary responsibility will be to execute the retardation program as defined by the state's Department of Public Health.

QUESTION: *The idea of "diagnostic counseling centers is not new. But the committee talks about "diagnostic counseling service" centers. What is meant by "service," and how would this work?*

Diagnostic and counseling centers for the mentally retarded are becoming more available throughout the nation, but a common weakness in these programs is that when, after diagnosis, it is determined that a child needs specialized care his family cannot afford, the state hospital remains the only practical referral. (There is only limited value in providing a better diagnosis if the end result is still the same.)

The committee views the regional centers as the appropriate agency to supervise the community treatment program prepared for the child as a result of the diagnosis. This view is consistent with the Department of Health's concept of the "one-door" approach, as opposed to a fragmented approach where families

²⁸ Many doctors are too quick to classify children as mentally retarded. In two years 800 children, supposedly backward, were sent for observation to the University of Oklahoma Child Study Center. After thorough testing, 373 of these 800 were found to be normal or near normal, and 5.4 percent actually checked out as superior on intelligence tests. Warns Dr. Harris D. Riley, Jr., professor of pediatrics: "It is imperative not to use lightly the diagnosis of mental retardation, since few misdiagnoses can be so catastrophic."

are referred to a variety of agencies, each handling a small piece of the problem. The fragmented approach is more expensive, confusing, and is impossible to administer effectively.

For these reasons, the committee's proposal includes the provision of funds to enable the regional center to employ enough staff to diagnose, to counsel, *and to supervise the treatment and child care services required by children who require specialized care. About 50 percent of the personnel budget allocated for each center would be used to carry out this activity.*

Under provisions of this system, the State Department of Public Health would provide funds to each center to be used by the service team to assist families in purchasing homemaker, foster care, day care, residential services, etc., as alternatives to state hospital placement. The service team would help the family select the proper service, would periodically review the child's progress, would assist the family in any required change of services, would help the family make maximum use of the services and funds available, and would continue to serve as case management consultants to the family as long as state funds are being used to help purchase services for the child.

In this manner diagnosis, counseling, treatment and professional supervision would be integrated into a single system which eliminates duplication. This pattern has been well established in the Crippled Children's Services Program. The only difference in this instance would be the use of a few regional centers rather than 58 county health departments. (The county health department would still serve as a major community resource if the regional center finds the child needs services available through that agency.)

This new method of organizing services for the retarded would be a significant departure from our present system. The committee is proposing the establishment of a totally "new track" which must be very carefully tested and evaluated during the first year or two. For this reason, the committee suggests that although more centers may be ultimately needed, two should be established at the present time—one in southern and another in northern California on a pilot basis. The new system should be very carefully evaluated for the purpose of providing the Legislature evidence of the value of this alternative to state hospitalization.

Personnel for the two pilot centers would cost roughly \$300,000. About half the funds would be needed to pay for diagnostic-counseling work with 600-700 new cases; the balance of the funds would provide salaries for service staff to assist about 500 families—whose children would otherwise go to state hospitals—in finding and supervising home or community residential care. To staff the regional centers with personnel to

place children in community facilities implies providing funds to assist families in making such placements.

The yearly cost of purchasing home or community care for about 500 children is estimated at \$1,200,000. (In contrast, the cost in the state hospital would be about \$2,000,000—excluding the cost of construction.)

Since there are now at least 1,000 retarded children on the state hospital waiting lists whose families would prefer community care, and since the new system may take six to eight months to become fully operative, the committee further recommends that the Department of Mental Hygiene be allocated additional funds up to \$500,000 to expand its "private placement" program as an expedient measure to create space in the hospitals for urgent cases on the waiting list.

Since 1961 the department has been allocated \$250,000 each year to contract for private care for 115 hospitalized patients. The authorization for this program is provided in the State Welfare and Institutions Code, Section 6726.6:

"Any patient may be placed for leave of absence for care in a licensed hospital or other suitable licensed facility. The Department may pay for such care at a rate not exceeding the average cost of care of patients in the state hospitals as determined by the Director. Such payments shall be made from funds available to the Department for that purpose or for the support of patients in the state hospitals."

The following dialogue between Chairman Waldie and Anderson Pollard took place at the committee's public hearing on October 2, 1964, and documents the feasibility of expanding the department's private placement program:

MR. ANDERSON POLLARD: I'm Anderson Pollard. I'm the supervising program consultant for the Bureau of Private Institutions of the Department of Mental Hygiene. We receive all complaints in our department that affect our licensed facilities, and to my recollection we have received about two complaints from relatives who were dissatisfied with the placement of patients from a state hospital into private facilities.

CHAIRMAN WALDIE: Out of how many placements?

MR. POLLARD: I don't know how many placements there have been.

CHAIRMAN WALDIE: Have there been a hundred?

MR. POLLARD: I believe there have been over 100, and out of this we feel that two complaints is pretty minimum.

CHAIRMAN WALDIE: Do you have anything to do with the licensing of the private facilities we have been using during the past four years? The program on which we are spending a quarter of a million dollars a year for private care of the retarded?

MR. POLLARD: Yes, we do. We license all the facilities for the mentally retarded.

CHAIRMAN WALDIE: What experience have you had with that?

MR. POLLARD: We've had a very favorable experience. When the program first started we found few facilities that wanted to participate, but now we have a surplus of facilities. We have a large number which we have certified. By certified I mean that certain standards, certain criteria above the basic minimum licensing standards were asked for these particular facilities. We have a large list with a great many vacancies waiting, just anticipating that this program will expand.

CHAIRMAN WALDIE: Have you had complaints from parents of children who have been in those institutions?

MR. POLLARD: When the program first started in 1962, the program was new, we ran into problems, we received a few complaints, not from parents but from the state hospitals, social workers, who were involved in supervising these children. Since that time I feel that the program has been very successful. We have received compliments on it, and as I said, we are anticipating a time when this can be expanded.

CHAIRMAN WALDIE: How many children have been placed?

MR. POLLARD: Not even 120.

CHAIRMAN WALDIE: And these were 120 children that would have been in a state hospital? These are children that were taken from the state hospital and placed in private institutions?

MR. POLLARD: Placed directly in private facilities, yes.

The suggestion to expand the department's private placement program is not an alternative to creating a system to bypass the state's hospitals. But by relocating some patients, immediate relief can be provided for urgent cases now on the hospital waiting lists.

In summary, during the first full year of operation, the committee's proposals would create a new system for diagnosing and counseling 600-700 new cases and could provide for community

care of 700-800 persons who would otherwise require state hospitalization. The total yearly cost would approximate \$2,000,000. (The yearly cost of care in state hospitals for 700 patients is \$2,400,000—excluding construction costs.)

If the committee's proposals regarding improvements in the standards and licensing system are also approved, an additional \$30,000 to \$50,000 may be required.

STANDARDS—FEES—LICENSING—INSPECTION

Since the alternative system would expand the use of community-based facilities by the use of state funds, it is absolutely essential that these facilities be of good quality.

The subcommittee received considerable testimony in support of new and more effective machinery to assure a better quality of service in community facilities.

Some existing community facilities are excellent and others are poor. There is no uniformity at present. The regional centers should be able to assist families to use services which will meet only the highest standards in much the same manner as the Crippled Children Program is now able to refer families to an approved physician for medical services.

Increased use of community facilities would pose problems in setting standards, rates, licensing and inspecting. The present system in California is not good. There is general agreement that we must considerably improve quality control if we are to use public funds to support children in private facilities.

On December 5 the subcommittee heard testimony from the San Francisco Coordinating Council on Mental Retardation. (This council represents 40 public and private agencies concerned with planning for the retarded.) They stated:

"The coordinating council has firmly endorsed centralized licensing and standard-setting for private facilities.

"The multidisciplinary standard-setting, licensing, and inspection machinery to establish standards and insure a high quality of service we believe to be essential. It is also essential that this machinery be separated from any one functional agency since standards and procedures are currently totally confused through the number of licensing organizations, their particular jurisdictional lines and emphases. The present procedure increases rather than decreases poor quality of service.

"Therefore, the council urgently recommends enactment of the organization proposal for a multidisciplinary standard-setting team independent of any existing functional agency."

At this same hearing the California Council for Retarded Children, an organization representing thousands of families with retarded children in California, made the following comments:

*"In our view the most urgent need is the establishment of a multidisciplinary standard-setting, licensing, and inspection body."*²⁹

Many witnesses have indicated that confusing licensing procedures, and the fact that many different agencies have different requirements for licensing, complicates and hampers the development of additional privately operated facilities.

*"There is an extremely high mortality rate among original inquiries offering to supply foster home care. Only 1 out of 10 who apply are licensed to take children. One of the policies that limits the kind of home acceptable for licensing is the 'principle of only accepting facilities with first floor bedrooms for patients.'*³⁰

*"The problems of finding foster homes is complicated not only by a lack of funds for persons under 18, but also by rigid licensing regulations. 'For example, certain homes required that the children all be boys or all girls, or that they be ambulatory or nonambulatory, or that they fit into cribs of certain sizes.'*³¹

*"You now have in any community the Youth Authority, the Veterans Administration (which pays \$175, and therefore beats us all in terms of money available), the child welfare programs of the various county welfare departments, the juvenile courts, and the Department of Mental Hygiene, and the Department of Social Welfare all out hunting homes. One of the major needs for this state is to get into some kind of more coordinated approach."*³²

At the present time, in California, different agencies (and even different bureaus within the same agency), set different standards, pay different rates, and have different licensing and inspection procedures. It is a bureaucratic tangle that defies all logic.

Hopefully, the Legislature will eventually solve the entire problem, but until a completely revised system has been created,

²⁹ Testimony given by Fred Krause, executive secretary for C.C.R.C., before the Assembly Ways and Means Subcommittee on Mental Health Services at a public hearing in Santa Cruz, December 5, 1964.

³⁰ Testimony given by William Wilsnack (D.M.H.), before the Assembly Ways and Means Subcommittee on Mental Health Services at the Sacramento public hearing, March 26, 1964, pp. 21-22.

³¹ Testimony given by Mrs. N. England, Sacramento Community Welfare Council, before the Assembly Ways and Means Subcommittee on Mental Health Services at the Sacramento public hearing, March 26, 1964, pp. 40-41.

³² Testimony given by Mrs. Elizabeth MacLatchie, Department of Social Welfare, before the Assembly Ways and Means Subcommittee on Mental Health Services at the Sacramento public hearing, March 26, 1964, pp. 35-36.

it is essential to make several immediate changes if the alternative system for the retarded is to develop properly.

The committee recommends that:

- a A Director of Mentally Retarded Care Standards position should be established under the State Health and Welfare Administrator.
- b It is recommended that the director's office be permitted to contract for consultation from experts in education, child care, pediatrics, nursing care, institutional management, etc. (In this way it will be possible to secure expert advice from the nation's leading authorities.) Standards should be established that insure that the total needs of various categories of retarded children will be met.
- c It is recommended that an advisory committee whose membership shall include parents of the retarded and directors of private agencies rendering services for the retarded be established to review and to advise the director in establishing standards for various kinds of care.
- d It is recommended that the Director of Mentally Retarded Care Standards have the additional responsibility of fixing rates which will enable private agencies to meet the recommended standards, including the cost of amortizing their capital investments. (*Rates and standards must be viewed as inseparable and the state should be prepared to pay for high-quality services.*)
- e It is further recommended that the proposed regional centers not refer families to, or use public funds to help pay for, services in any community facility which does not meet the standards established by the coordinator's office—*regardless of any other licenses the facility may hold*. (This means that the regional centers would only "do business" with individuals and agencies whose services are of guaranteed quality and who agree contractually to adhere to the standards required for participation in the program.)
- f *The staff of the regional centers should be required to periodically visit each child the center has helped place in a community facility. The purpose of this visit is twofold—to evaluate the child's progress and condition and to review the agencies' compliance with standards.*
- g It is also recommended that parents of children placed through the regional centers immediately report to the

regional center any unfavorable conditions they may find when visiting their children. If the regional center has any evidence that an approved facility is negligent in complying with their contractual agreement, and so recommends, state support funds should immediately be withdrawn for all children in that facility.

It may be argued that insistence on high standards may inhibit the use of many private community facilities and retard the rapid development of the alternative system. This may be true, but in the committee's judgment it is essential that the new system start off properly. Experience in other programs has shown that it is very difficult to correct inadequate programs once they have been established and have gained momentum.³³ In beginning the alternative system for the retarded it is possible to avoid past mistakes.

It may also be argued that the proposed new standards and fee schedules will not solve the existing duplication of state activity in this field but will only increase the multiplicity of agencies involved. It is quite true that the committee's proposal will not solve some of the long-standing anachronisms in the organization of California's licensing programs. But to wait for a resolution of that entire problem would mean authorizing the use of substandard facilities in this new program—a risk the committee is not willing to consider.

Hopefully, the proposed new system of standards will have the effect of forcing standards in other programs to rise. Quite possibly, in the future, standards for all mental retardation programs, including our state hospitals, will be governed by the same machinery.³⁴

³³ *Our recent experience in the field of nursing home care for the aged provides many lessons. (See final report, Assembly Ways and Means Subcommittee on Institutions, 1965.)*

³⁴ "It is worthy of note that by long established tradition state institutions are exempt from the requirements of law pertaining to child care. The state institutions must obey the law concerning licensing of motor cars or gasoline pumps or dogs, but what the state demands in essential standards from private child care institutions it does not demand from its own state facilities serving children. The question here is not on the technical aspects of applying for and securing a license but rather on the essence of the licensing process . . . the protection of children. Thus a mode of accrediting state residential facilities for the mentally retarded will create a means wherein the state meets its ethical responsibilities." *Accreditation of Residential Care Facilities for the Mentally Retarded*, Gunnar Dybwad, J.D., Executive Director, National Association for Retarded Children, presented at American Association on Mental Deficiency, Portland, Oregon, May 1963.

GUARDIANSHIP IN THE NEW SYSTEM

As the California Study Commission on Mental Retardation points out, "There is no more poignant or challenging question than the cry of the parent: 'What will happen to my retarded child when I am no longer able to care for him?'"³⁵ The state hospital—because of its permanency—has provided an answer. The subcommittee has received considerable testimony indicating that although many families would like an expanded use of home care and private community care, they are anxious about the long-term stability of these alternative arrangements:

*"We must provide a legal guarantee for continuity of care if we establish the private residential plan."*³⁶

*"There is a deep concern that we will detract from the stability and inherent protection provided by the state in a hospital with continuity of care and protection for these children after the parent has gone."*³⁷

*"The hospital is seen by the parent as a stable and permanent institution. The foster home, on the other hand, is a private enterprise that may go out of business for a variety of reasons. Parents of children in foster homes must always be concerned with the possibility of its closing necessitating the relocation of the child."*³⁸

THE COMMITTEE RECOMMENDS THAT GUARDIANSHIP BE AVAILABLE AS PART OF THE NEW SYSTEM

In order to provide families with full assurance of continuity of care for their retarded children, it is essential that whenever the state assumes responsibility, either in a state hospital or in a community facility, that, upon parental request, the state will agree to supervise the care of that child after the parents are no longer able to participate.

The committee is recommending a shift in the time and form of state responsibility. But the content of state responsibility—

³⁵ Report of the California Study Commission on Mental Retardation, *The Undeveloped Resource* (State of California: January 1965), p. 77.

³⁶ Testimony given before the Assembly Ways and Means Subcommittee on Mental Health Services by Mrs. Vivian Walter at the Sonoma public hearing, February 21, 1964.

³⁷ Testimony given before the Assembly Ways and Means Subcommittee on Mental Health Services by Mrs. Bess Hearne Toretsky at the Los Angeles public hearing, October 2, 1964.

³⁸ Letter to committee from Ronald L. Hunt, December 21, 1964.

our collective permanent concern for the well-being of the dependent individual—remains.

Notwithstanding any other guardianship services now available or any which may be created in the future, the committee recommends that families be permitted to transfer personal guardianship of their children to the Director of the California State Department of Public Health after their child has been screened by a regional center. The Director of the Public Health Department will carry out his responsibility for the proper placement of the retarded person through the regional center.

Under provisions of this system, the regional center, which has diagnosed the child and worked with the parents during their lifetime, will continue to provide supervision regarding the appropriate placement of the child after the death of the family.

It is reasonable that the child should not have to be moved to the state hospital from a community facility where he is doing nicely just because his parents have died.

It is also logical that the regional center, where the child is known and which is staffed by mental retardation experts, should continue to supervise his placement rather than transfer responsibility for his future care to some other agency.

The fact that a child may be moved from one foster home to another would have the same significance in the suggested program as if a child in a state hospital was moved from one hospital ward to another. The continuity of knowledgeable concern and supervision would be provided by the regional center and the stability of the State Department of Public Health would provide the same assurance of lifetime care as is now available through the Department of Mental Hygiene's state hospitals.

Furthermore, if after the parents' death, the regional center should determine that the retarded person will benefit from being moved from a community facility to a state hospital, such a transfer can be effected. (The state hospital will still remain one of the choices, but the decision to place in the state hospital will be made because the retardate *needs* state hospital services not because it is the only stable agency providing long-term care.)

* * * * *

The foregoing proposals do not attempt to answer all the many questions posed to the subcommittee during the past year. There is the issue of parental participation in the cost of care; the issue of relating the new system to older existing programs; the matter of coordinating other community services—such as education, recreation, etc. The subcommittee has attempted to develop a simple, direct answer to a chronic state problem. The proposed new system should be studied carefully during its first two years.

The system is flexible enough to be integrated into any comprehensive program for handicapped persons which may develop in the future. The proposed system does provide alternatives to state hospital care for those who seek alternatives. The subcommittee is convinced the proposal is professionally sound and economically advantageous.

APPENDIX

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STATE HOSPITAL CONSTRUCTION COSTS

The expense of building state hospitals is illustrated in Tables I and II. The estimates for these projections are based on information developed by the Department of Mental Hygiene and the Department of Finance and reported in Hospital Bed Needs for Mentally Retarded Patients in California—1963–1968.¹

The department's estimates for bed needs are based on a formula of 80 state hospital beds for the retarded per 100,000 state population. This estimate was developed by adding the number of persons in the state hospitals and the number of persons on the waiting list and comparing this sum to the total state population. The result is a projection of the number of beds per 100,000 population that will be needed.

The estimate of 80 beds per 100,000 population, however, must be considered as a minimum estimate of the facilities needed because the critical factor in preparing the projection (the present hospitalized population) is limited by the number of services now available. (For example, if there were more state hospital beds available, the number of persons in the state hospital would be higher, and an estimate of future beds needed based on the present hospital population would yield a higher figure.)

Also, the characteristics of the waiting list are affected by the services that are available. Since there are fewer beds available than there are persons who need some form of specialized care, an administrative decision is made as to who goes on the waiting list and who does not. Those who are designated as being in most urgent need of specialized care are placed on the waiting list, while those whose needs are relatively less urgent are not placed on the waiting list. They are therefore not counted in the estimates of beds needed per 100,000 population.

Table I shows the state hospital population increase from 1955 to the present, and projects the population figures from the present through 1968 on the basis of the 80 beds per 100,000 population estimate. It also shows the steady rise in the support expenditures for the hospitals, and projects the minimum support budget which would be required to operate the number of beds estimated to be needed by 1968.² This table indicates that by 1968 the support budget would have to be raised from the present \$44.7 million to at least \$55.8 million. The state would also have to increase the number of state hospital beds from the present 13,000 that are now available to 16,170.

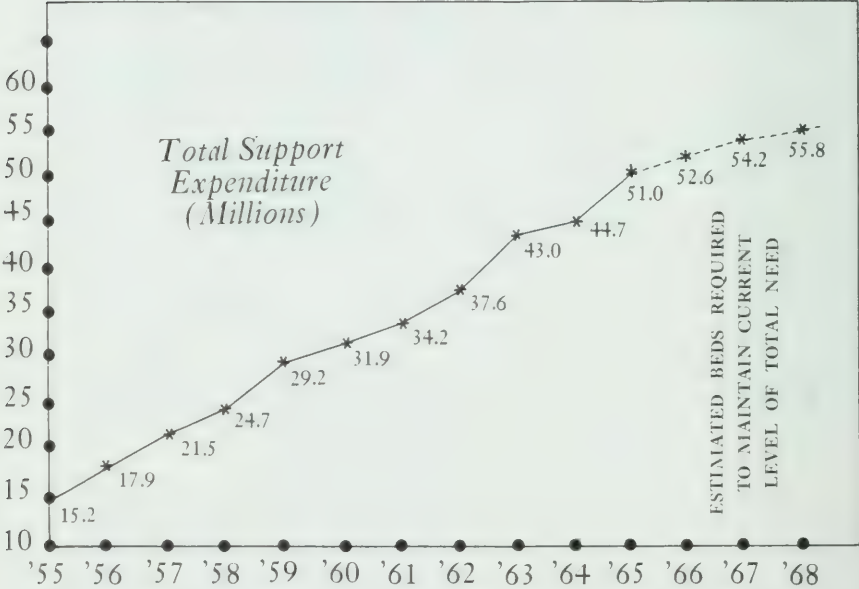
¹ *Biostatistics Bulletin No. 32, Department of Mental Hygiene, May 1963.*

² *Statistics provided by the California Legislative Analyst's office.*

Table II shows the capital outlay California has expended since 1955 for the purpose of building hospital beds for the retarded. The projected construction cost estimates are based on the Department of Mental Hygiene figures which report that the cost of construction of a 500-bed hospital would run between \$6,000 to \$20,000 per bed, with an average cost of \$15,000 per bed.

TABLE I

STATE HOSPITALS FOR THE MENTALLY RETARDED
HOSPITAL POPULATION AND SUPPORT EXPENDITURES



	'55 TO '61						
Hospital Population:	8,527	9,185	9,415	10,004	10,879	11,427	11,561
Per Capita Cost:	1,788	1,949	2,285	2,471	2,683	2,790	2,962
	'62 TO '68						
Hospital Population:	11,910	12,500	13,000	14,796	15,248	15,706	16,190
Per Capita Cost:	3,326	3,439	3,436	3,500	3,500	3,500	3,500

TABLE II

**CAPITAL OUTLAY FOR STATE HOSPITALS
FOR THE MENTALLY RETARDED**

Annual Outlay		Total Investment
Before 1955	-----	\$46.1 million
1955	\$4.2 million	50.3
1956	5.1	55.4
1957	1.3	56.7
1958	3.9	60.6
1959	4.8	65.4
1960	1.5	66.9
1961	2.9	69.8
1962	0.7	70.5
1963	2.5	73.0
1964	0.6	73.6 present investment

PROJECTED OUTLAY

Estimated	{	1965	\$47.6 million
3,170 more beds		1966	
needed to maintain		1967	
current level *		1968	

* (An additional complication results from the fact that over $\frac{1}{3}$ of the existing 13,000 state hospital facilities are considered by the department to be substandard and in need of replacement.)

A REDEFINITION OF THE NEEDS OF THE RETARDED POPULATION

The results of a study done by the Department of Mental Hygiene and reported in *A Survey of Patient Needs for Residential Care and Assistance*³ indicates the potential for the use of facilities other than the state hospitals for caring for the retarded. This survey included all of the retarded who were in the hospitals and on the waiting list during the first few months of 1963. In doing this study, the Department of Mental Hygiene tried to determine the type of residential care most appropriate for each patient. The determination of the most suitable type of residential care facility was made according to the need of the patient, regardless of whether or not such a facility existed in the community at the time of the survey.

There were four categories of residential care utilized in the study:

- 1 HOSPITAL CARE—the patient needs placement in a hospital for intensive treatment for medical, surgical, or psychiatric services.
- 2 24-HOUR NURSING HOME CARE—the patient needs placement in a nursing care environment with occasional medical, surgical, or psychiatric assistance.
- 3 FOSTER HOME CARE—the patient's needs could be most adequately met in a home other than the patient's own home or that of a close relative.
- 4 HOME CARE—the patient could benefit most by placement in the home of parents, siblings, or other close relatives.

OTHER—a category used only where previously defined categories did not apply.

Each one of the patients in the state hospitals and on the "waiting list" to a hospital was placed in one of the above categories. The results of the survey are presented in Table III.

³ *Biostatistics Section Bulletin No. 34, Department of Mental Hygiene, Research Division, August 1963.*

TABLE III

Type of residential care most appropriate	Population	Percent
1. Hospital care	5,129	36.7
2. 24-hour nursing care	3,837	27.5
3. Foster home care	3,882	27.8
4. Home care	1,114	7.9
5. Other	16	0.1
TOTALS	13,978	100.0

The most significant fact brought to light in this study is that less than 40 percent of those who were in the state hospitals or on the "waiting list" were placed in the category of needing hospital care. Over 60 percent of the patients studied could have their residential care needs more adequately met in a setting other than a hospital. The importance of these findings is most significant in terms of the change in emphasis which must be made in future state planning. Not only is the hospital bed building approach an expensive way for the state to provide services for the retarded, but it is a method which does not fulfill residential needs for the patient in the most satisfactory way in over half of the cases.

Since the publication of Biostatistics Bulletin No. 34, the Department of Mental Hygiene has redefined the original four categories of residential care needs and grouped the patients into two broader and more general categories. Table IV shows the manner in which the reclassification was accomplished and indicates the two broad categories from which the department now projects future bed needs.⁴

⁴ The most recent projection of hospital bed needs published by the Department of Mental Hygiene based on the regrouping of the categories found in Biostatistics No. 34 may be found in the Department of Mental Hygiene's Tentative Proposal for a Five-year Program, October 5, 1964.

TABLE IV

**BIOSTATISTICS NO. 34
CATEGORIES (1963)**

Type of residential care	Population
Need hospital care	5,129
Need 24-hour nursing care	3,837
Need foster home care	3,882
Need home care	1,114

REDEFINED CATEGORIES (1964)

Type of residential care	Population
Need hospital care	8,966
Need residential care (other than hospital care)	4,996

TOTAL

13,962

The redefined "need hospital care" category shown in Table IV is a combination of the "need hospital care" and "need nursing care" categories used in Biostatistics Bulletin No. 34. The redefined "need residential care" category is a combination of the "need foster home care" and "need home care categories" of Biostatistics No. 34. These *redefined* categories modify the impact of the findings of Biostatistics No. 34, for upon redefinition the department now believes 64 percent of the patients in state hospitals and on the waiting lists need hospital care as compared to the 37 percent listed as needing hospital care a year ago.

In the Department of Mental Hygiene's *Tentative Proposal for a Five-year Plan*, the department projects state hospital bed needs for the retarded in California on the basis of the figures in the redefined categories. The accuracy of these projections rest on the assumption that all who are in the redefined "need hospital care" category are, in fact, in need of hospital care. There is some evidence to indicate, however, that many of those who were in the original "need 24-hour nursing care" category and are now redefined as needing hospital care, could actually be cared for very adequately in community facilities. (The department has conducted what they believe to be a successful program of placing persons who were categorized as "needing nursing care,"

into family care nursing homes where they are "making a very satisfactory adjustment.")^{5, 6}

The classification of patients according to their residential needs as is done in Biostatistics No. 34 and in the department's *Tentative Proposal* represents a more sophisticated approach to planning services for the retarded. Even though the exact number of persons actually needing hospital care rather than other types of residential care could not be precisely estimated in either of the reports, both reports point out the need for the development of residential services which can serve as alternatives to state hospitalization.

⁵ A letter to the subcommittee from Dr. William Beach of the Department of Mental Hygiene on October 9, 1964, stated that placements from the state hospitals into private nursing homes have resulted in the majority of the patients being correctly placed: "The key to successful placement lay in the careful selection and screening of facilities and patients. A period of intensive followup supervision immediately after placement was also indicated to facilitate adjustment. When this has been done the adjustment of those placed appeared to be adequate, with the facilities currently caring for patients rendering satisfactory to excellent care."

⁶ There is one additional problem in the projections for bed needs in the department's *Tentative Proposal*. In addition to the patients in the hospitals and on the waiting list who are included in the redefined "need hospital care" category, the department also includes in their figures some 650 retarded who are now residing in private nursing homes. A survey of private facilities conducted by the subcommittee found that 51.3 percent of those in private nursing homes were also on the waiting list. As a result, over 300 retardates are being counted twice in developing projections for state hospital bed needs.

TABLE V

EXAMPLE OF COSTS OF CARE IN A STATE HOSPITAL

SONOMA STATE HOSPITAL

Monthly Per-patient Costs *

JOHNSON WARD

(138 patients)

Crib patients—adult

Actual cost,
April 1964

Comments

\$155.64 Cost would have been
\$222.23 if fully staffed
as classified0.72 Based on fractional
time by more than
one employee

0.42 Same as above

No psychology services
given to this ward2.06 Ward physician devotes
0.2 of his time

CORCORAN WARD

(92 patients)

Crib patients—children

Actual cost,
April 1964

Comments

\$171.71 Cost would have been
\$221.91 if fully staffed
as classified0.34 Based on fractional
time by more than
one employee

0.11 Same as above

0.21 One psychologist devotes
0.02 of his time to this
ward4.25 Ward physician devotes
0.25 of his timePersonal Services¹

1. Ward nursing staff

2. Rehabilitation services

3. Social services

4. Psychology

5. Ward physician

6. Administrative and supervisory	2.43 Comprise of supervising nursing service personnel, plus assistant and associate superintendents	6.06 Same as Johnson
7. Public health (hospital per capita)	0.70	0.70
8. Clinical services (hospital per capita)	1.79	1.79
9. O.D. (hospital per capita)	1.32 Physician on 24-hour call for all wards	1.32 Physician on 24-hour call for all wards
10. Miscellaneous care and welfare services (hospital per capita)	3.86 Pharmacy, X-ray labs, EEG, dental, etc.	3.86 Same as Johnson
11. Support and subsistence (hospital per capita)	11.77 Food preparation, laundry and clothing personnel	11.77 Same as Johnson
12. Plant operation (hospital per capita)	12.86 Hospital maintenance personnel	12.86 Same as Johnson
13. Administration (hospital per capita)	12.75 Nonmedical administrative personnel	12.75 Same as Johnson
Gross salaries and wages	207.34	227.73
Staff benefits (9.2)	19.08	20.95
Total—Personal services	226.42 Cost would be \$299.13 if ward fully staffed as classified	248.68 Cost would be \$303.50 if ward fully staffed as classified

OPERATING EXPENSES

14. Hospital per capita

MISCELLANEOUS

15. Central office
administration

16. Depreciation on
improvements and
equipment

17. Interest on capital
investment

18. Premium on auto
insurance

19. Attorney General's
charges

20. State administrative
overhead

21. Workmen's compen-
sation

Total miscellaneous

JOHNSON WARD (138 patients)

Crib patients—adult

Actual cost,
April 1964

Comments

44.18

6.40

11.23

14.75

0.05

0.12

3.76

4.24

\$40.55

CORCORAN WARD (92 patients)

Crib patients—children

Actual cost,
April 1964

Comments

44.18

6.40

11.23

14.75

0.05

0.12

4.12

4.24

\$40.91

Recapitulation

Personal services (1 through 13)	\$226.42	\$248.68
Operating expenses (14)	44.18	44.18
Miscellaneous (15 through 21)	40.55	40.91
Grand total	\$311.15	\$333.77
	\$384.93 if fully staffed at classified level	\$389.36 if fully staffed at classified level
Estimated 1963-64 monthly hospital per capita cost— Sonoma (all wards)	\$328.00	

¹ Cost figures for 1 through 8 are based on the actual gross payroll checks dated May 1, 1964, for the hospital employees assigned to the wards surveyed. The remaining cost figures are based on data appearing in the Governor's 1964-65 Budget and/or information furnished by the Department of Mental Hygiene.

In addition to the above costs, each of the three wards makes use of acute hospital services when the need arises. These services are, of course, more expensive than ward care. The following indicates the extent to which acute hospital care was required for the past six months.

Acute Hospital Care (Six-month Totals)		
Ward	Number of patients	Total patient-days
JOHNSON	10	325
CORCORAN	13	275

COST OF COMMUNITY RESIDENTIAL SERVICES

The costs of community services that can be used as alternatives to state hospitalization are less easily estimated than the costs of state hospitalization.

On the basis of the studies and hearings conducted by the subcommittee, however, some rough estimates regarding the costs of some alternative services can be made.

The results of a survey of private residential facilities done by the subcommittee are presented in Table V. This study indicated that about 8 out of 10 retarded who were in these facilities at the time of the survey were being cared for at less than \$300 a month. It can be seen, however, that there are differences in the costs of private care, depending on the type of facility being utilized.

In addition to these studies, testimony given before the subcommittee at its hearings gives further indication of some of the costs of community care. The Department of Mental Hygiene now spends about \$165 per month for the foster home care of the retarded who are included in their "aftercare" program. (This includes administrative overhead.) If a retarded person is eligible for welfare support, however, the fees paid by some counties for foster care may exceed this amount.¹¹ (Fees in excess of \$175 per month paid by governmental agencies for the purpose of placing the retarded in foster care facilities appear to be the exception, and not the rule.)

Under the present system any discussion of the true cost involved in subsidizing the placement of persons in community facilities is open to question. The system, as it now exists, requires that any parents wanting to place their child in a residential facility other than a state hospital must pay the fees.¹² The rate of utilization of private facilities is high only among the higher income families (see Table VII).¹³ The rates charged by private

¹¹ At a public hearing in Santa Cruz, December 5, 1964, in testimony given before the Assembly Ways and Means Subcommittee on Mental Health Services, it was pointed out the Santa Clara County Welfare Department has paid over \$300 per month for support of children in private residential schools.

¹² The only exceptions are children whose parents are on welfare and children placed out of the state hospitals on aftercare basis, in which case the state pays for the placement.

¹³ Supplementary Factual Report No. 2 indicates that rate of utilization of private facilities increases significantly in families with a yearly family income in excess of \$10,000. (See Table VII.)

facilities tend to reflect the amount which these agencies know parents can afford, rather than a fee which is truly equitable. As one witness stated, "Due to a lack of funds on the part of a majority of parents, most private facilities are forced to keep their fees at a bare minimum. Therefore, we should not set our fees according to costs as they now exist."¹⁴

¹⁴ Testimony given before the Assembly Ways and Means Subcommittee on Mental Health Services by Mrs. Mary Jeffrey at a public hearing in Los Angeles, October 2, 1964.

TABLE VI
 COST OF CARE PER MONTH
 IN PRIVATE FACILITIES

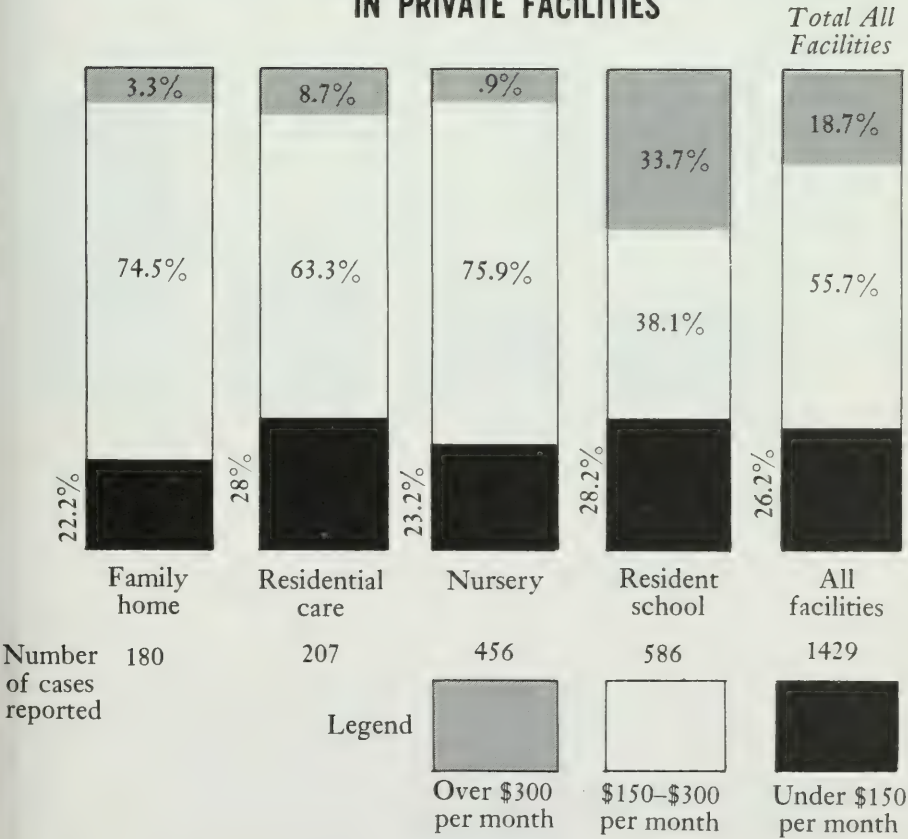
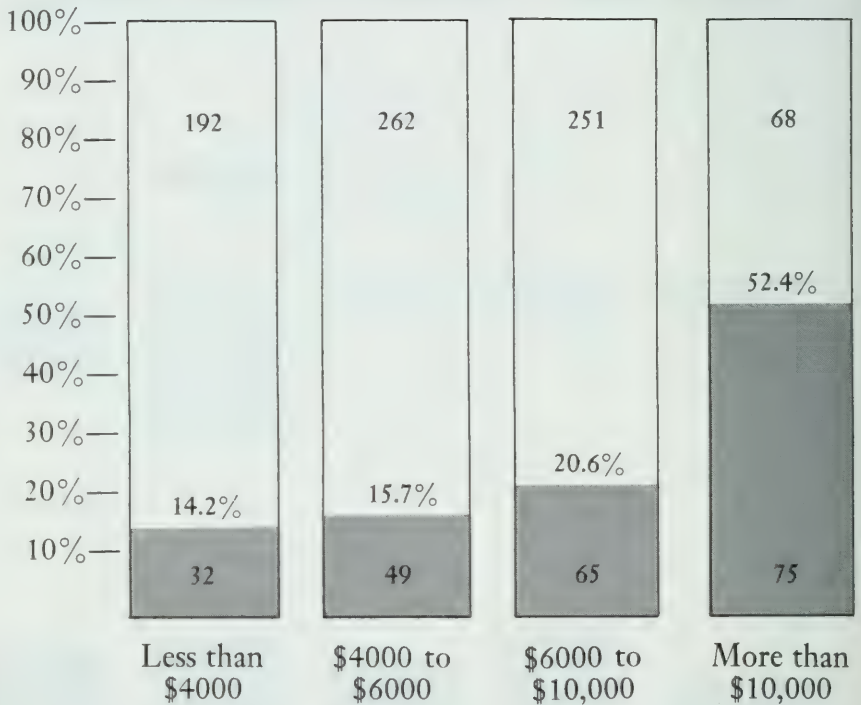
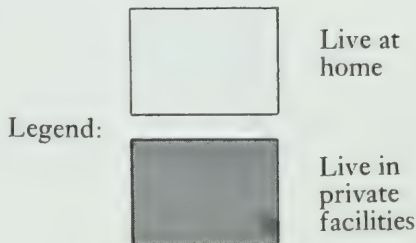


TABLE VII

RATE OF UTILIZATION OF PRIVATE FACILITIES BY INCOME GROUPS



YEARLY FAMILY INCOME



The foregoing indicates that although there is a great deal of evidence supporting the notion that community care is less costly than care in a state hospital, caution must be exercised in trying to state the case too strongly. If the state is to adopt a system which subsidizes placement in community facilities, then fees which reflect the true cost of good service will have to be established. The result may be an increase in the fees as we now know them.

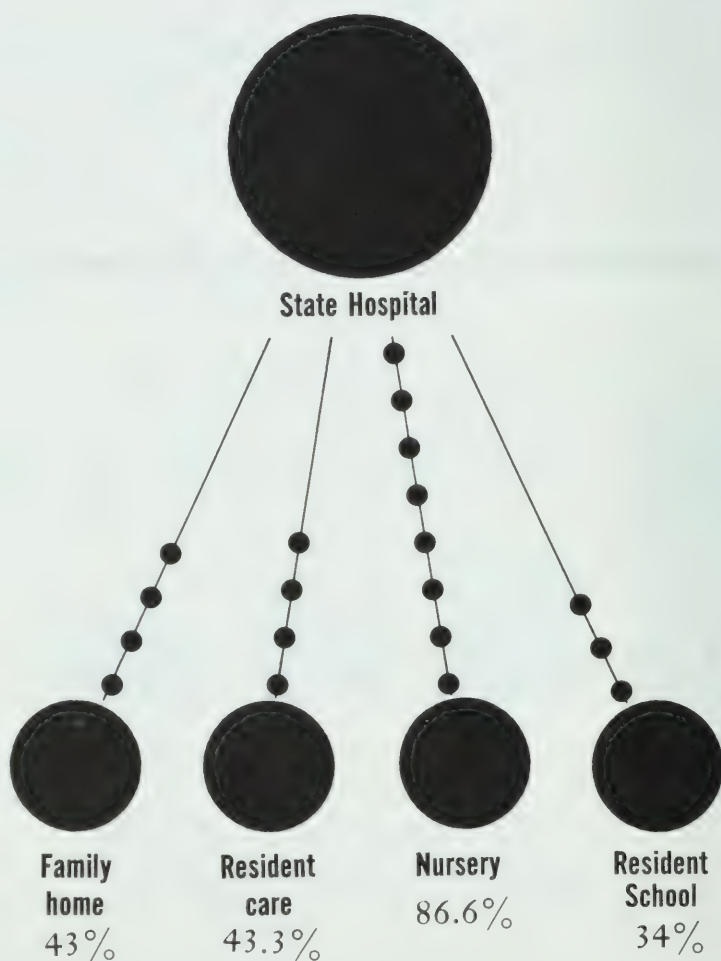
There is still evidence which indicates that payments would not exceed the \$300 per month cost of state hospitalization for most cases.¹⁵ Even if the support costs for community care did exceed \$300 per month in some cases, the state would still save money by not having to build as many additional hospital beds.

IT SHOULD BE MENTIONED THAT COMMUNITY CARE IS NOT SYNONYMOUS WITH PRIVATE RESIDENTIAL CARE. COMMUNITY CARE COULD INCLUDE SUPPORT FOR CHILDREN PLACED IN PUBLIC AGENCY FACILITIES SUCH AS PUBLIC SCHOOL DAY CARE CENTERS AND NURSERY SCHOOLS, PAYMENT FOR HOME CARE AIDS SUCH AS HOME MAKERS, PAYMENT FOR ANY OTHER APPROVED SERVICES NEEDED BY THE CHILD AS AN ALTERNATIVE TO THE STATE HOSPITAL.

¹⁵ Mr. Jewell Trumbo in testimony given before the Assembly Ways and Means Subcommittee on Mental Health Services at a public hearing, Los Angeles, California, October 2, 1964, says, "I operate a home for retarded children privately. We charge approximately \$200 a month, with which we have been giving the kids something that we think is better than they can receive at the state hospitals . . . and we are not going in the hole, we're not going broke, and we can certainly build a lot cheaper than \$15,000 a bed."

TABLE VIII

PERCENT OF POPULATION IN PRIVATE INSTITUTIONS WHO TRANSFER TO STATE HOSPITALS



For all private institutions combined, 49.5% eventually transfer to state hospitals

ENDORSEMENTS

Since the publication of the "Preliminary Proposal" in June, the committee has received expressions of support from hundreds of families of retarded children as well as from numerous knowledgeable professional persons.

The following organizations have also expressed their endorsement:

AMERICAN ACADEMY OF PEDIATRICS
CALIFORNIA COUNCIL FOR RETARDED CHILDREN
CALIFORNIA MEDICAL ASSOCIATION
CALIFORNIA ASSOCIATION OF NURSING HOMES
CALIFORNIA NURSES ASSOCIATION
SAN FRANCISCO COORDINATING COUNCIL
FOR MENTAL RETARDATION

The following letters are typical of the majority of responses the committee has received.

THE WHITE HOUSE

WASHINGTON

December 24, 1964

Dear Mr. Waldie:

I want to let you know that I have received and carefully reviewed the materials from your special subcommittee relating to mental retardation.

I think that they are the finest materials of the kind that I have ever seen. They show a great deal of careful thought.

We are in the process of analyzing the waiting list group, and I will forward to you some more complete comments on this in the very near future.

Sincerely yours,

EDWARD H. FORGOTSON, M.D.
Deputy Special Assistant
to the President
for Mental Retardation

Honorable Jerome R. Waldie
Assembly California Legislature
State Capitol
Sacramento, California 95814

November 10, 1964

Assemblyman Jerome Waldie
The Capitol
Sacramento, California

Dear Mr. Waldie:

I have noted in communication from the National Association of State Mental Health Program Directors (Commissioners of Mental Health) that you are advocating out of hospital aid for the retarded.

I don't know whether you have seen the remarks that were made but these certainly are a credit to you and I want to congratulate you on taking this stand. You may recall that we discussed various matters related to this particular effort on your part and I am delighted to know that you are personally backing such an effort.

I would like at this time to reiterate my previous thanks to you for your strong support of good mental health programming in the state of California.

With every good wish,

Sincerely yours,

DANIEL BLAIN, M.D.
President
American Psychiatric Association

DB:ii
cc: Dr. James Lowry

September 17, 1964

Mr. Arthur Bolton, Consultant
Subcommittee on Mental Health
State Capitol, Room 2140
Sacramento, California

Dear Mr. Bolton,

Thank you for your letter of August 26th together with the preliminary proposals suggesting significant reforms in the State programs for the mentally retarded child.

The American Academy of Pediatrics would wholeheartedly support these proposals and believe this would be a significant improvement for the welfare of the mentally retarded child and his family. I have requested Dr. Jack W. Bills, Chairman of the Committee on Mental Retardation, Section II of District X of the Academy, to testify at the public hearing to be held October 2, 1964, in Los Angeles. Dr. Bills' address is 14914 Sherman Way, Van Nuys, California. He would prefer to testify at the morning session.

The American Academy of Pediatrics is vitally interested in the welfare of children and appreciates the opportunity to give our endorsement to these proposals.

Sincerely yours,

RUSSELL W. MAPES, M.D.
Chairman, District X
American Academy of Pediatrics

RWM-em
Copy to Dr. E. H. Christopherson

RESOLUTIONS

Subcommittee on Mental Health Services

RESOLVED that the California Council for Retarded Children endorses the preliminary proposal of the Subcommittee on Mental Health Services, which provides a modern concept for utilizing untapped community resources for California's mentally retarded and serves as a means to effectively eliminate the waiting list for admission to State hospitals through ten regional diagnostic-counseling centers throughout the State; and

BE IT FURTHER RESOLVED that appreciation for the creative and bold approach in the preliminary proposal be and is hereby expressed to the Subcommittee on Mental Health Services.

Study Commission on Mental Retardation

RESOLVED that the California Council for Retarded Children does hereby express its appreciation for the diligence in preparation, scope of effort, and reflected sincerity of the Study Commission on Mental Retardation for its tentative recommendations for services to the mentally retarded in California; and

BE IT FURTHER RESOLVED that the California Council for Retarded Children does hereby approve and endorse the philosophy contained therein.

California State Hospitals

RESOLVED that any addition to or new construction of State hospital facilities for the mentally retarded be held in abeyance until alternative programs may be introduced and developed.

* * * * *

The above resolutions were unanimously supported by the CCRC Board of Directors at a meeting held in Sacramento, California on September 26, 1964

October 2, 1964

Copies to—CCRC Board of Directors
Presidents of Member Units
Public Affairs Committee Chairman (CCRC)
CCRC Newsletter

ASSEMBLY BILL

No. 690

Introduced by Assemblymen Waldie, Greene, and Petris
(Coauthor: Senator McAteer)

February 1, 1965

REFERRED TO COMMITTEE ON PUBLIC HEALTH

An act to add Article 7.6 (commencing with Section 416.3) to Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, relating to the mentally retarded.

The people of the State of California do enact as follows:

1 SECTION 1. Article 7.6 (commencing with Section 416.3) is
2 added to Chapter 2 of Part 1 of Division 1 of the Health and
3 Safety Code, to read:

4
5 Article 7.6. Office of Standards of Care
6 for the Mentally Retarded
7

8 416.3. There is in the Health and Welfare Agency an office
9 which shall be known as the Office of Standards of Care for
10 the Mentally Retarded. The office shall be administered by the
11 Director of Standards. The director shall be appointed by and
12 shall serve at the pleasure of the Governor. He shall receive
13 an annual salary as provided in Section _____ of the Gov-
14 ernment Code.

15 416.4. The Director of Standards shall adopt reasonable
16 rules and regulations prescribing standards regarding physical
17 welfare, health, education, safety, and sanitation which shall

LEGISLATIVE COUNSEL'S DIGEST

AB 690, as introduced, Waldie (Pub.H.). Mentally retarded.

Adds Art. 7.6, Ch. 2, Pt. 1, Div. 1, H. & S.C.

Establishes Office of Standards of Care for the Mentally Retarded in Health and Welfare Agency, to be administered by a Director of Standards appointed by the Governor.

Requires the director to adopt standards regarding physical welfare, health, education, safety, and sanitation, which must be met by public or private facilities caring for mentally retarded persons, as a condition to the receipt of state funds.

Requires director to consult with authorities in various professional fields and with advisory committee provided for by the act.

Requires director to establish rates of state payment for care of mentally retarded persons in facilities.

(R) L-1891 5M

1 be satisfied and maintained as a condition to the receipt of
2 state-funds by any public or private facility in which mentally
3 retarded persons are placed by a regional center.

4 The director shall provide regional centers with current lists
5 of approved public and private facilities. The regional center
6 may not expend state funds for services in any facility which
7 is not approved by the director, notwithstanding any other
8 certification, licensing, or approval of the facility.

9 The director shall consult with, or contract with, and obtain
10 the advice and recommendations of such other public or pri-
11 vate authorities in the various professional fields as he deems
12 advisable in order that the standards prescribed pursuant to
13 this article shall give proper recognition to the mental, physi-
14 cal, social, and educational needs of mentally retarded persons.

15 416.5. The Governor shall appoint an advisory committee
16 consisting of 12 persons, 6 of whom shall be parents of men-
17 tally retarded persons and 6 of whom shall be directors of
18 community based agencies engaged in providing services for
19 the mentally retarded. The committee shall consult with and
20 advise the Director of Standards in the adoption of standards
21 pursuant to Section 416.4.

22 416.6. If there is evidence that a facility does not meet
23 the standards prescribed by the director, state funds may be
24 immediately withdrawn for all children in the facility.

25 416.7. The Director of Standards shall establish rates of
26 state payment for the care of mentally retarded persons in
27 public and private facilities utilized by the regional centers.

AMENDED IN ASSEMBLY MARCH 10, 1965

CALIFORNIA LEGISLATURE—1965 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 691

Introduced by Assemblymen Waldie, Greene, Lanterman
Alquist, Burgener, Petris, and Warren
(Coauthor: Senator McAteer)

February 1, 1965

REFERRED TO COMMITTEE ON PUBLIC HEALTH

An act to add Article 7.5 (commencing with Section 415) to Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, relating to the mentally retarded.

The people of the State of California do enact as follows:

1 SECTION 1. Article 7.5 (commencing with Section 415) is
2 added to Chapter 2 of Part 1 of Division 1 of the Health and
3 Safety Code, to read:

4
5 ARTICLE 7.5. MENTALLY RETARDED PERSONS

6
7 415. As used in this article, "regional centers" means re-
8 gional diagnostic, counseling, and service centers for mentally
9 retarded persons and their families.

10 415.1. It is desirable that there be a shift in state responsi-
11 bility for mentally retarded persons from the time they enter
12 a state hospital to the time when they are diagnosed as needing
13 specialized care.

14 In order to provide fixed points of referral in the commu-
15 nity for the mentally retarded and their families; establish
16 ongoing points of contact with the mentally retarded and their
17 families so that they may have a place of entry for services
18 and return as the need may appear; provide a link between
19 the mentally retarded and sources in the community, including
20 state departments, to the end that the mentally retarded and
21 their families may have access to the facilities best suited to
22 them throughout the life of the retarded person; and offer
23 alternatives to state hospital placement, it is the intent of this
24 article that a network of regional diagnostic, counseling, and

1 service centers for mentally retarded persons and their fam-
2 ilies, easily accessible to every family, be established through-
3 out the state.

4 415.2. The State Department of Public Health, within the
5 limitations of funds appropriated, shall contract with appro-
6 priate agencies for the establishment of regional centers.

7 415.3. Regional centers shall be near centers of population
8 where most needed and wherever possible connected to or in
9 close proximity to institutions of higher learning and research.

10 415.4. The regional centers shall provide and perform or
11 cause to be performed services including, but not limited to,
12 the following:

13 (a) Diagnosis.

14 (b) Counseling on a continuing basis. Counseling shall in-
15 clude advice and guidance to any mentally retarded person
16 and his family, to assist them in locating and using suitable
17 community facilities, including, but not limited to: special
18 medical services; nursery and preschool training; public edu-
19 cation; recreation; vocational rehabilitation; and suitable resi-
20 dential facilities.

21 (c) Provide state funds to vendors of service to the re-
22 tarded, when failure to provide such services would result in
23 state hospitalization.

24 (d) Maintain a registry and individual case records.

25 (e) Systematic followup of the mentally retarded and re-
26 activation of cases as indicated.

27 (f) Assist, where necessary, in state hospital placement of
28 the mentally retarded.

29 (g) Call public attention to unmet needs in community care
30 and services, defining and interpreting standards of community
31 care and services as used by the regional center, and stimulat-
32 ing the community to develop such services as needed.

33 (h) Maintain a staff according to standards set by the State
34 Department of Public Health.

35 415.5. Upon referral by a physician, or other qualified
36 professional person authorized by the regional center, any
37 person suspected of mental retardation shall be eligible for
38 initial intake and for diagnostic and counseling services in
39 the regional centers.

40 415.7.

41 415.6. The State Department of Public Health may receive
42 and expend all funds made available to the department by the
43 federal government, the state, its political subdivisions, and
44 other sources, and, within the limitation of the funds made
45 available, shall act as an agent for the transmittal of such
46 funds for services through the regional centers. The depart-
47 ment may use any funds received under Article 2 (commenc-
48 ing with Section 249) of this chapter for the purposes of this
49 article.

50 416. The parents or guardian of a mentally retarded per-
51 son may designate the Director of Public Health as guardian
52 of the mentally retarded person on the death of the parents or

1 guardian, if the state has assumed responsibility for providing
2 care to the retarded person, through the regional center. Such
3 guardianship shall be for the purpose of carrying out the
4 recommendations of the regional center and to provide the
5 retarded person with the assurance of continuity of care.

6 416.1. This article does not authorize the care, treatment,
7 or supervision or any control over any mentally retarded per-
8 son without the written consent of his parent or guardian.

9 416.2. The agency operating a regional center may enter
10 into agreements with parents, guardians, persons responsible
11 for the care of the mentally retarded, or estates of mentally
12 retarded persons, to use such amounts as they may be able to
13 pay toward the cost of services for such mentally retarded
14 persons. In no event, however, shall there ~~be~~ be any charge for
15 diagnosis or counseling.

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Photographs courtesy of The San Francisco Association of Retarded
Children
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SEMBLY INTERIM COMMITTEE REPORTS 1963-65

Volume 21, No. 11

CALIFORNIA LEGISLATURE

SEMBLY INTERIM COMMITTEE ON WAYS AND MEANS

Summary report on

HEALTH CARE SERVICES FOR THE AGED

**Members of the
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Summary of
Findings and Recommendations
by a Report on

HEALTH CARE SERVICES FOR THE AGED

Prepared by

SUBCOMMITTEE ON INSTITUTIONS

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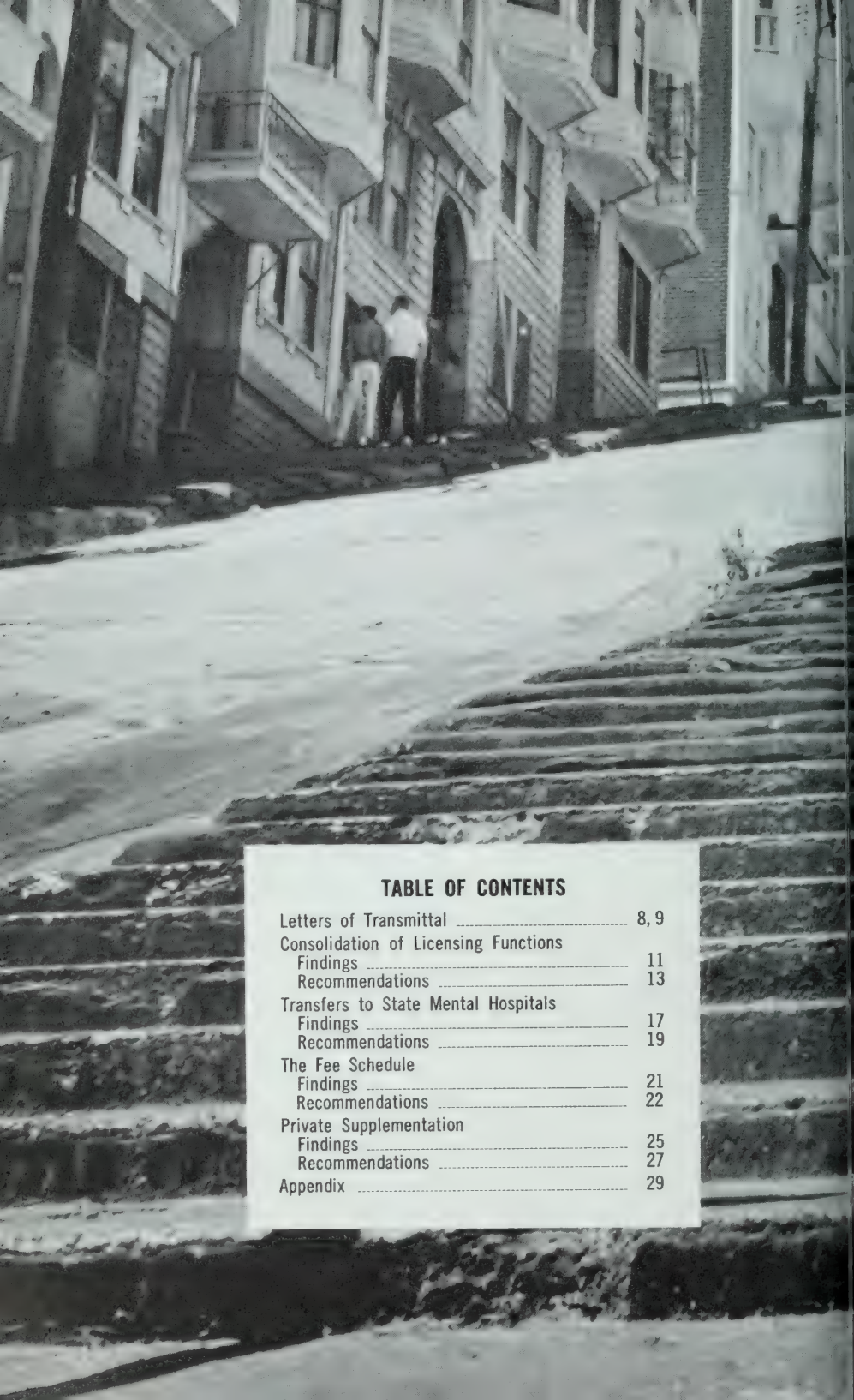


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DUNNES



April 12, 1965

Hon. Robert W. Crown, Chairman
Assembly Interim Committee on Ways and Means

Dear Mr. Chairman:

Transmitted herewith is the final report of the Subcommittee on Institutions relating to health care services for the aged.

The subcommittee is very gratified for the assistance rendered by many interested persons during the course of the study.

Respectfully submitted,

NICHOLAS C. PETRIS

Chairman

Subcommittee on Institutions

Tom Bane (with reservations; see p. 29)

Joseph Kennick (with reservations)

Frank Lanterman (with reservations)

Lester McMillan

Howard Thelin (with reservations)

Jerome Waldie

April 12, 1965

To the Speaker and Members of the Assembly

Dear Mr. Speaker:

I am pleased to transmit herewith the final report of your Interim Committee on Ways and Means relating to health care services for the aged.

The committee wishes to express its appreciation for the assistance rendered by many persons during the course of the study.

Respectfully submitted,

ROBERT W. CROWN

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Summary of Findings and Recommendations

Consolidation of Licensing Functions Relative to Public Health Facilities

The interim study of this subject was directed by H.R. 317, introduced by Assemblyman Joseph Gonsalves during the 1964 First Extraordinary Session. Legislative interest was heightened by an executive order issued by the Health and Welfare Department Director which would have consolidated such functions through an interagency contract.

FINDINGS

According to the Attorney General and the Legislative Counsel, consolidation of licensing under the Department of Public Health through interagency contract would be illegal under existing statutes.

Letters and testimony received by the subcommittee suggest that staff of the Departments of Social Welfare and Mental Hygiene encouraged opposition to the executive order.

The wide range of services needed by senior citizens would be best handled by a single administrative agency. Programs, standards, licensing, enforcement and rate-setting pertaining to services for the aged could be more efficiently organized and administered in a single department under the Health and Welfare Agency. This would permit maximum use of federal funds, reduce the rate of institutionalization, make possible development of a comprehensive program for senior citizens.

The present confusing, duplicating and overlapping regulations make it very difficult to provide adequate and appropriate services for senior citizens. In many instances, regulations of different agencies conflict; to obey one set of regulations may mean violation of another.

The present diffusion of responsibility among existing agencies leads to waste and poor economy. Separation of rate setting, and licensing means that costs cannot be related to quality and scope of services.

6. Present licensing regulations of all agencies concerned are virtually unenforceable because penalties are not available to fit the severity of violations. Revocation of license is the sole punitive action authorized to deal with 125 possible violations under the law.
7. The problems in this area of human need cannot be solved piecemeal. A systematic revision of existing laws relating to care of the aged and of pertinent administrative regulations is urgently required.



COMMENDATIONS

The state should establish a Department of Senior Citizens Services in the Health and Welfare Agency to carry out a program of comprehensive services for the aged, including:

- a. Family counseling
- b. Homemaker assistance
- c. Visiting nurse services
- d. Recreation
- e. Employment counseling
- f. Medical care
- g. Foster homes, boarding homes, nursing homes, hospital care
- h. Preretirement counseling
- i. Housing services
- j. Analyze and recommend training and educational programs for personnel needed to provide services for the aged

Programs for the aged presently administered by Public Health, Social Welfare, and Mental Hygiene should be transferred to the Department of Senior Citizens Services.

This department should be organized and ready to submit program recommendations as well as suggested operating and licensing standards to the Legislature no later than January 5, 1967. A key element in the development of these program recommendations should be the objective of providing needed services to the aged on a timely basis.

The Department of Senior Citizens Services should establish diagnostic, counseling and referral centers to help senior citizens and their families obtain appropriate care.

Institutions which serve other classes of patients besides the aged should be licensed by the appropriate licensing agency as well as by the Department of Senior Citizens Services. If administrative regulations of the respective departments are in conflict then the regulations of the Department of Senior Citizens Services should apply until the next legislative session resolves the conflict.



For purposes of planning, there should be established five regional advisory councils composed of seven people appointed by the Governor all of whom shall be aged 65 years or older. Each regional council should elect one of its members to serve on a State Senior Citizens Advisory Council. In addition, this state council should have two members from each legislative house to be appointed by the presiding officers of the respective houses. It should replace the present Citizens Committee on Problems of the Aged which would be abolished. The majority of the regional councils and of the state council should be composed of public members. The Senior Citizens Advisory Council should be adequately staffed with whatever technical and professional assistance it may require.



The Transfer of Senile Patients to State Mental Hospitals

Although specifically prohibited by Section 5102 of the Welfare and Institutions Code, the transfer of senile patients from public and private institutions has been a continuing problem. H.R. 426, introduced by Assemblymen Lester McMillan and Joseph Kennick during the 1963 Regular Session, called for an interim study of this subject.

FINDINGS

- 1 Almost 3,000 people 65 years and older are committed to state mental hospitals for the first time each year. Almost 80 percent of these people die within a year of commitment. ,
- 2 This practice is socially and economically undesirable and should be halted.
- 3 In most instances, commitment to state mental hospitals of the aged is determined not by mental illness, but by local policy, lack of community resources, and budgetary convenience.¹
- 4 Extensive variations in the county aged commitment rate indicate that court procedures and policies are not uniform.² This situation is similar for other classes of patients beside the aged.

testimony to the committee, Dr. Robert Hewitt, Chief Deputy Director of the Department of Mental Hygiene, stated: *"In our hospitals today are a substantial number of people who do not require hospitalization, are not mentally ill, and some of whom should never have been committed to our care."*

Present statutes require the department to accept all patients committed by the courts. About 4,500 aged patients now in state hospitals do not require state hospital care. Dr. Hewitt testified further: *"Clearly, the best hope for reducing the number of nonmentally ill aged in our hospitals is to prevent them from entering in the first place."* Some counties have achieved notable success in preventing commitment through superior courts of persons whose needs are for nursing or residential care in the community. Other areas in the state have not done so well. Although there is a specific prohibition against it in the Welfare and Institutions Code, some aged patients who are not mentally ill are sent to state hospitals. Dr. Hewitt believes that inappropriate commitment results from inadequate screening procedures prior to commitment and errors in medical judgment. *"The commitment of nonmentally ill aged to the state hospital can be made a rare occurrence."*

According to information supplied to the committee by Dr. Hewitt, the commitment rate varies from 0.7 per 1,000 county population aged 65 in Los Angeles to 5.0 in San Francisco and 5.5 in Monterey County.

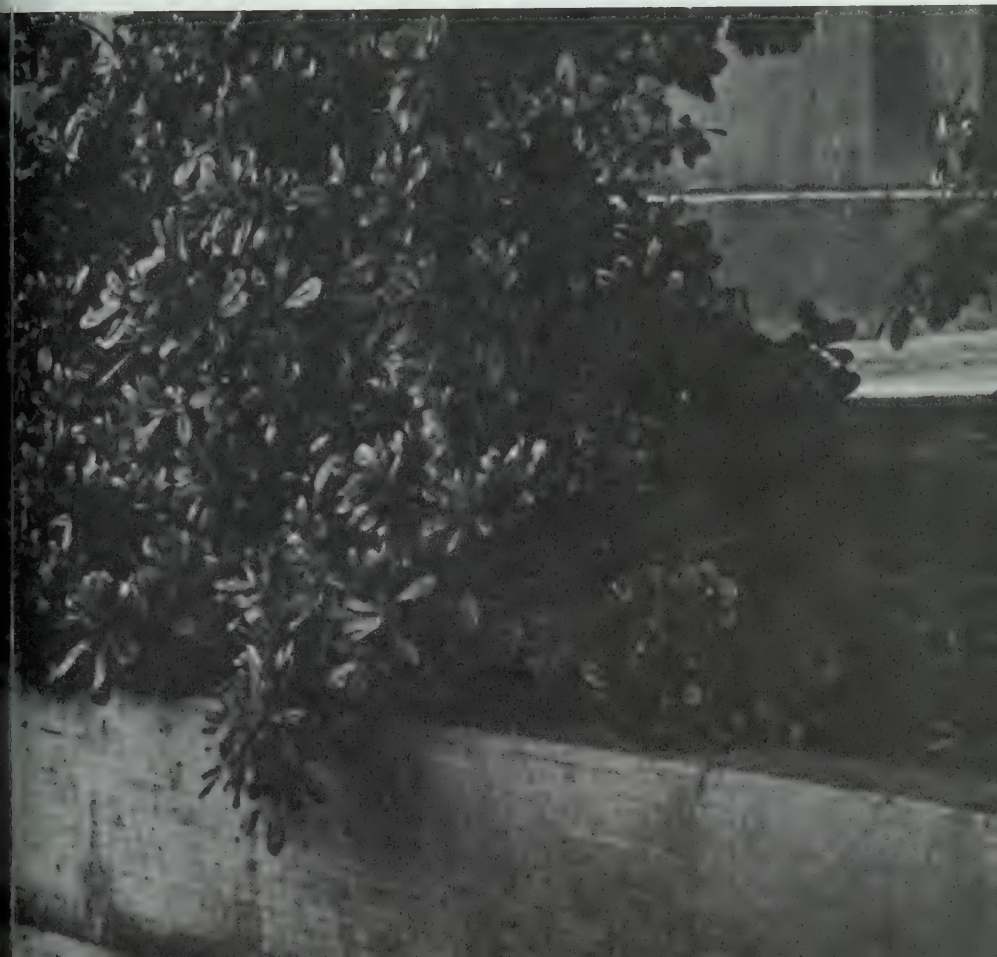
5. The "dumping," or improper placement of aged persons in state mental hospitals, forces the state to assume 100 percent of the cost of care from the General Fund and results in underutilization of federal funds available to California to care for the aged.
6. Halting transfer of aged patients to state hospitals would free beds needed for the mentally ill and would reduce the need for capital outlay expenditures for new state hospitals.
7. The state should assume the county share of Medical Assistance for the Aged (MAA) matching funds. It would be more economical for the state to assume the county share of the MAA formula than to continue to pay 100 percent of the cost of care in state hospitals.



RECOMMENDATIONS

The state should prohibit first commitments of aged persons 65 years and older to state mental hospitals. Only through such drastic action can this undesirable practice be effectively halted.

The Legislature should conduct an interim study to ensure that the rights of mental patients are safeguarded, that inappropriate commitments are eliminated and that community services be used whenever available.



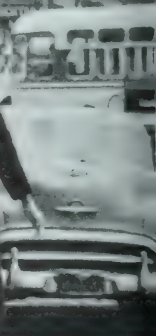
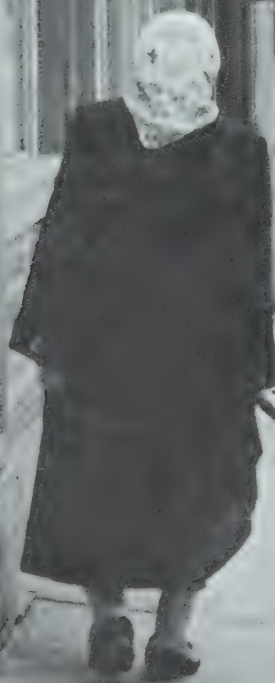
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The Nursing Home Schedule of Maximum Allowances

H.R. 470, introduced by Assemblyman Robert W. Crown in the 1963 Regular Session, called for an interim study of the nursing home fee schedule issued by the Department of Finance to determine whether it adversely affected standards of care in nursing homes. In addition, H.R. 470 directed study of whether maximum and proper use was being made of available public funds from all sources in providing care for the aged.

CRITICISMS

The nursing home schedule of maximum allowances is unreasonable and inequitable. It is based on insufficient cost information and has encouraged substandard care.

Federal funds available to California under the Kerr-Mills Act are not being fully utilized. Persons who could be eligible for Kerr-Mills benefits are not covered due to improper commitments to mental care institutions. As a result, money from the state General Fund is being used inappropriately and excessively.

Planning for services for the aged which would reduce the total cost of institutional care and encourage alternative methods has been inadequate.

RECOMMENDATIONS

1. The Legislature should amend the Hospital Licensing Act to classify institutions for licensing purposes according to the scope and quality of services they are equipped to render. Institutions should be classified rather than patients.
2. MAA rates should be based on the type of services the individual institutions are equipped to render. MAA funds should not be paid to institutions which do not meet these licensing standards.
3. Violations of established standards, should be classified by severity and frequency of occurrence. An appropriate system of fines, suspensions and revocation of license should be instituted. The last inspection report should be posted in a conspicuous place in the institution.
4. Written admission and discharge policies should be required for each class of facilities. Transfer of patients to another institution without notification and consent of the patient or responsible relative, public guardian, or attending physician should be a misdemeanor.
5. The Health and Safety Code should be amended to prohibit continuation of "grandfathered" facilities, institutions in existence prior to the Hospital Licensing Act of 1946, under new ownership. The intention of the Legislature should be reaffirmed that "grandfathered" facilities be discontinued whenever the licensee surrenders the license.
6. Rates should be based on reimbursable cost and should be renegotiated every year. The state should require uniform cost accounting information from each vendor.
7. The transformation of county hospitals into community hospitals should be encouraged by halting further distribution of Hill-Burton and Hill-Harris funds. This would help to abolish segregation of the indigent sick from the rest of the sick, and eliminate expensive capital outlay by local bond issue or from property taxes. Governmental jurisdictions should consider the advantages of purchasing services from vendors on the basis of the recipient's *medical needs* rather than on his *economic* or *class status*.

tate law should be amended to permit realistic Hill-Burton and Hill-Harris priorities which take account of how people actually use hospital beds. For instance, members of group prepayment plans such as the Kaiser Foundation Health Plan use only their local Kaiser hospital. It is misleading to count these people for projecting hospital bed-population ratios as part of the general population. Similarly, other population groups who use only certain facilities such as hospitals run by various religious denominations should be counted according to actual use of facilities. In certain areas the proportion of aged is much higher than in others. Long-term hospital and nursing home bed needs should be projected on the basis of such differences. The Department of Public Health should present a revised priority schedule for legislative approval.

9. The Legislature should conduct an interim study into the advisability of continuing the present state-federal Hill-Burton matching fund formula, and the method by which Hill-Burton funds are disbursed. California is the only state which matches Hill-Burton federal funds. The financial difficulties of some institutions which have received Hill-Burton funds and their low occupancy rates indicate that present policies for distributing funds need serious review.

10. The Hospital Advisory Council members whose institutions or class of institutions are being considered for Hill-Burton or Hill-Harris grants should be disqualified from voting.

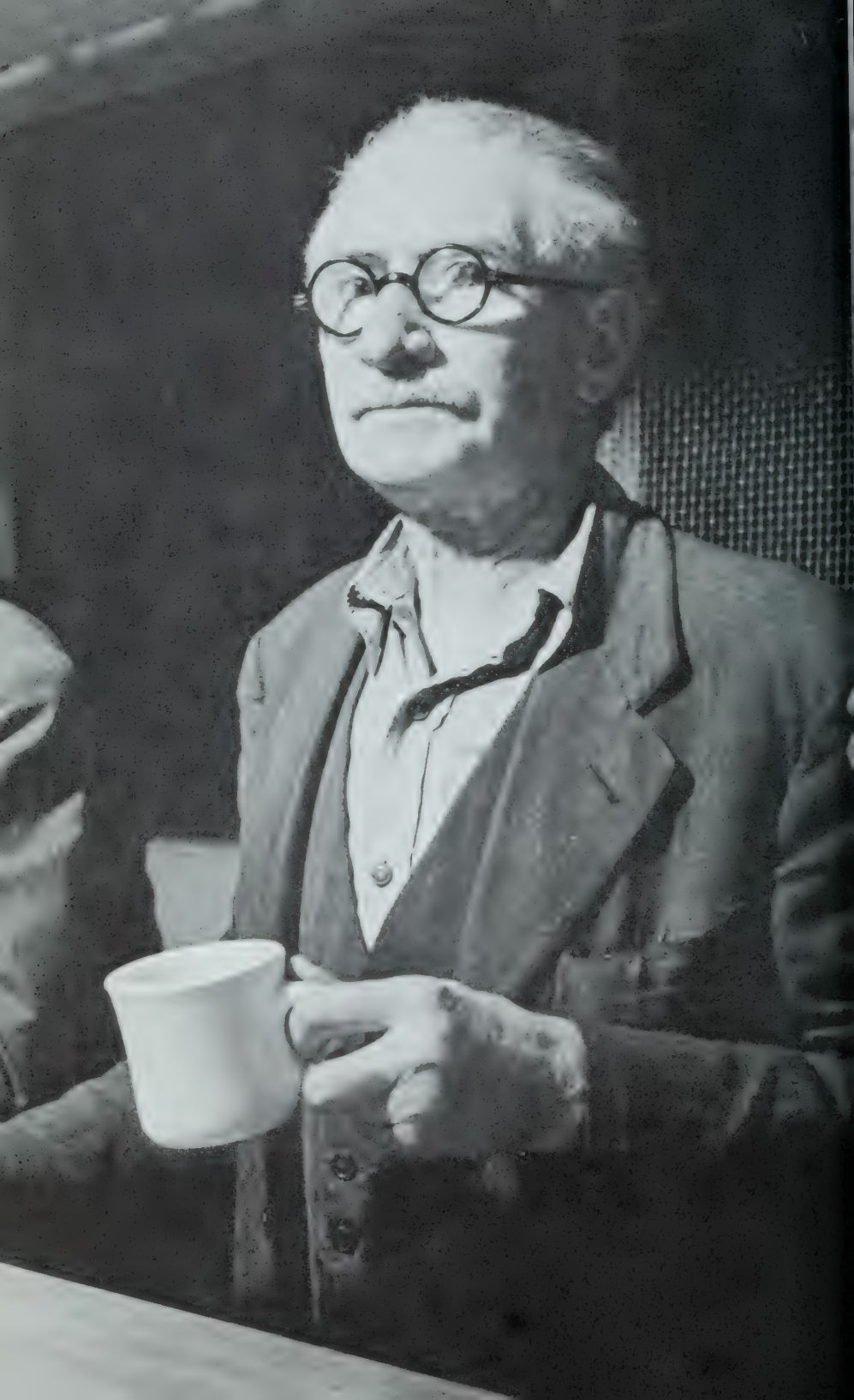


Private Supplementation of Nursing Home Rates

H.R. 25, introduced by Assemblyman Thomas Bane during the 1963 First Extraordinary Session, called for an interim study to determine whether private supplementation by patients' relatives or friends might provide a possible solution to the problems caused by the uniform nursing home rate schedule.

FINDINGS

- 1 The committee finds that allowing relatives to supplement MAA rates would be socially and economically unsound.
- 2 Supplementation is a covert form of relatives' responsibility. Since the Legislature has eliminated relatives' responsibility, it should not permit it in disguised form.
- 3 Supplementation would permit differential rates for the same services, an inequitable practice.
- 4 Supplementation would encourage operators to discriminate in favor of patients whose families could afford additional payments. This would tend to segregate patients by economic class and would have the long-run effect of forcing poorer patients into less desirable facilities.
- 5 Wherever supplementation is in effect, the problem of ensuring quality standards of care remains unsolved.
- 6 A reimbursable cost formula would result in fair reimbursement of operators, making supplementation unnecessary.



RECOMMENDATIONS

The present policy of prohibiting supplementation by relatives should remain unchanged.

The Legislature should reexamine the desirability of requiring families to pay part of all of the cost of care according to their ability to pay. In no case, should costs exceed the maximum fee schedule. If it is decided that financial responsibility of relatives should be reinstituted, then the amount paid by families should be deducted from the total cost of care.

Acceptance of supplemental payments above the maximum rate should be a misdemeanor.

Fixed-fee schedules for units of service should be required. Differential rates for the same services should be prohibited.



March 6, 1965

Honorable Robert W. Crown
Chairman, Assembly Committee on Ways and Means
San Francisco Capitol
San Francisco, California

Dear Bob:

The report of your subcommittee on "Supporting Services for Senior Citizens", chaired by Charles Petris, was exceedingly fine, and its recommendations are detailed and generally excellent. However, I would appreciate it greatly if you would include with "my approval with recommendations" the printing of the following comments within the report itself.

Cordially,
TOM BANE

H.R. 470—NURSING HOME SCHEDULE OF MAXIMUM ALLOWANCES

1. Rather than being based on the types of services the institution is equipped to render (Recommendation No. 1), I believe that the rates should be based on the types of services rendered to the patient according to the patient's needs.
2. All nursing and convalescent homes should be designed to provide long-term medical care to take care of a patient whose medical needs undoubtedly will progress as he ages. The compulsory moving of a patient from one home to another because of a slight change in the intensity of nursing care needed would result in great harm to the patient.
3. Regarding Recommendation No. 4, provision should be made for the transfer of a patient to a public institution without a misdemeanor being committed by the private institution when the private institution is no longer receiving remuneration for its services. Under the present language of the report a private institution might be required to give indefinitely services with no remuneration.
4. The subject of reimbursable costs (Recommendation No. 6) should receive extensive study. Reimbursable cost rates in hospitals have resulted in daily rates up to \$49 per day. Reimbursable cost rates in defense contracts known as cost plus resulted in excessive costs to the government because of sometimes careless and sometimes purposeful raising of costs. Such a procedure might result in an unnecessary heavy burden on the State Welfare Budget. Further confusion is caused when private patients are in the same facility as public patients. The costs of services to the private patient may result in raising the cost to the public patient. The rate should be established as to what is best for the patient, best for the provider of the services, and best for the taxpayer.

H.R. 25—PRIVATE SUPPLEMENTATION

Regarding the recommendations concerning the allowances of relatives to supplement MAA rates, I have the following comments:

1. Voluntary supplementation is not the same as the former relatives responsibility act because the Relatives Responsibility Act was compulsory supplementation. The forcing of relatives to pay for the care of other relatives caused great family and social stresses because of the compulsion. Voluntary supplementation would not cause the same social or family stresses.
2. All patients in a home do not require the same services. It seems logical that those requiring more services should be allowed to supplement if they are financially able to and willing to without requiring those who have less need for services to pay the same rate. The philosophy adopted in the income tax schedule has been taxation according to the ability to pay. This has been a compulsory taxation feature. It does not seem to be in conflict with voluntary supplementation in the welfare field by allowing people to pay according to their ability to pay.

3. Under the present circumstances in the State of California there would be no forcing of poor patients into less desirable facilities. In fact, it would result in the opposite. Poor patients would be receiving better care because the convalescent or nursing home involved would be receiving higher income and would be able to provide more desirable facilities to the poorer patients. Without supplementation all patients would be forced into less desirable facilities.

4. The report says in the past supplementation has not solved the problems of ensuring quality standards of care. Voluntary supplementation has not been tried so how can the report substantiate this statement. Colorado has a voluntary supplementation plan which is claimed to have worked satisfactorily. Before any such conclusion is drawn, I suggest a detailed study of results of the Colorado voluntary supplementation plan.

Regarding your report generally, exclusive of the above exceptions, it is exceedingly fine and its recommendations are detailed and generally very excellent.

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ASSEMBLY INTERIM COMMITTEE REPORTS
1963-65

VOLUME 21

NUMBER 13

CALIFORNIA LEGISLATURE
ASSEMBLY INTERIM COMMITTEE ON
WAYS AND MEANS

REPORT ON
STATE INHERITANCE TAX APPRAISING

MEMBERS OF THE COMMITTEE

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TOM BANE
CARLOS BEE
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Minority Floor Leader

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Chief Clerk

LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
CALIFORNIA LEGISLATURE
March 8, 1965

TO THE SPEAKER AND MEMBERS OF THE ASSEMBLY

Dear Mr. Speaker and Members:

Your Interim Committee on Ways and Means herewith submits its final report on inheritance tax appraising.

The committee is indebted to the many persons who took the time and effort to provide information and advice during the course of this interim study.

Respectfully submitted,

ROBERT W. CROWN, *Chairman*

TOM BANE
CARLOS BEE (with reservations)
FRANK BELOTTI
CARL A. BRITSCHGI
JOHN L. E. COLLIER
CHARLES CONRAD
PAULINE DAVIS
JAMES L. HOLMES
JOSEPH M. KENNICK
FRANK LANTERMAN
(with reservations)

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NICHOLAS C. PETRIS
CARLEY V. PORTER
(with reservations)
HOWARD THELIN (minority report)
JEROME WALDIE
(with reservations)
JOHN C. WILLIAMSON
(with reservations)
GORDON H. WINTON

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INTRODUCTION

Assembly Bill 127, relating to the appointment of inheritance tax appraisers, was introduced in the First Extraordinary Session of 1964 by Assemblyman William T. Bagley. Because it was felt this subject needed more thorough analysis, and partly because it was generally felt that any legislative action with impending state elections would have been fraught with political overtones, real and imagined from both political parties, the bill was referred to the Interim Ways and Means Committee for study.

In its consideration of the measure, this committee conducted hearings, carried out independent research, and consulted with the Assembly Committee on Government Organization, the Commission on State Government Organization and Economy, and the Legislative Analyst on related studies undertaken by those agencies.

In the course of the study, several proposed reforms to current inheritance tax administration were presented to the committee. Several proposals in addition to AB 127 were therefore examined.

The committee is appreciative of the cooperation extended by many agencies and individuals in helping to develop the information contained in this report.

FINDINGS

1. The present system of appointing inheritance tax appraisers carries with it an unnecessary and potentially unhealthy element of political influence and patronage in state tax administration.
2. The present method of compensating inheritance tax appraisers by fees based on the value of estates appraised does not take into account the amount or caliber of actual appraisal work performed and it often results in excessive remuneration for some part-time appraisers.
3. The present lack of prescribed qualifications for inheritance tax appraisers is contrary to basic principles of public administration and provides a source of potential abuse.
4. The political nature of inheritance tax appraiser appointments results in excessive turnover in appraiser personnel when a Controller of an opposite political party takes office.
5. The present participation of county treasurers in the inheritance tax process is unnecessary and serves to diminish state revenues.
6. The committee finds that bringing inheritance tax appraisers into the state civil service structure, as proposed in AB 127, would be an improvement over the current system but that superior alternatives are available.

RECOMMENDATIONS

1. It is strongly recommended that action be taken at the 1965 legislative session to remove patronage from the administration of state inheritance taxes.
2. It is recommended that legislation be enacted providing for a self-assessed system of inheritance tax administration. Whether this is done in a single step or in several phases is less important than the principle involved. The recent proposal of the Legislative Analyst regarding the self-assessed system provides an excellent vehicle to achieve this goal.
3. It is further recommended that legislation be enacted to eliminate the county treasurers from the state inheritance tax process.

BACKGROUND

Taxes on property transferred as a result of the owner's death constitute one of the oldest and most widely used forms of state taxation. Forty-nine states, excluding only Nevada, tax the estates of deceased persons in some fashion. Also, the federal government imposes a similar "death" tax.

These taxes generally are handled in one of two ways—either as an estate tax, which is levied against the total estate before distribution among the heirs, or as an inheritance tax, which is levied against each portion of the estate after it has been distributed.

Estate taxes are collected by the federal government and by nine states while inheritance taxes are in effect in the 40 remaining states, including California.

Inheritance taxes in this state essentially date back to 1893. An earlier law, enacted in 1853, was never really effective as it was repealed the following year.

A revision of inheritance tax law in 1905, with subsequent modification, provided the basis for the present structure found in Part 8, Division 2, of the State Revenue and Taxation Code. In essence, inheritance taxes are imposed on the right to inherit or otherwise receive a decedent's property, levied at progressive rates which are based on the value of the property received and the relationship between the decedent and the beneficiary.

The Controller was first authorized to appoint an inheritance tax appraiser in each county in 1911. An Inheritance Tax Department was established within the office of the Controller in 1913. To prevent the avoidance of inheritance taxes through gifts prior to—or in contemplation of—death, the Gift Tax Act was passed in 1939 to be administered jointly with inheritance taxes.

Inheritance tax revenue has accounted for two to three percent of total state revenues for the past 20 years. In fiscal 1963-64, almost \$96 million was collected from this source. (See page 21 for more precise data.) Prior to the income, sales and gas taxes, the inheritance tax was a leading source of state revenue. While no longer of such high importance, it remains a firmly established and widely accepted method of taxation.

CURRENT INHERITANCE TAX ADMINISTRATION

Organization

Administration of the state inheritance tax is the responsibility of the State Controller. The Inheritance and Gift Tax Division of the Controller's office operates at an authorized strength of 109.5 positions out of three district offices (Sacramento, San Francisco and Los Angeles). An organization chart appears on page 22.

The division is responsible for providing advice on inheritance tax matters to appraisers in the field, county treasurers, attorneys, trust officers, title examiners, taxpayers and the general public. The division also issues rules and regulations, and it compiles and issues pertinent statistics.

The Controller appoints one or more persons to form a panel of appraisers in each county. No formal qualifications have ever been set for appointment. In practice, there are approximately 150 appraisers throughout the state with the number per county varying up to 30 for Los Angeles. The probate courts assign cases as they arise to individual members of the county panel. As a result, inheritance tax appraisers are legally considered officers of the courts and thereby not subject to the direction of the Controller for many administrative purposes.

Cost

Expenditures for salaries and other operating expenses of the Inheritance and Gift Tax Division during fiscal 1963-64 were \$1,088,623. This amount excludes commissions to county treasurers and the relatively small payments to appraisers in the form of report fees. (More complete cost data may be found on page 23.)

Inheritance Tax Appraisers derive most of their compensation not from the state but from the estates taxed. A fee is imposed, separate and apart from the tax liability, based on the appraised value of the estates. Under present law, the fee essentially is one dollar per thousand dollars valuation up to \$500,000 and half that rate for everything over \$500,000. Appraisers also earn some fees for releasing liens and they are reimbursed for certain expenses, in addition to receiving limited payments in the form of report fees from the state.

From their gross income the appraisers must cover such operating expenses as clerical and technical assistance and office rent. Net income for probate and inheritance tax work in 1963 was \$1,591,887, or an average per appraiser of roughly \$10,000. (A breakdown of appraiser income and expenses is on pages 24-30.)

Procedures

Under existing law, the inheritance tax function is procedurally integrated with the probate process. The probate inventory and appraisal is used as a basis for computing the inheritance tax. And it is within the jurisdiction of the probate court to determine the inheritance tax liability.

As soon as possible after the decedent's death, the probate court appoints an executor or administrator of the estate. At about the same time, a member of the panel of appraisers is selected by the court to handle the case.

An inventory of all assets is prepared, usually by the attorney for the estate, which normally includes "suggested values." The local county treasurer performs an official inventory of safe-deposit boxes. It is the duty of the appraiser to review the listed assets and assign a value to each.

In the case of estates valued more than \$300,000 an informal conference normally is held between the estate's representatives, the appraiser and the Inheritance and Gift Tax Division.

The completed report of the appraiser, including tax computations, is submitted to the Inheritance and Gift Tax Division for review and audit. This audit process, incidentally, is not required by law since the appraiser technically is an officer of the court and is not bound by the division's audit findings.

Upon division approval, or at the appraiser's discretion, the report is filed with the probate court and a copy is sent to the executor.

Within 10 days after court receipt of the appraiser's report, objections may be filed either by the executor, any beneficiary, or the Inheritance and Gift Tax Division. In such an event, a hearing is held by the court to decide the issues in question and to set the tax liability. This decision is final unless overruled by a higher court.

Once the tax liability has been fixed by the court, it is the executor's responsibility to pay the taxes due to the local county treasurer. Upon notification that the taxes have been paid, the court allows distribution of the estate to the heirs. The tax becomes delinquent two years after the date of death and an interest penalty is imposed. In practice, most state inheritance tax cases are processed in 10 to 14 months while the federal estate tax carries a 15-month deadline.

Existing law provides 90 days for county treasurers to remit inheritance tax collections to the Controller's office. For their role in the inheritance tax process, county treasurers are entitled to commissions of three percent of the taxes collected up to a prescribed maximum depending on the size of the county.

CRITICISM OF INHERITANCE TAX ADMINISTRATION

California's inheritance tax administration has come under increasing criticism in recent years, particularly regarding the method of appointing appraisers. One of the first to urge reform was the office of the Legislative Analyst. As far back as 1945 the analyst recommended "appropriate steps be taken to place inheritance tax appraisers under civil service." Over the years, legislation to effect reforms has been introduced on a number of occasions but has not passed either house. And appointive appraisers have come under fire during the heat of recent political battles. Meanwhile, the current system has received, in general, the continuing support of the State Bar Association and incumbent administrations of both parties.

While criticism has taken a number of forms, several major points at issue have emerged.

Political Patronage

Perhaps the most frequently advanced argument against the current system is that it is a form of political patronage otherwise long since eliminated in California.

Testimony before the committee generally held that the vast majority of past and present appointed appraisers has been honest and competent. Many of them have exercised their right to participate in political affairs and to contribute openly to political campaigns, including those of their appointing officer.

It is neither the committee's duty nor desire to pass judgment on such political activity by inheritance tax appraisers. But it seems evident that the system does invite abuse.

In public administration generally, patronage is on the decline. In tax administration specifically, the possible impact of political influence is entirely out of place. And patronage is still patronage whether it is dispensed by one or more sources.

Fee Compensation

Another major criticism has centered on the method of compensating appraisers through a fee based on the value of the estates appraised. This does not necessarily reflect the amount or the caliber of actual appraisal work performed.

Critics also point out that occasions can and do arise in which appraisers are paid for work actually performed by someone else. For example, most of the cases involving business interests or stocks having no established value, such as closely held corporations, occur in the Los Angeles area. A "preaudit review" of such assets is provided by a specialist examiner, a civil service employee, in the Los Angeles district office of the Inheritance and Gift Tax Division. In practice, much reliance is placed on this expert review, but the appraiser still collects the full fee for appraising that part of the estate.

Inheritance tax appraising can be profitable, particularly for work generally considered to be part time. The following table lists the gross and the net income, after expenses, of appraisers as reported by the State Controller for the calendar years 1962 and 1963.

Amount	Number of appraisers			
	Gross income		Net income	
	1962	1963	1962	1963
50,000 or more	8	13	0	0
40,000 to 50,000	19	13	0	0
30,000 to 40,000	13	25	0	1
25,000 to 30,000	9	4	5	7
20,000 to 25,000	11	9	12	21
15,000 to 20,000	14	13	21	17
10,000 to 15,000	13	8	30	22
5,000 to 10,000	21	24	33	36
Less than 5,000	28	32	38	37

The income of part-time inheritance tax appraisers becomes all the more impressive when compared with the pay of full-time civil service appraisers. To illustrate, the salary schedule and number of appraiser positions budgeted for the Property Tax Division of the State Board of Equalization follows:

Position	Number authorized	Salary range
Principal appraiser	3	\$12,696 to \$15,432
Senior appraiser	16	10,968 to 13,332
Associate appraiser	38	9,036 to 10,968
Assistant appraiser	25	8,428 to 9,036
Junior appraiser	13	5,832 to 6,744

Thus, while only 3 of 95 Board of Equalization appraisers are even in a position, after long years of experience, to earn \$15,000 a year, 46 of 150 inheritance tax appraisers gained more than \$15,000 in net income during 1963. On the other hand, the number of inheritance tax appraisers earning less than \$5,000—37 in 1963—raises the question of whether adequate appraisal work exists in some counties to warrant their having an appraiser panel. Where the workload is very light, there is little opportunity to gain sufficient experience in appraising.

Prior to the July 8, 1964, hearing of the Ways and Means Committee, very limited information was available on appraiser income and expenses. The more complete data presented by the Controller's office at that time was welcome. The public unquestionably has the right to know how much inheritance tax appraisers earn.

The reported expenses of the appraisers evoked considerable interest among committee members. A breakdown follows:

	Number of appraisers reporting net expenses	
	1962	1963
\$50,000 or more	1	0
40,000 to 50,000	0	1
30,000 to 40,000	3	7
25,000 to 30,000	13	11
20,000 to 25,000	12	9
15,000 to 20,000	12	18
10,000 to 15,000	16	13
5,000 to 10,000	18	20
Less than 5,000	63	62

One explanation offered for the great disparity in reported expenses was that some appraisers rely more on hired staff than do others. Perhaps so, but the reported overhead expenses appeared unusually excessive for a number of appraisers in the higher gross income brackets. In the gross income ranges over \$30,000 reports of expenses amounting to 60 percent, 70 percent and even 80 percent of gross income were not uncommon.

Lack of Qualifications

Under existing law, there are no minimum qualifications for appraisers, other than being considered suitable for appointment by the Controller. A breakdown prepared by the Legislative Analyst of the occupational background of 140 appraisers in office in 1963 showed this: attorneys—53; real estate brokers—32; insurance brokers or agents—9; real estate appraisers—7; accountants—7; miscellaneous—14; none reported—18.

Again on this point, there was testimony before the committee that most appointments to date have gone to competent persons. But without any legally prescribed standards of education or experience, an unnecessary opportunity for abuse exists.

In a recent presentation to the State Government Organization and Economy Commission, Controller Alan Cranston described the aim of prescribing qualifications for appraisers as a "sound" objective. The committee agrees.

Lack of Continuity

It has been charged that the current system results in wholesale appraiser turnover when the party in power changes. The change in occupants of the State Controller's office as a result of the 1958 election did, in fact, produce a major turnover on appraiser panels. With very little legal leverage to exert administrative control or direction over the appraisers, it is understandable that a Controller might prefer having under him persons of known loyalty rather than persons with ties to a past or future opponent. But this condition hardly contributes to efficient administration of an important tax function.

Role of County Treasurers

Apart from the method of appointing appraisers, another recurring point of criticism of current inheritance tax administration is the role played by county treasurers. The treasurers participate in the process by examining and inventorying safe-deposit boxes, issuing consents to transfer property, making tax collections and transmitting the funds to the State Treasurer. For these services, the county treasurers are allowed to retain 3 percent of their collections up to a statutory limit. Existing law permits the treasurers to hold collections for 90 days without penalty. In practice, the treasurers usually transmit these funds at bimonthly intervals, so most inheritance tax revenue is in the State General Fund within 60 days of its original collection.

Both the Board of Equalization and the Legislative Analyst contend that important savings (\$670,000) could be realized by having the

taxes paid directly to the state and transferring the other duties away from the treasurers.

Direct state collection would also permit interest earnings to commence upon payment of the tax rather than 60 to 90 days later.

The analyst suggests that bank officers, who normally are present at safe-deposit inspections anyway, could prepare the official inventory for a nominal fee or even as a public service.

Consents to transfer property prior to the time of tax settlement are issued by either the county treasurers or the Inheritance and Gift Tax Division. At present, the county treasurers issue more consents than does the division. If this function were to be withdrawn from the local treasurers, some added administrative costs for the division would result.

PROPOSED REFORMS

AB 127 (Bagley)

Enactment of this bill would accomplish the following changes in state inheritance tax administration:

1. Appraisers would be full-time civil service employees paid on a regularly salaried basis. The State Personnel Board would prescribe appropriate qualifications and positions would be filled through normal testing and hiring procedures. Administrative responsibility would remain with the Controller.

2. Repealed would be the statutory requirement that at least one appraiser be appointed in each county.

3. The fees now paid appraisers for their services, as specified in Section 609 of the Probate Code, would instead be deposited in the General Fund. In 1963, these fees totaled \$3,035,000.

4. The compensation now received by appraisers for reimbursable expenses and as report fees, under Section 14772 of the Revenue and Taxation Code, would instead be deposited in the General Fund. Such compensation amounted to more than \$250,000 in 1963.

5. The bill would be operative only after the election, or appointment, of the successor to the Controller in office at the time of enactment.

Cost estimates for the additional civil service personnel, plus their overhead and operating expenses, vary widely. The Controller estimates that 391 new positions would be needed with a total added cost of \$4,408,763 to the Inheritance and Gift Tax Division. However, the Board of Equalization contends that if it were given the inheritance and gift tax function, it would need only 202 appraisers and support personnel at an annual cost of \$2,767,260.

The Controller's office, in reaching the 391 new personnel figure, used Board of Equalization appraisal workload data. The board subsequently disputed this, asserting that its appraisals for intercounty equalization purposes are far more detailed and time consuming than appraisals for inheritance tax purposes. At any rate, the added administrative expense of employing civil service appraisers would be largely, if not fully, offset by the increased revenue of roughly \$3.3 million a year.

In presenting his views on AB 127, Legislative Analyst A. Alan Post suggested it be amended so as to eliminate the county treasurers from the inheritance tax process. This, as explained on page 14, would produce an estimated \$670,000 in added annual revenues.

Appearing before the committee in opposition to AB 127 were representatives of the State Bar Association and the Controller's office. The Controller also presented his position in some detail to the Commission on State Government Organization and Economy.

It was contended that civil service appraisers would not be impartial and that they could not perform the probate appraisal. This, explained

the Controller, was because: "The interests of a taxing agency and the taxpayer are necessarily adverse. Employees of a taxing agency would, of course, be partial to the interest of their employer." The committee, however, finds no reason to doubt that civil service inheritance tax appraisers would provide impartial and fair treatment to taxpayers. The committee is aware of no evidence that civil service appraisers presently in state service or in local county and city assessor offices fail to provide impartial treatment. Indeed, it would seem more likely that inflated appraisals might occur when they produce higher fees for the individual appraiser than when they produce added revenues for the state. There is no indication such abuse now occurs under the present appraisal system, nor does it seem any more likely under civil service.

Neither is the committee convinced that probate appraisals could not be performed by civil service appraisers. However, the committee recognizes that it would be more difficult to establish the close relationships between civil service appraisers and the attorneys of taxable estates that now exist between appointed appraisers and the attorneys. But the competence and impartiality of civil service appraisers should pose no major problem for the probate process.

Under AB 127, the final decision regarding inheritance tax liability is left with the probate courts. Any objections to the appraiser's valuations could, of course, be settled in the courts.

Self-assessed System

A leading proponent of converting California inheritance tax administration to a self-assessed system has been the Legislative Analyst. Under this system, appraisers and county treasurers both would be eliminated from the inheritance tax and probate process as the estate would be responsible for assessing its assets, subject to state audit. The self-assessed system would operate, in essence, as follows:

1. The probate court would continue to appoint the executor or administrator of the estate.
2. The estate's attorney would prepare the inventory of assets and their estimated values. The tax return, with tax computed, would be submitted to the Inheritance and Gift Tax Division along with necessary accompanying documents.
3. The Inheritance and Gift Tax Division would audit the return and either accept it as submitted or, within a prescribed time period, indicate the areas of disagreement. This time limit on administrative action would be aimed at preventing undue delays in settling estates.
4. Any disagreement between the estate, its beneficiaries, and the division would be settled by the probate courts, as under the present system.
5. After the inheritance tax liability has been set by the court, the estate's executor would make the necessary payment directly to the Inheritance and Gift Tax Division instead of through the local county treasurers.
6. The estate could be distributed among the heirs upon notification to the court that the taxes have been paid.

Under this proposal, the existing inheritance tax and probate appraisal fees would be dropped. Elimination of such fees would save taxable estates approximately \$3 million a year.

At the same time, removal of the county treasurers from the process would annually save the state some \$670,000 which is now retained by the local treasurers as commissions, plus \$300,000 in increased interest earnings through earlier receipt of the taxes. Almost \$200,000 more, the analyst estimates, would be saved yearly through discontinuance of inheritance tax report fees. Gross savings thus are placed at \$1.16 million.

Additional administrative costs to the Inheritance and Gift Tax Division for implementing the self-assessed system are estimated at between \$500,000 and \$750,000. The Analyst foresees a net saving to the state of \$400,000 to \$650,000 each year from adoption of this plan.

It was pointed out during committee hearings that federal estate taxes, which also are a form of "death" taxes, are administered on a self-assessed basis.

Objections to a self-assessed system were expressed by the Controller in his earlier cited statement to the Commission on State Government Organization and Economy. Criticism of this approach began:

"Under the usual self-assessment system the taxpayer (estate) must provide and pay for its own appraisal which is then reviewed and evaluated by the taxing agency to the extent that employee time permits."

Of course, the same could be said of the present arrangement. Estates in probate pay for the appraisal and their settlement is subject to delays due to appraiser workloads, audit review by the Inheritance and Gift Tax Division, and probate dockets.

The Controller also faulted the self-assessed system in that there would be "no hearing and prompt determination in the probate court in the particular county, during the probate period." The detailed presentation of the Legislative Analyst, explaining the step-by-step procedures of the self-assessed plan before the Assembly Committee on Government Organization, seems to satisfy this requirement.

Another criticism of the self-assessed approach leveled by the Controller was that it would necessitate dealing with "a remote state agency, operating from Sacramento or a branch or regional office." Some years ago, this certainly would have been a most onerous burden. But with modern modes of transportation and communication, state government can hardly be said to be remote. Moreover, the final determination of tax liability would be no further away than the county seat, with the probate courts, where it is today.

Apprehensions of the Controller that the self-assessed system would cause "considerable delay in closing probate administration in many if not most cases" would appear satisfied by the imposition of statutory time limits as proposed by the Analyst.

"Little Hoover" Commission Recommendation

An alternative reform of inheritance tax administration was recently proposed by the Commission on California State Government Organiza-

tion and Economy, the so-called "Little Hoover" Commission. In his address to the Legislature on January 5, the Governor endorsed this proposal.

In its report the commission described its plan as a "modified self-assessed" approach. Essentially, it would retain appointed appraisers but it would limit their activity, and resulting fees, to certain types of assets.

Under this plan, the executors or attorneys for affected estates would continue to compile an inventory of assets but instead of listing "suggested values," as is present practice, actual valuations would be made of assets which have "comparatively exact and ascertainable market value." This would include assets such as cash, stocks, bonds, mortgages, securities, and insured personal property. Additionally, improved real property with a current assessed valuation of \$6,250 or less would be appraised for probate and inheritance tax purposes by the executor or attorney. All of these self-assessments would, of course, be subject to audit by the state administering agency.

Appointed appraisers would be responsible for determining the market value of real property with an assessed valuation of more than \$6,250 as well as such specialized personal property as jewelry, antique furniture, paintings, closely held businesses, and other items requiring specialized appraisal skills.

Compensation for the appointed appraisers would continue to be on the present fee basis but would be computed only on those assets actually appraised. Fees for those assets handled on a self-assessed basis would go to the State General Fund. The commission estimates this would generate about \$1.1 million in added state revenues and leave almost \$2 million in gross appraiser income.

The commission also recommends the elimination of county treasurers from the inheritance tax process. Increased annual state revenues are estimated at \$670,000 from commissions now paid to the local treasurers plus an additional \$300,000 in interest value from earlier tax receipts. Even with partially offsetting administrative expenses, the commission foresees net savings to the state in excess of \$1.5 million per year.

In reviewing this proposal, the committee is interested to note that no obstacle apparently was found to using the self-assessed valuations for probate as well as inheritance tax purposes.

However, the committee finds it difficult to justify the state collecting a fee with respect to those assets which actually are self-assessed. In effect, the state would be collecting a fee for work performed by representatives of the estate. If the aim of reform in this area is to generate additional revenues, then it would be more appropriate to change the inheritance tax rate structure.

The primary advantage of the commission's proposal is that it constitutes at least a partial shift away from the current fee-compensated, patronage-based system. It would test the self-assessed approach and it would reduce the often excessive income of many appraisers. If adopted, however, it should be considered only a first step in a broader plan of reform. Its success should permit extension of the self-assessed method to all assets and the elimination of appraisers.

Administration Proposal

Yet another proposed change in inheritance tax administration was presented last August to the "Little Hoover" Commission with the endorsement of Governor Edmund G. Brown. It was contained in a report prepared at the direction of Finance Director Hale Champion which had the broader purpose of proposing consolidation of all state tax administration.

Under this proposal, a Department of Revenue would be created to administer the state personal income tax, sales tax, cigarette tax, gas tax, and the inheritance and gift tax functions among others. The Department of Revenue would be headed by a three-man "California Tax Commission" consisting of the State Controller, the State Treasurer and the Director of Finance. The commission would appoint inheritance tax appraiser panels for each county. The Controller would serve as permanent chairman of the commission.

This proposal would seem to have little effect on any of the drawbacks of current inheritance tax administration. Though it would seem to include the Treasurer and Finance Director in patronage decisions, the Controller—as permanent commission chairman, and long-time administrator of inheritance taxes—might well remain the dominant force in appraiser appointments.

In his message to the 1965 Legislature, Governor Brown seemed to move away from this approach, endorsing instead the modified self-assessment proposal of the "Little Hoover" Commission.

APPENDICES

1. THE INHERITANCE TAX AS A REVENUE SOURCE

<i>Fiscal year ended June 30</i>	<i>Total revenues (in thousands)</i>	<i>Inheritance tax revenue</i>	<i>Inheritance tax as percent of total revenues</i>
1964 -----	\$2,995,883	\$95,855	3.2
1963 -----	2,667,917	86,776	3.3
1962 -----	2,451,226	70,546	2.9
1961 -----	2,338,200	65,092	2.8
1960 -----	2,196,824	51,706	2.4
1959 -----	1,925,340	41,979	2.2
1958 -----	1,750,910	42,551	2.4
1957 -----	1,711,256	35,994	2.1
1956 -----	1,577,748	34,173	2.2
1955 -----	1,433,851	28,429	2.0
1954 -----	1,271,118	22,409	1.8
1953 -----	1,152,299	21,881	1.9
1952 -----	1,080,595	27,776	2.6
1951 -----	1,013,247	21,744	2.1
1950 -----	833,472	18,652	2.2
1949 -----	777,843	20,440	2.6
1948 -----	712,493	19,400	2.7
1947 -----	602,284	18,872	3.1
1946 -----	493,244	13,938	2.8
1945 -----	416,289	9,833	2.4
1944 -----	394,564	9,762	2.5

SOURCE: Statistical Report—California Inheritance Tax Cases, 1961, State Controller, as revised.

2. OFFICE OF THE STATE CONTROLLER DIVISION OF INHERITANCE AND GIFT TAX ORGANIZATION CHART July 1, 1964

Salary Range	REVENUE			ACCOUNTING			TOTAL		
	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd
1375-1425	1						1		
1425-1475									
1475-1525									
1525-1575	1	1					2		
1575-1625									
1625-1675	1	1	1				3		
1675-1725	1	1	1				3		
1725-1775	1	1	1				3		
1775-1825	1	1	1				3		
1825-1875	1	1	1				3		
1875-1925	1	1	1				3		
1925-1975	1	1	1				3		
1975-2025	1	1	1				3		
2025-2075	1	1	1				3		
2075-2125	1	1	1				3		
2125-2175	1	1	1				3		
2175-2225	1	1	1				3		
2225-2275	1	1	1				3		
2275-2325	1	1	1				3		
2325-2375	1	1	1				3		
2375-2425	1	1	1				3		
2425-2475	1	1	1				3		
2475-2525	1	1	1				3		
2525-2575	1	1	1				3		
2575-2625	1	1	1				3		
2625-2675	1	1	1				3		
2675-2725	1	1	1				3		
2725-2775	1	1	1				3		
2775-2825	1	1	1				3		
2825-2875	1	1	1				3		
2875-2925	1	1	1				3		
2925-2975	1	1	1				3		
2975-3025	1	1	1				3		
3025-3075	1	1	1				3		
3075-3125	1	1	1				3		
3125-3175	1	1	1				3		
3175-3225	1	1	1				3		
3225-3275	1	1	1				3		
3275-3325	1	1	1				3		
3325-3375	1	1	1				3		
3375-3425	1	1	1				3		
3425-3475	1	1	1				3		
3475-3525	1	1	1				3		
3525-3575	1	1	1				3		
3575-3625	1	1	1				3		
3625-3675	1	1	1				3		
3675-3725	1	1	1				3		
3725-3775	1	1	1				3		
3775-3825	1	1	1				3		
3825-3875	1	1	1				3		
3875-3925	1	1	1				3		
3925-3975	1	1	1				3		
3975-4025	1	1	1				3		
4025-4075	1	1	1				3		
4075-4125	1	1	1				3		
4125-4175	1	1	1				3		
4175-4225	1	1	1				3		
4225-4275	1	1	1				3		
4275-4325	1	1	1				3		
4325-4375	1	1	1				3		
4375-4425	1	1	1				3		
4425-4475	1	1	1				3		
4475-4525	1	1	1				3		
4525-4575	1	1	1				3		
4575-4625	1	1	1				3		
4625-4675	1	1	1				3		
4675-4725	1	1	1				3		
4725-4775	1	1	1				3		
4775-4825	1	1	1				3		
4825-4875	1	1	1				3		
4875-4925	1	1	1				3		
4925-4975	1	1	1				3		
4975-5025	1	1	1				3		
5025-5075	1	1	1				3		
5075-5125	1	1	1				3		
5125-5175	1	1	1				3		
5175-5225	1	1	1				3		
5225-5275	1	1	1				3		
5275-5325	1	1	1				3		
5325-5375	1	1	1				3		
5375-5425	1	1	1				3		
5425-5475	1	1	1				3		
5475-5525	1	1	1				3		
5525-5575	1	1	1				3		
5575-5625	1	1	1				3		
5625-5675	1	1	1				3		
5675-5725	1	1	1				3		
5725-5775	1	1	1				3		
5775-5825	1	1	1				3		
5825-5875	1	1	1				3		
5875-5925	1	1	1				3		
5925-5975	1	1	1				3		
5975-6025	1	1	1				3		
6025-6075	1	1	1				3		
6075-6125	1	1	1				3		
6125-6175	1	1	1				3		
6175-6225	1	1	1				3		
6225-6275	1	1	1				3		
6275-6325	1	1	1				3		
6325-6375	1	1	1				3		
6375-6425	1	1	1				3		
6425-6475	1	1	1				3		
6475-6525	1	1	1				3		
6525-6575	1	1	1				3		
6575-6625	1	1	1				3		
6625-6675	1	1	1				3		
6675-6725	1	1	1				3		
6725-6775	1	1	1				3		
6775-6825	1	1	1				3		
6825-6875	1	1	1				3		
6875-6925	1	1	1				3		
6925-6975	1	1	1				3		
6975-7025	1	1	1				3		
7025-7075	1	1	1				3		
7075-7125	1	1	1				3		
7125-7175	1	1	1				3		
7175-7225	1	1	1				3		
7225-7275	1	1	1				3		
7275-7325	1	1	1				3		
7325-7375	1	1	1				3		
7375-7425	1	1	1				3		
7425-7475	1	1	1				3		
7475-7525	1	1	1				3		
7525-7575	1	1	1				3		
7575-7625	1	1	1				3		
7625-7675	1	1	1				3		
7675-7725	1	1	1				3		
7725-7775	1	1	1				3		
7775-7825	1	1	1				3		
7825-7875	1	1	1				3		
7875-7925	1	1	1				3		
7925-7975	1	1	1				3		
7975-8025	1	1	1				3		
8025-8075	1	1	1				3		
8075-8125	1	1	1				3		
8125-8175	1	1	1				3		
8175-8225	1	1	1				3		
8225-8275	1	1	1				3		
8275-8325	1	1	1				3		
8325-8375	1	1	1				3		
8375-8425	1	1	1				3		
8425-8475	1	1	1				3		
8475-8525	1	1	1				3		
8525-8575	1	1	1				3		
8575-8625	1	1	1				3		
8625-8675	1	1	1				3		
8675-8725	1	1	1				3		
8725-8775	1	1	1				3		
8775-8825	1	1	1				3		
8825-8875	1	1	1				3		
8875-8925	1	1	1				3		
8925-8975	1	1	1				3		
8975-9025	1	1	1				3		
9025-9075	1	1	1				3		
9075-9125	1	1	1				3		
9125-9175	1	1	1				3		
9175-9225	1	1	1				3		
9225-9275	1	1	1				3		
9275-9325	1	1	1				3		
9325-9375	1	1	1				3		
9375-9425	1	1	1				3		
9425-9475	1	1	1				3		
9475-9525	1	1	1				3		
9525-9575	1	1	1				3		
9575-9625	1	1	1				3		
9625-9675	1	1	1				3		
9675-9725	1	1	1				3		
9725-9775	1	1	1				3		
9775-9825	1	1	1				3		
9825-9875	1	1	1				3		
9875-9925	1	1	1				3		
9925-9975	1	1	1				3		
9975-10025	1	1	1				3		
10025-10075	1	1	1				3		
10075-10125	1	1	1				3		
10125-10175	1	1	1				3		
10175-10225	1	1	1				3		
10225-10275	1	1	1				3		
10275-10325	1	1	1				3		
10325-10375	1	1	1				3		
10375-10425	1	1	1				3		
10425-10475	1	1	1				3		
10475-10525	1	1	1				3		
10525-10575	1	1	1				3		
10575-10625	1	1	1				3		
10625-10675	1	1	1				3		
10675-10725	1	1	1				3		
10725-									

3. INHERITANCE AND GIFT TAX DIVISION OPERATING EXPENSES

	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64	Estimated 1964-65
(1) Inheritance Tax Division							
Support.....	\$649,777	\$693,619	\$804,802	\$859,590	\$945,284	\$1,014,932	\$1,058,558
Retirement contributions.....	59,520	56,738	65,800	51,768	65,390	73,691	78,337
Medical contributions.....	--	--	--	3,161	--	--	--
	\$709,297	\$750,357	\$870,202	\$914,519	\$1,010,674	\$1,088,623	\$1,136,895
(2) Appraisers' report fees.....	211,281	261,697	255,818	199,558	177,487	166,349	170,000
(3) County treasurers' commissions.	493,804	524,938	577,917	613,506	622,255	666,857	670,000
Totals (1, 2, 3).....	\$1,414,382	\$1,536,992	\$1,703,937	\$1,727,583	\$1,810,416	\$1,921,829	\$1,976,895

SOURCE: Office of State Controller, as extracted.

Del Norte	996	407	170	28	--	72	1,679	--	561	551	5	78	33	74	540	--	548	1,130
Rohrer.....																		
El Dorado	923	1,028	1,028	--	--	--	2,979	--	1,505	498	--	252	823	--	27	--	1,406	1,574
Wishart.....	450	--	--	--	--	--	450	--	10	--	--	--	2	--	--	--	8	443
Oro																		
Fresno	12,053	1,062	1,466	858	107	--	15,546	3,739	2,048	2,120	--	501	831	61	579	20	6,918	8,628
Greenway.....	16,819	2,601	2,297	1,900	--	--	23,617	5,695	914	855	69	109	498	114	400	914	5,716	17,901
Levy.....	12,500	378	127	834	--	438	14,277	6,000	510	3,400	20	--	510	38	3,200	20	6,162	8,115
Willeford																		
Glenn	3,835	163	533	167	--	--	4,687	--	221	630	20	--	221	--	2,413	--	--	6,450
Jensen.....																		
Humboldt	5,422	980	137	61	10	--	6,610	1,750	--	143	--	12	191	193	2,348	45	--	7,482
Bussman.....	5,837	728	89	320	--	--	6,974	2,427	522	1,399	--	245	694	153	2,929	--	817	6,157
Nielson.....																		
Imperial	4,922	312	2,235	338	80	--	7,886	688	775	1,525	--	151	711	35	16	16	2,379	5,508
Hart.....	6,645	421	667	53	--	--	7,785	1,016	600	630	--	36	148	36	--	--	2,098	5,687
Wied.....																		
Inyo	3,000	--	--	--	--	--	3,000	113	125	44	--	46	341	47	--	--	--	3,059
Mairs.....																		
Kern	12,027	2,040	1,625	85	300	--	16,077	2,346	1,010	1,164	--	607	1,470	478	1,815	--	1,362	14,714
Atbs.....	12,027	2,040	1,625	85	300	--	16,077	7,368	1,010	1,164	--	--	1,470	478	1,815	--	5,779	10,298
Magnus																		
Kings	6,160	1,549	1,133	721	65	177	9,805	2,045	1,238	2,338	--	411	519	67	2,812	--	2,634	7,170
Baird.....																		
Lake	2,471	2,145	795	38	--	--	5,449	404	1,375	445	--	385	701	--	1,094	--	814	4,634
Springer.....																		
Lassen	951	38	71	18	--	15	1,079	--	142	186	--	--	142	--	--	--	186	803
McQueen.....	156	--	10	--	--	--	181	--	--	--	--	--	--	--	--	--	--	181
Bieber.....																		
Los Angeles	39,066	12,408	761	3,038	145	--	55,418	13,866	3,078	5,367	357	2,322	1,117	237	400	559	22,699	32,790
Braden.....	39,861	961	233	2,808	13	3,658	47,534	14,466	2,915	6,778	982	1,161	2,183	31	400	781	22,906	21,638
Burke.....	33,469	8,778	1,166	2,397	95	27	47,931	15,055	2,652	3,876	173	621	1,376	32	400	--	20,370	21,302
Crutchfield.....	33,584	9,174	419	2,504	282	4,066	50,029	17,375	3,161	8,923	670	738	1,926	276	400	278	27,996	22,033
Desmond.....	47,081	--	23	1,646	--	--	49,350	23,512	751	6,361	584	1,376	2,069	25	400	--	30,089	13,201
Ferraro.....	31,888	--	--	3,308	--	1,422	48,271	15,359	2,597	5,709	829	1,794	1,390	19	500	544	23,835	24,436
Despol.....	10,485	--	1,168	3,308	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Geiler.....	50,633	1,051	583	1,416	--	--	53,633	16,895	5,585	7,020	1,078	3,645	3,394	26	400	584	29,819	23,803
Geffner.....	25,780	1,939	367	1,423	14	1,795	31,318	14,267	1,139	5,758	1,171	477	2,194	12	2,500	732	17,374	13,945

4. APPRAISER INCOME AND EXPENSES—Continued

1963 CALENDAR YEAR
(in dollars)

	Gross Income					Expense				Reimbursements					Net income				
	Probate and inheritance tax appraisals			Conser- vatorship	Gift tax	Other	Total	Em- ployees etc.	Auto	Office	Map- ping, stock quotes	Account- ing notary travel, etc.	Mileage	Notary		State	Other	Net expense	
	Court appoint- ments	Release of lien	Outside referral																
Los Angeles—Cont.																			
Glass.....	44,424	773			51,900	6,240	20	352	21,806	6,388	4,390	815	1,021	1,529	20	500	609	31,762	20,047
Gleaves.....	25,285	3,373	435		30,776	--	187	1,487	16,753	601	2,295	974	272	2,564	28	4,698	726	12,879	17,897
Granville.....	4,939		768		5,704	--			2,914		2,146	131	567	655	3		192	4,907	797
Hall.....	50,348	1,314	30		52,886	--	78	1,117	18,976	708	4,374	938	4,068	708	--	600	--	27,756	25,130
Lindelo.....	(appointed 1/27/64)																		
Linderman.....	3,579	91	--		4,508	116	--	723	2,946	366	1,461	161	434	251	6	--	109	4,841	--333
Maxwell.....	5,794	425	255		8,761	1,578	--	709	4,842	812	1,812	161	40	323	12	--	--	7,331	1,429
McKee.....	49,533	88	--		50,299	--	23	655	25,320	1,751	8,586	1,366	970	2,250	21	400	2,317	35,276	15,023
Moore.....	41,750	1,939	733		46,027	796	--	504	18,159	3,773	4,541	894	702	2,285	24	300	672	24,574	22,053
Moseley.....	25,378	6,874	649		35,187	31	1,204	1,476	16,669	2,076	3,573	667	2,129	1,972	246	2,284	1,102	21,511	13,676
Newby.....	48,398	1,529	430		52,476	958	33	1,129	18,039	2,352	7,334	1,003	1,613	1,355	21	400	822	27,714	24,762
Prinzmetal.....	4,288	--	--		4,288	--	--	--	3,025		1,476		135	--	--	--	--	4,637	--349
Seymour.....	5,271	653	5		7,658	1,578	--	152	4,842	812	1,812	161	40	323	12	--	--	7,332	326
Sparks.....	37,637	12,684	303		52,480	40	40	1,816	15,985	2,811	7,385	887	2,299	not itemized	--	--	--	29,366	23,114
Stegman.....	45,829	973	609		48,847	372	103	1,062	18,925	1,325	4,638	627	2,403	1,793	20	400	93	25,882	23,165
Taylor.....	49,074	93	--		52,295	1,929	--	1,198	14,158	5,410	6,601	928	7,406	2,239	19	400	2,214	27,662	24,633
Thomas.....	19,445	7,713	185		31,876	1,780	52	2,500	8,007	2,234	4,286	69	756	524	19	400	--	14,408	17,468
Ward.....	54,993	2,245	43		58,869	--	270	3,118	41,107	1,996	6,602	828	1,550	2,690	20	500	--	48,873	9,996
Weiner.....	47,890	2,270	15		51,160	--	35	980	15,819	4,612	8,755	1,139	346	3,426	30	400	--	25,706	25,455
Zambrano.....	52,875	938	104		57,040	1,928	--	1,194	24,018	2,469	8,195	--	1,683	2,623	30	400	1,050	33,402	23,638
Wymore.....	(appointed 1/20/64)																		
Madera																			
Spence.....	2,356	398	422		3,181	--	--	5	--	259	72	--	--	259	--	833	--	--761	3,942
Tordini.....	1,647	93	482		2,582	273	37	51	--	--	--	--	--	236	11	918	--	--1,164	3,746
Marin																			
Guthrie.....	12,519	1,329	1,483		18,076	684	--	2,061	4,309	934	2,182	47	1,092	395	232	2,593	--	5,344	12,732
Holman.....	16,839	3,218	2,506		25,610	92	--	2,955	7,024	904	3,007	65	1,605	715	387	1,216	10	10,287	15,323

Mariposa Pellock.....	633	520	603	104	--	--	1,860	--	474	328	--	51	265	32	--	--	557	1,303
Mendocino Broadus.....	8,813	780	91	277	61	--	10,022	3,078	743	830	--	86	1,830	127	2,613	--	168	9,854
Merced Falasco.....	5,256	92	236	308	183	--	6,075	800	735	810	--	84	49	84	1,681	--	615	5,460
Hamp -----	5,834	813	724	266	204	--	7,841	--	355	677	35	--	183	149	1,698	--	963	8,805
Modoc Forrest.....	1,041	155	23	--	--	14	1,233	--	225	493	--	3	99	3	115	--	504	728
Mono Charlebois.....	958	--	79	--	--	--	1,037	--	--	--	--	--	--	--	--	--	--	1,037
Monterey May.....	30,088	1,163	1,324	1,072	90	--	33,737	18,672	1,377	2,076	--	675	879	97	1,800	70	19,054	13,783
Vial.....	21,445	2,046	1,438	1,304	402	--	26,634	11,907	2,030	5,763	--	1,871	1,890	156	2,400	--	17,121	9,513
Napa Dickenson.....	6,956	672	481	254	40	--	8,403	3,044	379	1,264	67	47	233	52	3,200	--	1,316	7,087
McCormick.....	6,082	1,265	520	426	75	--	8,367	2,319	450	1,489	15	--	155	--	3,200	--	917	7,450
Nevada Blas.....	2,570	2,007	633	5	15	--	5,230	--	1,394	452	26	168	85	16	1,985	--	45	5,275
Orange Kirk.....	21,106	4,516	1,798	2,539	16	--	29,974	9,831	3,287	2,415	296	1,668	--	--	--	298	17,199	12,776
O'Campo.....	13,571	3,588	1,253	1,536	--	--	19,948	6,388	1,845	2,083	286	1,027	--	--	851	--	10,778	9,170
Thomson.....	29,330	5,372	1,625	1,628	46	32	37,033	13,214	1,300	3,766	153	600	1,100	6	400	455	17,072	19,961
Young.....	29,330	5,372	625	1,628	46	32	37,033	15,214	1,800	3,766	153	600	1,100	6	400	455	19,572	17,461
Placer Garbolino.....	4,227	1,197	2,094	71	209	--	7,797	572	924	856	--	545	--	--	1,350	--	1,547	6,250
Ruid.....	2,054	1,721	1,454	297	15	1,831	7,373	--	1,140	282	--	30	--	--	--	--	1,452	5,921
Plumas Leonhardt.....	520	220	463	--	266	67	1,536	450	319	202	21	21	210	21	--	--	782	754
Riverside Dougherty.....	19,277	8,100	1,789	1,757	--	--	30,922	6,353	150	3,325	974	150	350	150	400	--	10,053	20,870
Spiegelman.....	16,438	3,140	1,516	651	84	557	22,358	7,515	2,577	3,516	637	2,117	2,295	145	2,600	675	10,647	11,711
Strahan.....	15,922	1,969	2,441	1,215	111	--	21,658	6,196	2,629	10,437	755	2,642	3,155	184	1,900	804	16,615	5,043
Sacramento Carnody.....	26,252	5,698	663	1,413	170	960	35,155	10,161	1,268	3,458	232	750	250	4	400	--	15,215	19,941
Wymore.....	34,194	2,133	697	1,196	18	--	38,237	11,135	2,352	4,082	--	2,613	673	343	400	--	18,769	19,468

4. APPRAISER INCOME AND EXPENSES—Continued

1963 CALENDAR YEAR
(in dollars)

	Gross Income						Expense				Reimbursements							
	Probate and inheritance tax appraisals			Conservatorship	Gift tax	Other	Total	Employees etc.	Auto	Office	Mapping stock quotes	Accounting notary travel, etc.	Mileage	Notary	State	Other	Net expense	Net income
	Court appointments	Release of lien	Outside referral															
San Benito																		
Matthews.....	2,496	98	235	89	15	--	2,934	820	443	624	--	866	28	--	--	--	2,724	209
San Bernardino																		
Katz.....	18,289	7,250	2,613	2,126	150	--	30,428	13,750	6,400	3,442	1,214	--	2,150	--	400	1,142	21,114	9,314
San Diego																		
Gaston.....	28,586	5,404	953	4,168	--	--	39,111	15,125	1,896	3,379	--	257	1,896	83	300	89	18,290	20,821
Golden.....	28,810	4,335	409	2,539	85	444	36,623	12,823	2,247	3,690	--	573	1,344	74	400	53	17,462	19,161
Levy.....	27,959	3,794	1,295	2,166	65	--	35,278	8,952	2,043	4,220	533	264	1,517	44	400	--	14,021	21,257
Lustig.....	25,561	3,547	969	1,226	12	--	31,316	10,932	2,332	4,006	--	1,182	1,237	62	500	100	16,554	14,761
Manley.....	29,274	14,931	1,081	1,128	50	3,030	49,494	20,664	3,448	4,573	128	1,011	2,284	177	300	10	27,053	22,441
Peterson.....	(appointed 12/27/63)																	
San Francisco																		
Berlin.....	35,127	812	166	467	247	1,400	38,308	15,853	397	4,030	24	644	--	--	400	--	20,517	17,791
Brown.....	24,645	213	310	124	89	707	26,088	15,800	--	2,255	--	472	--	419	400	763	16,946	9,143
Feeney.....	31,682	1,664	2,008	199	287	630	36,470	17,536	1,990	4,642	162	1,099	--	--	400	--	25,028	11,442
Haughey.....	35,064	3,600	1,655	369	297	--	40,986	18,489	3,339	6,877	350	1,082	--	--	400	--	30,137	10,848
Hu.....	30,281	4,185	--	103	--	--	34,569	8,988	698	1,722	--	1,414	--	--	400	--	12,422	22,147
Skelly.....	36,194	415	867	498	149	--	38,123	11,528	1,915	2,773	39	582	--	403	400	--	16,036	22,088
Smyth.....	(not itemized)						42,763	9,835	1,557	3,645	98	1,182	--	--	400	--	15,917	26,846
Williams.....	(not itemized)						22,593	4,437	923	3,508	350	250	--	--	400	--	9,068	13,526
San Joaquin																		
Dozier.....	15,583	3,093	312	992	730	--	20,710	5,727	1,972	1,469	--	676	321	388	400	--	8,735	11,975
Michael.....	14,660	2,315	294	1,150	273	--	18,682	5,732	1,350	1,816	24	644	233	351	400	--	8,583	10,099
San Luis Obispo																		
Misosi.....	11,703	3,601	2,701	955	163	--	19,123	2,812	2,182	3,112	48	464	1,822	--	1,352	--	5,444	13,679

4. APPRAISER INCOME AND EXPENSES—Continued

1963 CALENDAR YEAR

(in dollars)

	Gross Income						Expense						Reimbursements				Net income	
	Probate and inheritance tax appraisals			Conservatorship	Gift tax	Other	Total	Em- ployees etc.	Auto	Office	Map- ping, stock quotes	Account- ing notary travel, etc.	Mileage	Notary	State	Other		Net expense
	Court appoint- ments	Release of lien	Outside referral															
Tehama	3,252 (not itemized)	117	598	144	--	610	4,721 3,048	-- 350	1,237 214	302 388	-- --	30 --	-- --	-- --	1,663	-- --	-- --	-93 952
Trinity	991	10	88	9	--	--	1,097	74	--	--	--	5	74	6	--	--	--	1,097
Tulare	13,815 14,121	535 192	806 791	535 283	597 97	83 99	16,370 15,583	3,535 2,537	1,115 1,895	1,270 1,370	-- --	47 494	859 774	24 9	3,020 2,809	-- 1	2,063 2,702	14,306 12,881
Tuolumne	2,111	38	271	241	--	28	2,688	--	868	471	56	--	195	2	1,092	23	84	2,604
Ventura	8,546 9,158 7,852	826 1,963 1,058	672 141 469	317 612 1,302	427 107 1,875	56 -- 52	10,844 11,981 12,608	3,675 4,000 4,320	996 700 1,547	3,532 2,145 3,174	194 -- 284	-- -- --	428 232 468	-- -- --	3,200 3,200 3,090	224 27 164	4,546 3,385 5,603	6,298 8,396 7,005
Yolo	14,776	273	472	1,709	289	10	17,528	5,744	991	1,367	87	279	728	--	3,200	--	4,541	12,987
Yuba	(not itemized)						8,614	1,800	200	760	40	--	90	70	2,010	--	630	7,984
Total	2,375,487	301,412	90,519	133,648	19,757	46,617	3,044,465	1,033,080	194,661	388,897	25,998	97,343	99,374	10,024	142,088	34,945	1,452,580	1,591,887

NOTE: Detail may not add to totals due to rounding, different reporting methods and inability to separate detail in some instances.

5. MINORITY REPORT

ASSEMBLYMAN HOWARD J. THELIN

February 4, 1965

It may be that the present system of appointing inheritance tax appraisers is not the best system possible and if a better method could be suggested I might well endorse and vote for a new kind of system.

However, it does not seem to me that there was any showing to the committee that the appraisers have done a bad or inefficient job. Quite the contrary, as I recall the testimony of the representatives of the State Bar of California, the lawyers who deal in probate matters and who are, therefore, the ones to a great extent who must deal with the inheritance tax appraisers if any sizeable amount of money is concerned, favor the present system and find that the appraisers and the Controller cooperate with the bar in these matters to the benefit of the taxpayer for whom the lawyer must speak and act.

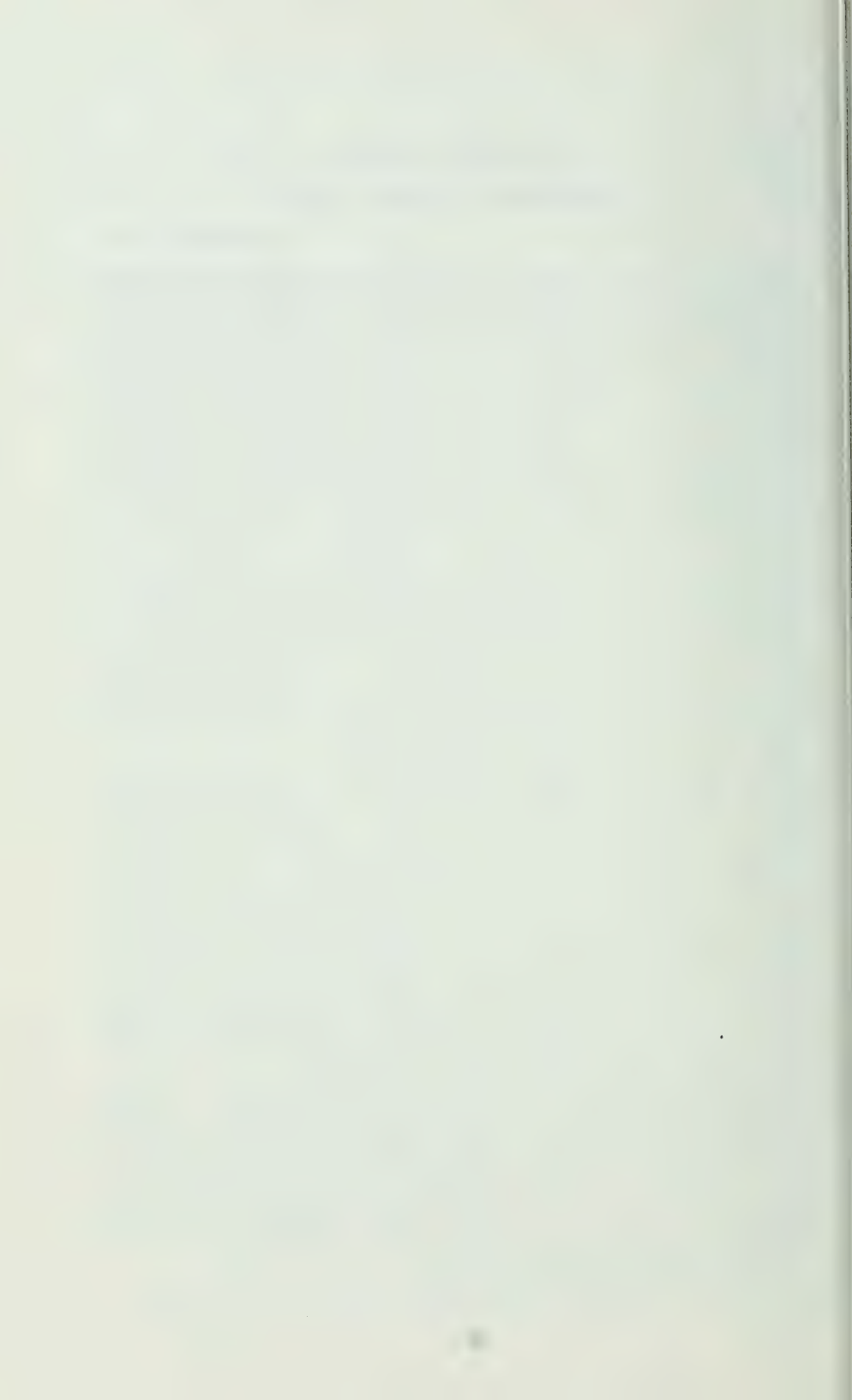
I am also troubled by the fact that although bills introduced on this subject have been presented with the affirmation that they will save the taxpayer money, nothing in the suggested changes will reduce the tax rates. The argument is simply that instead of the money going to the appraiser as his fee that it will go into the General Fund of the state where it will undoubtedly be spent for some other state purpose. Moreover, if we change to a civil service system it might well be that we would develop quite an expensive replacement for the present method which will cost the taxpayers even more money.

The statement is made in the findings of the committee, "that the present method of compensating the present tax appraisers by fees based on the value of estates appraised does not take into account the amount or caliber of appraisal work performed and it often results in excessive remuneration for some part-time appraisers." While this may be true, it seems to me that it is also possible that in some instances a small fee is being paid for the service rendered compared to what it would cost to hire a qualified appraiser to do the same particular job. I believe this is particularly true if you are talking about the kind of appraiser who could go to court and testify as to the value concerned. I do not agree with the recommendation that we enter into a self-assessment system of inheritance tax administration. What this means is that the taxpayer will be required to do more work and still be taxed at the same rate and for the same amount of money.

It seems to me that, on the whole, the basic question as to whether adequate or good services are being rendered to the public or not under the present system has been overshadowed and lost sight of because of the dramatic imposition of the appraiser issue into the senatorial campaign of last year. I, therefore, cannot in good faith pledge myself to vote for such changes in the law as are recommended in this report, although I do not say that further study and information would not modify my views on the subject.

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ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
ROBERT W. CROWN, *Chairman*

THE CALIFORNIA BUY AMERICAN ACT

REPORT OF THE
WAYS AND MEANS SUBCOMMITTEE ON
ECONOMIC DEVELOPMENT

ROBERT W. CROWN, *Chairman*



MEMBERS OF THE SUBCOMMITTEE

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JOHN L. E. COLLIER
PAULINE DAVIS
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JAMES HOLMES

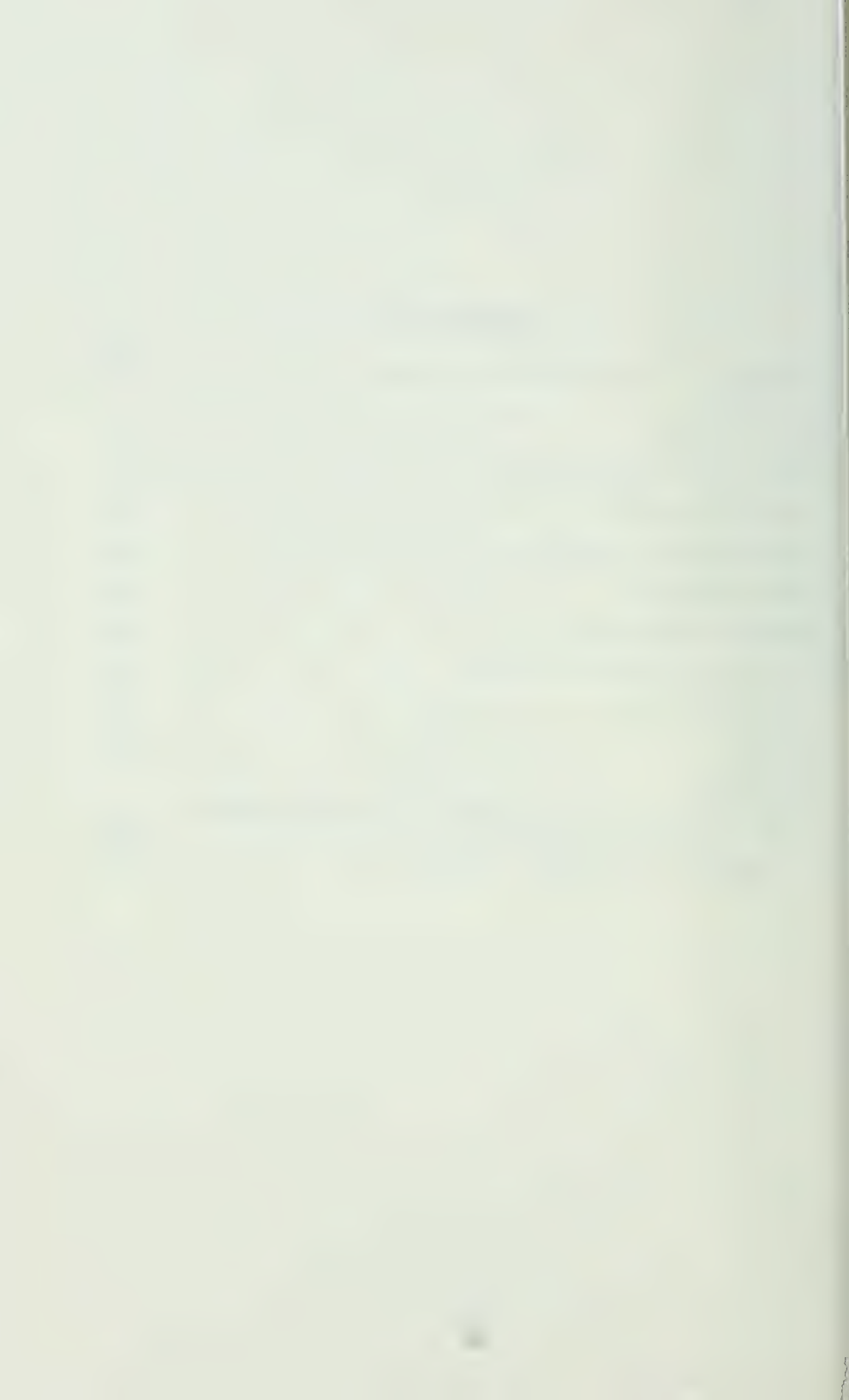
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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
CALIFORNIA LEGISLATURE

March 8, 1965

To the Speaker and Members of the Assembly

Dear Mr. Speaker and Members:

Your Interim Committee on Ways and Means herewith submits its final report on the California Buy American Act.

The committee is deeply appreciative of the invaluable assistance rendered by the many witnesses who testified during the course of this interim study.

Respectfully submitted,

ROBERT W. CROWN, *Chairman*

TOM BANE (with reservations)
FRANK P. BELOTTI
CARL A. BRITSCHGI
CHARLES CONRAD (minority report)
PAULINE DAVIS (with reservations)
EDWARD M. GAFFNEY (minority report)
FRANK LANTERMAN (minority report)

JAMES R. MILLS
NICHOLAS C. PETRIS
HOWARD THELIN
JOHN C. WILLIAMSON
GORDON H. WINTON

LETTER OF TRANSMITTAL

SUBCOMMITTEE ON ECONOMIC DEVELOPMENT
ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS

January 5, 1965

TO THE MEMBERS OF THE ASSEMBLY INTERIM COMMITTEE
ON WAYS AND MEANS

Gentlemen:

Transmitted herewith is the final report of the Subcommittee on Economic Development of the Assembly Interim Committee on Ways and Means on the subject of California's Buy American Act.

Assembly Bill 2424 (Petrus, 1963) constitutes the vehicle for the subcommittee's study of this subject matter.

The subcommittee is indebted to the many witnesses whose testimony provided the framework for the subcommittee's findings and recommendations.

Respectfully submitted,

ROBERT W. CROWN, *Chairman*

FRANK BELOTTI

PAULINE DAVIS (with reservations)

JOSEPH KENNICK (with reservations)

JAMES MILLS

NICHOLAS PETRIS

JOHN WILLIAMSON

Assembly Interim Committee on Ways and Means Subcommittee on Economic Development Final Report

SUMMARY OF FINDINGS

The committee makes the following findings with respect to the California Buy American Act:

1. The act is costly to taxpayers. It is mandatory and virtually covers all public purchases, state and local, thereby reducing competitive bidding.
2. While the act purports to protect California industry, there is evidence that often it gives preference to products manufactured in one of the other 49 states. It is, therefore, difficult to justify its further existence as a California statute.
3. The act rests on uncertain constitutional and legal grounds and is in conflict with certain laws and policies of the federal government.
4. The confused legal situation created by the act often delays purchasing decisions by public agencies and often requires costly litigation.
5. The act serves to frustrate efforts to ease foreign restrictions on certain California exports and, in fact, invites retaliatory purchasing practices.
6. The act runs counter to the progressive international economic community, those persons engaged in the import-export business.

SUMMARY OF RECOMMENDATIONS

The committee makes the following recommendations relative to the California Buy American Act:

Favorable recommendation of the provisions of AB 2424 (1963) which would repeal the California Buy American Act.

INTRODUCTION

AB 2424 (1963, Petris) would repeal the California Buy American Act, Sections 4300-4305 of the Government Code. The act provides for mandatory and inclusive preference for domestic goods in public purchasing. The two key sections of the act are Section 4303:

The governing body of any political subdivision, municipal corporation, or district, and any public officer or person charged with the letting of contracts for (1) the construction, alteration, or repair of public works or (2) for the purchasing of materials for public use, shall let such contracts only to such persons who agree to use or supply only such unmanufactured materials as have been produced in the United States, and only such manufactured ma-

terials as have been manufactured in the United States, substantially all from materials produced in the United States;

and Section 4304:

Every contract for the construction, alteration, or repair of public works or for the purchase of materials for public use shall contain a provision that only unmanufactured materials produced in the United States, and only manufactured materials manufactured in the United States, substantially all from materials produced in the United States shall be used in the performance of the contract. Any person who fails to comply with such provision shall not be awarded any contract to which this article applies for a period of three years from the date of violation.

The California Buy American Act was passed in 1933, during the great depression. Many states and the federal government passed similar statutes in this period. They were clearly intended to protect American industry and labor in a time of crisis. In the intervening years, most of the other states and the federal government have repealed or substantially amended their domestic preference acts. Only California and New Jersey retain acts which are mandatory and general in their application.

RECOMMENDATIONS

The committee recommends repeal of the Buy American Act as provided in AB 2424 (1963).

FINDINGS

In 1963, the Subcommittee on Economic Development was created to explore ways in which state government can participate in the maintenance of a healthy economy and ensure necessary future economic expansion. In this study the primary criterion for evaluating AB 2424 was whether the continuance or the repeal of the California Buy American Act would best aid the economy of the state.

COST TO TAXPAYERS

There are several compelling reasons for the repeal of the California Buy American Act. Foremost among these is the additional cost to the taxpayers that the act imposes. Significant economies could be achieved through foreign competition on public purchases. A case in point is the recent purchase of turbines and generators by the Sacramento Municipal Utility District. The low foreign bid was close to \$2 million (*or approximately 45 percent*) less than the low domestic bid. The utility district was able to make this foreign purchase because in this particular case the Buy American Act came into conflict with a federal treaty and was therefore inoperative.¹ On the other hand, the

¹ For further information in this point, see the Buy American section of the Final Report of the Subcommittee on State Purchasing of the Assembly Interim Committee on Ways and Means, 1965.

Bay Area Rapid Transit District was recently forced by the act to reject a foreign bid on equipment and accept a domestic bid which was 50 percent higher.

In another example, there was testimony before the committee that more than \$20 million could be saved on the California Water Project if foreign equipment suppliers could compete for contract awards. According to William E. Warne, State Water Resources Director, an estimated \$20.5 million could be saved on electric power generators, motors, turbines and pumps by accepting foreign bids during the next four years. In addition, Warne expressed the opinion that substantial savings could also be realized on foreign transformers and circuit breakers although a thorough cost analysis had not been completed.

The State Water Resources Director cited experiences with the San Luis Water Project to show that "the presence of foreign competition on federal and local agency equipment contracts has a salutary effect on domestic bid prices." From a cost standpoint, this key state agency found the Buy American Act "in conflict with the public policy which requires major public works projects to be let by competitive bidding."

Another public agency which cited hard evidence in demonstrating how tax dollars can be saved by foreign competition was the Los Angeles City Department of Water and Power. Because of its status as a charter city, Los Angeles has been free to purchase foreign equipment when advantageous to do so. Since 1955, the city's Water and Power Department has saved almost \$12 million by purchasing \$34.2 million of foreign equipment on which the lowest domestic bids totaled \$46.1 million.

Testimony before the committee also indicated that after exploring the possibility of purchasing lower cost foreign products, many local government units felt it necessary to drop this interest when reminded of the Buy American Act.

From these examples, it is clear to the committee that very substantial savings of tax dollars are prevented by the provisions of the Buy American Act. Precise determination of just how great these savings might be would require detailed study beyond the resources of the committee. A thorough analysis of purchases by the state and affected local government units, plus comparison with prices of foreign goods of comparable quality, would be a vast undertaking. But regardless of what exact savings would result from foreign competition for public purchases, California taxpayers could only benefit.

FOREIGN TECHNOLOGICAL ADVANCES

While American technology is second to none, there are specialized areas in which foreign industries are showing new leadership. Under the Buy American Act, public purchasing policies cannot be sufficiently flexible to take full advantage of these foreign innovations when they occur.

This point was raised in committee hearings by State Water Resources Director Warne when he referred to certain heavy equipment items needed for the State Water Project and stated that foreign bidding is "essential from an engineering standpoint." Warne explained that

although American manufacturers have had some experience with multi-stage pumps, they have never built pumps of the size and for the function required at the planned Tehachapi crossing. Pumps of the type needed have been developed successfully in Europe but, under existing law, are precluded from use in the state project.

Even with respect to products never before manufactured or used in this country and thereby subject to exemption as provided in the Buy American Act (as "materials which are of a class or kind which are not, or which are manufactured from materials which are not, produced in the United States . . .") the situation is unclear. There is always a distinct possibility that an American firm would submit a bid to produce an item, despite a lack of related experience, thus posing a threat of costly litigation and unnecessary delay in public projects. This was another point made by Water Resources Director Warne, who concluded: "application of the present Buy American provisions could deprive the state of the best techniques and facilities available for this critical work (the State Water Project)."

OUT-OF-STATE SUBSIDY

Another reason for repeal of the act is that it provides a subsidy for out-of-state business. A case in point is the heavy electrical equipment needed for the California Water Project. None of it will be manufactured in California. The estimated \$20.5 million extra the California taxpayers must pay will help industry and labor in other states. In view of the pressing problems of California's own economy, this act of generosity cannot be supported.

CONSTITUTIONAL AND LEGAL ASPECTS

The Buy American Act is incompatible with the spirit of the United States Constitution and its effect is contrary to national trade policy. Article I, Section 8, paragraph 3 of the Constitution gives Congress the exclusive power to regulate commerce with foreign nations. While it is probable that it is within the sovereign power of the state to exercise its purchasing function in any way it chooses, the committee believes that the exclusion of more than \$1 billion annually from foreign trade is in effect a regulation of commerce with foreign nations. That is, while the act perhaps does not violate the letter of the United States Constitution, it clearly violates the spirit.

Moreover, since the act discriminates against those persons engaged in the import-export business for their livelihood, it can be argued that the equal protection clause of the U.S. Constitution is thereby violated.

Conflict With GATT

The California Buy American Act on occasion has come in conflict with the General Agreement on Tariffs and Trade, an international trade agreement to which the U.S. government is a party.

The California Buy American Act conflicts with the provisions of the General Agreement on Tariffs and Trade specifically in paragraphs

4 and 8 (a) of Article III, Part 2, of GATT, which read in part as follows:

(Paragraph 4) "The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favorable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use."

(Paragraph 8a) "The provisions of this Article shall not apply to laws, regulations or requirements governing procurement by governmental agencies of products purchased for governmental purposes and not with a view to use in the production of goods for commercial sale."

In one case involving this conflict, *Baldwin-Lima-Hamilton Corp. v. Superior Court*, 208 A.C.A. 865 (October 24, 1962), the district court of appeals ruled that the Buy American statute was "unenforceable in the situation now before us since (it) conflicts with certain treaties and agreements and thus with the 'supreme law of the land.'²" The district court ruling substantiated an opinion by the State Attorney General which held that the purchase of equipment for use on the Canyon Power Project by the City of San Francisco was exempt from the Buy American Act.³

The 1963 Legislature enacted AB 1222 which exempted the purchase of electrical turbines and generators by the Placer County Water Agency from the provisions of the California Buy American Act after the agency was confronted with a legal dilemma on the one hand and excessive costs on the other. Due to high bids from domestic equipment producers, compliance with the act would have forced the water agency either to revise its entire financing program—requiring approval of new bonding authority by the voters—or to seek an avenue which would permit purchase of lower priced foreign equipment. AB 1222 was considered emergency legislation and the proponents of the measure argued that the successful completion of the Placer County Water Project rested with the passage of the bill. The measure won approval of the Legislature and was signed by the Governor. Although the bill contained a section which specified that the specific exemption made by the measure was in no way to be construed as changing or modifying the policies contained in the Buy American code sections, this action serves as an example of the multifold problems posed by the act.

EXPANDING FOREIGN TRADE

The committee also believes that the California economy would be best served by the repeal of the act. Essentially, the committee finds that the best opportunities for expanding the economy beyond the normal expected growth is in increased foreign trade. California faces a unique economic problem. Because of an unprecedented in-migration approxi-

² See transcript of hearing, Assembly Interim Committee on Ways and Means Subcommittee on State Purchasing, January 10, 1964.

³ The suit in connection with the Canyon Power Project cost the City of San Francisco \$68,000 a week in lost Hetch Hetchy electric power sales during the months spent in litigation for a total of more than \$3 million.

mately 200,000 new jobs must be created each year just to keep pace. The California economy must sustain a rate of expansion adequate to provide these jobs. Increased foreign trade is one of the most promising means of accelerating the rate of economic expansion.

The difficulty of this enormous task is magnified by present and anticipated curtailment of federal defense spending in California. As this committee has pointed out elsewhere,⁴ the state's economic growth in recent years has been largely dependent on defense spending. But with defense needs changing, defense expenditures will decline or level off. The committee has concluded that a variety of new or increased economic activities must be developed to compensate for this loss of federal dollars. Increased foreign trade is one of the most readily available and highly productive of such compensators. The state should take appropriate action to increase foreign trade.

California is now heavily dependent on foreign trade for economic stimulation. It is the largest export state in the nation and has a favorable balance of trade.⁵ It is estimated that 400,000 Californians now depend directly or indirectly on this foreign trade for their jobs. And to place this in perspective, the California economy in general, and its foreign trade in particular, are larger than those of most of the nations of the world.

The Buy American Act is a significant obstacle to increasing California's foreign trade. It is estimated that the expenditures of the public agencies to which the act is applicable exceed \$1 billion annually. The act simply excludes this substantial business from foreign trade, resulting in most cases in increased costs to the state. In addition, the act produces an economic "ripple effect." Although it applies to public purchases only, its effect on the economy in general is much broader. It often discourages substantial state suppliers from stocking foreign goods since to do so would be to maintain a dual inventory—one for public customers and one for private customers.

National Trade Expansion Policies

The steady trend of national policy since 1934 has been toward "liberalized" trade. Tariffs have been progressively lowered, reciprocal trade agreements negotiated, international trade organizations sponsored, and greater and greater flexibility built into the economic partnership of the nations of the free world. The executive and legislative branches of the national government under both political parties have recognized the dependence of the national economy on world trade and have taken positive steps to foster it. Yet the California Buy American Act stands unaffected by the course of events and, in fact is contrary to them.

This incompatibility between national policy and state law and its detrimental consequences are illustrated by the fact that California's Buy American Act has been specifically cited by participants in the "Kennedy Round" tariff discussions as one of the items frustrating agreement.

⁴ See Impact of Federal Spending in California, final report of the Subcommittee on Economic Development, Assembly Interim Committee on Ways and Means.

⁵ Approximately \$1.9 billion exports annually against \$1.7 billion imports.

Foreign Retaliation

The act encourages retaliation by foreign nations—in effect, reciprocal trade barriers—further frustrating California's attempts to increase its foreign exports. For example, on September 25, 1963, the Japanese Cabinet amended their governmental purchasing policy of competitive bidding without regard for national origin by adopting Cabinet Order No. 336 which provides that competitive bidding may be limited to specifically designated bidders. This new policy obviously permits the Japanese government to discriminate very selectively in its purchasing, against, for example, California bidders only. And Japan purchases approximately 30 percent of California's exports.

California, like the United States as a whole, enjoys a comfortable balance of trade with Japan. Exports of \$566 million during 1964 exceeded imports of \$447 million by \$119 million.⁶ Japan's new policy has never been applied but it demonstrates the real possibilities of retaliation.

In conclusion, one of the committee's most fundamental objections to the anachronistic Buy American Act is that it is an obstacle to the rapid increase in foreign trade upon which California will become progressively more dependent for continued economic expansion.

SUMMARY

In summary, the committee recommends repeal of the Buy American Act because it will lower the cost of government to the heavily burdened taxpayer, it will remove a serious obstacle to badly needed expansion of the state's economy; and it will end the damaging incompatibility between bipartisan national trade policy and state law.

⁶ Transcript of San Francisco hearing, Subcommittee on Economic Development, November 9, 1964.

APPENDICES

1. Minority Report of Assemblymen Lanterman and Gaffney

February 16, 1965

To the Members of the Assembly Interim Committee
on Ways and Means

Gentlemen:

Transmitted herewith is a minority report of the Subcommittee on Economic Development of the Assembly Interim Committee on Ways and Means on the subject of the California "Buy American Act."

Assembly Bill 2424 (Petris, 1963) constitutes the vehicle for the subcommittee's study of this subject matter.

Respectfully submitted,

FRANK LANTERMAN
EDWARD M. GAFFNEY

Assembly Interim Committee on Ways and Means Subcommittee on Economic Development Minority Report

SUMMARY OF FINDINGS

The members of the committee signing this report make the following findings with respect to the California "Buy American Act":

1. Repeal of the act would cause serious disruptions in the California economy, further complicating California's extreme unemployment problem which is presently 20 percent above the national unemployment average.

2. The California "Buy American Act" does not increase the cost of government when the tax generation of governmental purchases of domestic materials is taken into consideration. As an example, a \$100,000 purchase by the federal government of domestic material, generates 36.014 percent of this amount in taxes. Due to the effect of the velocity of money, every dollar spent by the State of California and its political subdivisions on California produced goods stimulates the California economy 12 times the original expenditure. Purchases of foreign produced goods has the effect of depressing the California economy by 12 times the cost of these goods.

3. Over the past 10 years California's foreign trade has substantially increased to the point where it stands as first in the nation in volume of exports and second in the volume of imports. This has been accom-

plished in an orderly and constructive manner while the California "Buy American Act" has been in existence. Continued expansion is foreseen in California exports and imports regardless of the status of the act. The argument that repeal of the act would stimulate California industries has only a limited application. No evidence has been submitted showing how California industries would substantially benefit.

4. The State of California and its political subdivisions benefit in many ways from purchases made of out-of-state manufactured items by collection of the sales and use tax, property tax and other taxes. The purchase of foreign manufactured goods do not bring about as great tax revenues to the State of California as domestic manufactured items.

5. The General Agreement on Tariffs and Trade (GATT) regulating the foreign trade activities of over 40 major nations in the world recognizes the principle that governmental agencies' purchasing policies are beyond the scope of normal trade relationships. For many years and even before the existence of the GATT treaty, other foreign countries, as well as the United States, have had laws or regulations giving preference to domestically produced items when purchased for governmental purposes. These laws and regulations are not considered as unusual or provocative to necessitate retaliatory measures.

6. Because of the monopolistic practices of most foreign countries, especially Japan, California industries are placed at a distinct disadvantage in foreign trade. The major Japanese industries are large cartels subsidized by the Japanese government bringing about a business climate entirely opposed to the principle of "American free enterprise" and producing high, fixed domestic prices, artificially controlled low export prices, artificial allocations, high tariffs, artificially low shipping rates, dumping practices and business practices repugnant to the "American way of business." The Japanese government both at the national and local level has long practiced a policy of purchasing domestic manufactured products exclusively for governmental use. While there is no specific law, this administrative policy is strictly adhered to in the purchase of goods for government use.

7. The federal government in negotiating the General Agreement on Tariff and Trade (GATT) recognized the principle that the states could restrict their purchases to domestic materials. The federal "Buy American Act" applies to purchases by the federal government for federal projects and is an indication that the federal government recognizes the desirability of the principle of using tax moneys to purchase domestic materials. The California "Buy American Act" is in agreement with the principle of the federal "Buy American Act."

8. The California "Buy American Act" has been a statute of the State of California for over 30 years (since 1933) with a minimum of litigation. Recent court decisions concerning the act have clearly outlined the scope of the law precluding the necessity for further litigation.

9. Foreign manufactured generators, pumps and valves, are all machined with metric system measurements. In case of national defense emergency or catastrophe, replacement parts could not be manufactured in America. All American machine tools are calibrated on the decimal system and cannot reproduce metric based tolerances. On the

basis of national defense alone it would be suicidal to so jeopardize the entire State Water System so vital to the very existence of the people and their industry.

10. The crisis concerning the United States in its critical imbalance of international gold payments and the President's plea for increased consumption of domestic products makes repeal of the California "Buy American Act" unthinkable.

SUMMARY OF RECOMMENDATIONS

The members of the committee signing this report make the following recommendations relative to the California "Buy American Act":

1. Unfavorable recommendation of AB 2424 (1963) which provides for repeal of the California "Buy American Act."
2. Amend Sections 4300-4305 of the Government Code to title these sections the "California Job-preservation Act."

INTRODUCTION

The Assembly Ways and Means Interim Subcommittee on Economic Development held hearings to consider AB 2424 (Petris, 1963) at the Sheraton-Palace Hotel on November 9 and 10, 1964, in San Francisco. A review of the testimony presented at these hearings showed that 11 points were presented to support the passage of AB 2424 (Petris, 1963). These points are summarized in the following section entitled, "The California 'Buy American Act' Arguments—Pro and Con." Also listed with these points is subject matter introduced by those opposing the passage of AB 2424 (Petris, 1963).

RECOMMENDATION

1. It is the recommendation of the members of the committee signing this report that the preponderance of evidence supports the retention of the California "Buy American Act."
2. The members of the committee signing this report recommends that no action be taken on AB 2424 (Petris, 1963).

THE CALIFORNIA "BUY AMERICAN ACT"

Arguments—Pro and Con

ARGUMENT FOR REPEAL

The California "Buy American Act" is old fashioned and out of date, having been passed during the great depression in 1933 to combat unemployment. There are only two states in the United States that have "Buy American Act" statutes.

ARGUMENT FOR RETENTION

Unemployment is still California's number one problem. In November 1964 California unemployment rate was 6.5 percent which was 20

percent above the national unemployment average. Some 21 states and territories give some preference to domestically produced goods in their purchasing policies. The loss of the substantial business done with the State of California and its political subdivisions would mean bankruptcy for many California businesses further complicating the unemployment problem. Because California is unique in being a coastal state, with a dynamic, expanding economy and desirable port facilities, the combination of which is not found in other states, it has attracted greater imports.

ARGUMENT FOR REPEAL

The California "Buy American Act" forces state governmental agencies to pay considerably more for the products which they purchase and in effect increases taxes. The California "Buy American Act" raises the cost of government.

ARGUMENT FOR RETENTION

The California "Buy American Act" does not increase the cost of government when the tax generation of governmental purchases of domestic materials is taken into consideration. A \$100,000.00 purchase by the federal government of domestic materials generates 36.014 percent of this amount in taxes.

ARGUMENT FOR REPEAL

As a great majority of the items purchased by the State of California and other governmental agencies in the state under the provisions of the California "Buy American Act" are manufactured out of the State of California at a price higher than offered by foreign manufacturers the taxpayers in the State of California are paying a penalty to support manufacturers out of the State of California.

ARGUMENT FOR RETENTION

Well over 90 percent of all reinforcing steel produced in the State of California is consumed in the state. The State of California does benefit in many ways from purchases made of out-of-state manufactured items by the sales and use tax, property tax and other taxes. An economic benefit to any part of the United States is a benefit to every part.

ARGUMENT FOR REPEAL

If the California "Buy American Act" is retained Japan and other foreign countries will retaliate with similar or more restrictive laws or regulations against the United States.

ARGUMENT FOR RETENTION

The General Agreement on Tariffs and Trade (GATT) regulating the foreign trade activities of over 40 major nations in the world recognizes the principle that governmental agencies purchasing policies are beyond the scope of normal foreign trade relationships. For many

years and even before the existence of the GATT Treaty, other foreign countries as well as the United States have had laws or regulations which are not considered as unusual or provocative to necessitate retaliatory measures.

ARGUMENT FOR REPEAL

The repeal of the California "Buy American Act" would hurt some industries but would stimulate trade in others so that eventually California industries as a whole would do a greater volume of business creating more jobs and greatly stimulating the whole California economy. California must buy if it is going to sell in international trade.

ARGUMENT FOR RETENTION

California is the nations largest exporting state and the second largest importing state with exports and imports increasing each year and has a favorable balance of trade. Progress in California foreign trade in the last 10 years has been significant and has been accomplished in a constructive and orderly manner. The argument that the repeal of the California "Buy American Act" would stimulate California industries is highly theoretical. No concrete evidence has been submitted showing how California industries will be benefited.

ARGUMENT FOR REPEAL

To bring about peace in the world we need greater foreign trade. The modern world must be built on the principle of free trade. The California "Buy American Act" is opposed to this principle.

ARGUMENT FOR RETENTION

American manufacturers support the principle of "free" foreign trade. Because of the monopolistic practices of most foreign countries, especially Japan, American manufacturers do not consider foreign trade today "free trade." The major Japanese industries are large cartels subsidized by the Japanese government bringing about a business climate entirely opposed to the principle of "American free enterprise" and producing high, fixed domestic prices, artificially controlled low export prices, high tariffs, artificially low shipping rates, artificial allocations, dumping practices, and business practices repugnant to the "American way of business life." American manufacturers are not competing against "Japanese free enterprise;" they are competing against the Japanese government and people.

ARGUMENT FOR REPEAL

Article I, Section 8, Clause 3 of the Constitution of the United States confers upon the federal government the power to regulate commerce with foreign nations. The federal government administers tariffs and has a federal "Buy American Act" to adequately protect United States manufacturers. The State of California has a "Preference Act" to protect California manufacturers. Under these circumstances why is it necessary to retain the California "Buy American Act"?

ARGUMENT FOR RETENTION

The federal government in negotiating the General Agreement on Tariff and Trade (GATT) in Section 5 of Article 2 of Part 3 recognized the principle that the states could restrict their purchases to domestic materials. The federal "Buy American Act" applies to federal projects only and is an indication that monies to purchase domestic materials. The California "Buy American Act" is in agreement with the principle of the federal "Buy American Act" and is simply a declaration of policy by the State of California that it is to the best interests of the state that tax monies be spent on domestic materials.

ARGUMENT FOR REPEAL

The California "Buy American Act" is in conflict with public policy requiring competitive bidding to insure economy in the expenditure of public funds. The act restricts the field of bidders to domestic purchasers and thereby encourages the inflation of contract prices.

ARGUMENT FOR RETENTION

Competition among domestic producers of material for state agencies is extremely keen. Governmental business is aggressively sought after. The California Division of Highways, Highway Cost Index is comparable to the United States Bureau of Public Roads Composite Mile Index indicating that the State of California is obtaining extremely competitive bids, in purchasing domestically produced materials.

ARGUMENT FOR REPEAL

Certain types of foreign manufactured equipment is better on quality and performance. The state agencies should be able to take advantage of better products.

ARGUMENT FOR RETENTION

If certain types of foreign manufactured equipment is better in quality and performance, the state agencies should be allowed to purchase these items. The California Legislature in past years, has recognized this situation by excluding scientific and medical instruments, certain types of office machines and supplies, sewing machines and a certain type of printing press.

ARGUMENT FOR REPEAL

The retention of the California "Buy American Act" will lead to considerable legal litigation which will delay many of our vitally needed public projects.

ARGUMENT FOR RETENTION

The California "Buy American Act" has been a statute of the State of California for over 30 years (since 1933) with a minimum of litigation. Recent court decisions concerning the California "Buy American Act" have clearly outlined the scope of the law procluding the necessity for additional litigation.

ARGUMENT FOR REPEAL

The California "Buy American Act" violates the principle behind the Trade Expansion Act of 1962 and United States foreign trade policy since 1934 when the Reciprocal Trade Act was passed.

ARGUMENT FOR RETENTION

The federal government has retained the federal "Buy American Act" in spite of the United States foreign trade policy since 1934 and the Trade Expansion Act of 1962 because the principle has been well established that the matter of governmental purchases both federal and state are in a category entirely different than commercial trade. Signatories to the General Agreement on Tariffs and Trade (GATT) recognized this principle when the treaty was signed.

2. Minority Report of Assemblyman Charles J. Conrad

February 16, 1965

I cannot concur in the findings and recommendations of the Ways and Means Subcommittee on Economic Development with respect to the California Buy American Act.

It is inconsistent to deny the use of foreign labor in California agriculture, insisting that American labor at higher costs be utilized, then permit state and local governments to purchase goods produced at lower cost by foreign labor. I find many objectional parts to the federal government's G.A.T.T. program. Part of the administration's "War on Poverty" program is concerned with economically depressed areas. Some such areas have been brought about by G.A.T.T. policies which ruined certain American industries, especially in New England. An elimination of the Buy American Act could produce to a lesser degree a similar situation here in California.

There may be individual items for which there is not a comparable American product, but such occasions could be dealt with by specific exemption as was done in a previous session.

A blanket repeal of the Buy American Act could have a serious impact on the highly paid and highly skilled labor force here in California.

3. Remarks of Assemblyman Joseph M. Kennick

Kindly let the subcommittee report show that I approve of the findings and recommendations with the following reservations:

1. To repeal the act, outright, would operate to the disadvantage of California and U.S. business and labor interests, a disadvantage that would not appear to be immediately offset by advantages to the economy and the taxpayers.
2. If it is to the benefit of the state and the nation that the act be repealed, such benefit should be achieved in orderly fashion and should

not be taken at the specific expense of business and labor sectors which have operated under the present law for 22 years and are accustomed to the market situation which the act has created.

3. Repeal should be accomplished by a phasing program. For example, the state might adopt law comparable to the restrictions that the federal government imposes upon itself in its purchase agreements; that is, law which grants a percentage favoring of domestic bids; foreign bids may be accepted only if they do not fall below a given percentile of the domestic bids. The law could provide for an annual reduction of the percentage figure, until such time as the Act would be, in effect, repealed. This approach would meet the spirit of the subcommittee recommendations but would provide a cushion against the impact of repeal upon the economic communities most likely to be affected.

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ASSEMBLY INTERIM COMMITTEE ON
WAYS AND MEANS

ROBERT W. CROWN, *Chairman*

REPORT OF THE
SUBCOMMITTEE ON STATE PURCHASING

JAMES R. MILLS, *Chairman*

MEMBERS OF THE SUBCOMMITTEE

CARLOS BEE

CARL A. BRITSCHGI

CHARLES J. CONRAD

FRANK LANTERMAN

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STEPHEN SPELLMAN, *Special Consultant*

GAIL VESSELS, *Committee Secretary*

LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
CALIFORNIA LEGISLATURE

March 8, 1965

TO THE SPEAKER AND MEMBERS OF THE ASSEMBLY

Dear Mr. Speaker and Members:

Your Interim Committee on Ways and Means herewith submits its final report on nine pieces of legislation duly referred for interim study.

The committee is indebted to the many persons and agencies who provided information and assistance during the course of the study.

Respectfully submitted,

ROBERT H. CROWN, *Chairman*

TOM BANE
CARLOS BEE
FRANK BELOTTI
CARL A. BRITSCHGI
JOHN L. E. COLLIER
CHARLES J. CONRAD
PAULINE DAVIS (with reservations)
EDWARD M. GAFFNEY
JAMES P. HOLMES
JOSEPH M. KENNICK
FRANK LANTERMAN (with reservations)

LESTER McMILLAN
JAMES R. MILLS
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HOWARD J. THELIN
JEROME WALDIE
JOHN C. WILLIAMSON
GORDON H. WINTON

LETTER OF TRANSMITTAL

SUBCOMMITTEE ON STATE PURCHASING
ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS

January 12, 1965

TO THE CHAIRMAN AND MEMBERS

Assembly Interim Committee on Ways and Means

Gentlemen :

Transmitted herewith is the final report of the Subcommittee on State Purchasing on nine bills and resolutions duly referred for interim study.

The subcommittee wishes to express its appreciation for the assistance rendered by the many persons who provided information and advice during the course of the study.

Respectfully submitted,

JAMES R. MILLS, *Chairman*

CARLOS BEE

CARL A. BRITSCHGI

CHARLES J. CONRAD

FRANK LANTERMAN (with reservations)

CARLEY V. PORTER

HOWARD J. THELIN

GORDON H. WINTON

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INTRODUCTION

The Subcommittee on State Purchasing was established to study and report on nine bills and resolutions concerning state purchasing policies and procedures which had been referred to the Committee on Ways and Means by the Committee on Rules. Similarities among the nine bills and resolutions suggested their division into four categories: (1) Investigation of procedures under the State Purchasing Act; (2) Consideration of changes in the state's Buy American Act; (3) Consideration of changes in the state's Buy California Act; and (4) Investigation of change orders made pursuant to the State Contract Act.

STATE PURCHASING PROCEDURES

HR 215 (1963, Mulford) directed the subcommittee to investigate the property acquisition procedures of the various departments and agencies of state government. HR 539 (1963, Lanterman) directed the subcommittee to investigate the procedures followed in the bidding on and awarding of contracts by the State Purchasing Agent*; to compile a list of bidders on contracts where only one or two bids were submitted; and to investigate the procedures for establishing specifications for bids let by the State Procurement Officer.

RECOMMENDATIONS

1. The committee recommends that the Legislature place primary responsibility for maximizing competition on the state's purchases with the Director of General Services and that he be directed to prepare a public information program which includes information on the kinds of supplies the state purchases, the procedures the state follows in purchasing, and the means by which potential suppliers may become qualified bidders as partial performance of this responsibility and that he report on this program to the Legislature not later than June 1, 1965.

2. The committee recommends that the Legislature direct the Director of General Services to formulate and enforce rules and regulations to insure competition on state purchases of less than \$1,000 and to report to the Legislature on such rules and regulations not later than June 1, 1965, and to make such rules and regulations available to any interested party on request.

3. The committee recommends that the Legislature direct the Director of General Services to specify the tests which prospective suppliers must meet to become prequalified bidders and report to the Legislature on such tests and the necessity for them not later than June 1, 1965, and make such information available to any interested party on request.

4. The committee recommends that the Director of General Services and all others who are responsible for the specification of the quality of state purchases refine the use of "brand-named specifications" in

* This position has since been renamed State Procurement Officer.

three respects: (1) that the use of two or more brand-named products which together set a standard is preferable to the use of one; (2) that "brand-named specifications" be used only in cases where it is known that one or more other products will meet the standards set by the brand-named products; and (3) that if only the one product is known to meet the standard of quality desired, the purchase should be made under Section 13402 of the Government Code which exempts from competitive bidding cases in which the department and the agency agree that "an article of a specified brand or trade name is the only article which will properly meet the needs of the agency" and Section 13403 which requires that in such cases a report of that determination be made to the Board of Control.

5. The committee recommends that increased use be made of "end product" or "performance" specifications to an extent consistent with the primary requirements of efficiency and economy.

6. The committee recommends that the Legislature make the Director of General Services responsible for establishing and enforcing statewide purchasing standards and that greater consolidation of purchases be effected through these standards; that the agencies retain the initial power to specify the quality of purchases to be made for them, but that if the State Procurement Officer finds these specifications to be inconsistent with the purchasing standards established, he may change them as necessary to make them consistent, with prior notice to the agency concerned; and that if the agency finds that the changes will cause the supplies and equipment to be purchased to not meet its needs, it may appeal these changes to the Director of General Services who shall, after hearing both sides, make a decision binding on both.

FINDINGS

In its investigation the committee focused on three major problem areas: the maximization of competition; the exercise of discretion in the specification of the quality of state purchases; and the centralization of purchasing policymaking. All of the committee's recommendations refer to these three areas.

MAXIMIZING COMPETITION

The basic purchasing policy of the state in competitive bidding. Competition insures that the state receives the highest quality for the lowest price. The committee has found that substantially less competition exists in state purchasing than is desirable. For example, in response to the direction in Assemblyman Lanterman's HR 539 to compile a list of bidders on contracts where only one or two bids were submitted, the State Office of Procurement informed the committee that on 13 of its 54 annual statewide contracts in 1963, only 1 or 2 bids were submitted. These 13 annual contracts on which there was little or no competition amounted to \$6,413,288.73. The committee recognizes that in certain cases there may be good reason for this lack of competition, but the relatively high incidence of noncompetitive purchases is considered to be a problem.

No agency of state government is responsible for maximizing competition. The state is wholly dependent on the normal operations of the free

enterprise system. Also, the State Office of Procurement operates in such a way that it is up to the prospective supplier to take the initiative in being placed on the state's list of qualified bidders. It is these bidders who regularly receive invitations to bid on state purchases. All of the subcommittee's witnesses agreed that many potential suppliers are neither aware that the state buys the kinds of goods they offer nor how to go about selling their goods to the state. No agency operates a program to inform these potential bidders of the opportunities for doing state business. The facts that no agency is responsible for maximizing competition, that the initiative lies with the bidders, and that no public information program exists explain in large part the lack of competition on roughly one-quarter of the state's major statewide purchases.

The subcommittee believes that the placement of responsibility for maximizing competition and the introduction of an inexpensive and effective public information program working through existing business or trade organizations would best serve to stimulate greater competition on state purchases and would result in substantial savings to the state.

The committee has found another element that contributes to less competition than is desirable. Competitive bidding is required by statute only on purchases in excess of \$1,000. Only 10 percent of all purchase orders are in amounts exceeding \$1,000 and this 10 percent of purchase orders accounts for only 40 percent of total purchasing expenditures. The degree of competition in the remaining 90 percent of purchase orders, accounting for 60 percent of total purchase expenditures, is not covered by the statutes and is wholly a matter of administrative discretion. Although the State Office of Procurement attempts informally to insure competition in this important area, the committee believes that an explicit policy of maximizing competition and the appropriate administrative rules and regulations would be more successful.

A final problem connected to competition concerns the prequalification process. Prequalification is an efficiency device by which the State Office of Procurement investigates the suitability of firms wishing to do business with the state. After prequalification, the firms are permanently placed on the State Office of Procurement's mechanized list of bidders and automatically receive notice of all contracts to be let in their respective areas of specialization. The problem is that prequalification depends upon tests which are wholly a matter of administrative discretion. Neither the Legislature nor the firms in question know the content of these tests. Thus, they are not only by definition arbitrary but cannot be evaluated as to effectiveness. This situation should be corrected.

SPECIFYING QUALITY

The next problem concerns the exercise of discretion in the specification of the quality of state purchases. The State Purchasing Act provides that the individual agencies may specify the quality of the supplies and equipment that are purchased for them by the State Office of Procurement. They operate under a single statutory limitation: that no specification may be drafted "in such a manner as to limit the bidding directly or indirectly to any one bidder." Thus, this is an unusually broad area of administrative discretion. And it is an area

particularly subject to intentional or unintentional discrimination in favor of or against any product or bidder.

The committee has not found any practice which is inconsistent with the best interests of the state. However, the committee has found that the practice of using brand named products to indicate a standard of quality in lieu of actually specifying the standard desired is conducive to unintentional discrimination. This practice is an efficiency device which saves the state the substantial expense of drafting detailed specifications on each purchase. Instead, the state specifies "X" product or its equal. The committee does not disapprove of this device but believes its use should be more rigorously circumscribed to prevent unintentional discrimination. The committee's recommendations are intended to mitigate the possibility of such unintentional discrimination.

The committee has also found that the more general the specification, the more competition is possible and that "end product" or "performance" specifications, which define the purpose the article to be purchased must serve or the function it must perform, are more general than "method" specifications which define how the article is to be constructed, and "brand-named specifications." The committee recommends increased use of the more general specifications.

POLICYMAKING

The final problem concerns the centralization of purchasing policy-making. The committee has found that significant economies could be achieved through statewide purchasing standards which would permit greater consolidation of purchases. The present law permits the agency to specify the quality of the articles to be purchased although the State Office of Procurement may disagree that the specification "best serves the interests of the state" and may request a ruling by the Board of Control. However, rulings by the Board of Control are requested in very few instances and the heavily burdened board is an inappropriate agency to establish and enforce statewide purchasing standards. The committee finds that the effective dispersal of the power to specify the quality of purchases throughout the agencies of state government and the inability of any agency to establish and enforce statewide purchasing standards results in a relatively inefficient and uneconomical purchasing system. Therefore, the committee recommends the centralization of this function by making the Director of General Services responsible for statewide purchasing policies through which greater consolidation of purchases and therefore greater economies can be effected.

THE BUY AMERICAN ACT

AB 2424 (1963, Petris) would repeal the state's Buy American Act.* HR 502 (1963, Petris) directed the committee to study the subject of AB 2626 (1963, Petris) which would make the provisions of the Buy American Act inapplicable to purchases by political subdivisions made with a view to use in the production or transmission of goods for commercial sale. HR 26 (1963, Dills) directed the subcommittee to study the subject of exempting from the provisions of the Buy American Act goods manufactured overseas in whole or in part from minerals produced in the United States.

RECOMMENDATIONS

1. The committee recommends that the Legislature approve AB 2626 (1963, Petris) which would exclude from the California Buy American Act those applications which conflict with the General Agreement on Tariffs and Trade, a federal treaty. The committee recommends that the language of AB 2626 be modified so that it will conform precisely with the language of the General Agreement on Tariffs and Trade.
2. The committee makes no recommendation on HR 26.

FINDINGS

The committee has found that the application of the California Buy American Act is general and inclusive and that in those cases where it applies to governmental purchases made for the purpose of "resale or for use in the production of goods for sale," it conflicts with a federal treaty, the General Agreement on Tariffs and Trade (GATT). In the case of such conflicts, the state law is clearly inoperative according to Article VI of the United States Constitution which provides that "... treaties made ... under the authority of the United States, shall be the supreme law of the land. ...". The Attorney General of the State of California and the California First District Court of Appeals, in the case of *Baldwin-Lima-Hamilton v. The Superior Court in and for the City and County of San Francisco*, concur in this view.

The committee has found that there is a certain amount of urgency connected to the passage of this measure. The conflict between existing state law and the supreme law of the land makes public procurement difficult. Those who are responsible for public procurement are subject to suit by foreign bidders if they follow the California Buy American Act and by domestic bidders if they follow the GATT. This situation needs clarification which the committee's recommendation is intended to supply.

The language of AB 2626 reads: "This article does not apply to purchases by a political subdivision, municipal corporation, or public

* After the subcommittee had studied the subject of AB 2424 it was transferred to the Subcommittee on Economic Development of the Assembly Interim Committee on Ways and Means. Therefore, no recommendations pursuant to HR 502 will be made in this report.

district of products purchased with a view to use in the production or transmission of goods for commercial sale." In order to conform to the supreme law of the land, the committee recommends that this bill be amended by the adoption of the precise language of the federal treaty: "This article does not apply to purchases of materials or products made with a view to resale or use in the production of goods for sale."

THE BUY CALIFORNIA ACT

AB 2111 (1963, Meyers) would limit bidders on contracts let by the state or any of its political subdivisions to licensed contractors; would give a 10-percent bid-price preference to bidders who furnish materials supplied by a dealer who is a resident of California and who has paid state and county taxes on the kinds of materials called for in the contract for at least the preceding two years. AB 2287 (1963, Meyers) would apply only to contracts let by public agencies for manufactured wood cabinetwork and would require that the contractor do business in California; that wages paid by him be not less than prevailing minimum wages as determined by the Director of Industrial Relations; that his employees not work in excess of eight hours a day or 40 hours a week unless allowed by a collective bargaining agreement; and that his working conditions comply with applicable law. AB 2953 (1963, Meyers) would apply only to municipal utility districts and would give a 5-percent bid-price preference to bidders who furnish California manufactured supplies and materials.

RECOMMENDATIONS

1. The committee recommends that the Legislature disapprove AB 2111, AB 2287, and AB 2953.

FINDINGS

The committee has found that AB 2111, AB 2287 and AB 2953 all create a legal preference for California manufacturers and dealers. The committee believes that such legal preference is incompatible with Article I, Section VIII, paragraph 3 of the United States Constitution which gives to Congress the exclusive power to regulate interstate commerce. If these measures do not violate the letter of the Constitution, the committee believes they clearly violate its spirit.

The committee has also found that the establishment of such legal preference in California would probably lead to retaliatory legislation in the other states which would in turn lead to a pattern of protection throughout the United States substantially hampering the free flow of goods and services among the states, as well as be injurious to the economy of California which is a major export state. Beyond the above considerations, these measures would be economically repressive within the California economy and would deteriorate its strength and future growth. Because their legal and economic consequences are undesirable, the committee must recommend disapproval of these measures.

CHANGE ORDERS

HR 334 (1964, Porter) directed the committee to study the subject of change orders and other modifications of construction contracts let pursuant to the State Contract Act. The act is administered by three major departments—the Department of Water Resources, the Department of Public Works, and the Department of General Services, Office of Architecture and Construction.

RECOMMENDATIONS

1. The committee recommends that the Legislature direct the departments to review the adequacy of their construction design work and to take appropriate steps to raise the quality of such design work to the level defined in Section 14270 of the State Contract Act; “full, complete, and accurate plans and specifications and estimates of cost, giving such directions as will enable any competent mechanic or other builder to carry them out.”

2. The committee recommends that the Legislature direct the departments to review their methods and procedures for consultation, cooperation, and joint planning in advance of construction with other public agencies which have an interest in the construction project and to take appropriate steps to improve this process in terms of reducing the number of change orders caused by the requests of other interested public agencies.

3. The committee recommends that the Legislature direct the departments to adopt as part of their administrative rules and regulations relative to change orders a maximum limit on the amount of price adjustment in the case of changes in a contract item or the amount of a price agreement in the case of extra work, such maximum limit to be the departments’ estimates of the cost of such work according to their regular “cost plus” formula.

4. The committee recommends that the Legislature direct the Legislative Analyst to prepare an annual review of change orders and related matters in the three departments to provide the Legislature with sufficient information for a comprehensive and orderly scrutiny of this process, such review to be included in his annual capital outlay report.

FINDINGS

The committee has found that in general the change order process is well regulated by the statutes and by the administrative rules and regulations adopted pursuant to the statutes. The departments’ power to make changes in construction contracts is necessary because no plan is perfect and unforeseeable circumstances do occur. However, the committee has found that an excessive number of change orders result from errors and omissions in the plans and specifications of construction projects. This indicates that inadequate attention may be given design

work. Design is admittedly done hastily in some cases, resulting in errors and omissions. The intent of Section 14270 of the State Contract Act is unambiguous: "full, complete, and accurate plans and specifications" must be prepared and approved by the director of the department before entering into any contract. The subcommittee has found that the departments are achieving somewhat less than full compliance with this section of the law.

The requests of other public agencies which have an interest in the construction project is another major cause of change orders. Each department now seeks advance cooperation with these public agencies. But the rate of occurrence of change orders from this cause indicates that this goal is inadequately pursued. Regular procedures should be established in each department to identify the interested agencies early in the design stages of a project, to identify all of their needs and to arrive at agreement on all points of common interest. If the problem stems from lack of cooperation on the part of the other public agencies, various alternatives are open to the departments. But beginning a project before all points of common interest have been agreed on is an alternative unacceptable to this committee.

Another problem concerns the administrative discretion to negotiate price with the contractor in the event of a change order. There are two basic types of change orders. When the department makes a change in a contract item, usually an increase or decrease in the quantity originally specified, under certain circumstances the contract item price may be adjusted. The adjustment is sometimes but not always made according to a formula specified in the department's regular contract provisions. When the department adds extra work to the contract, the price of such work may be agreed to between the department and the contractor. The problem is that there are no limits placed on such price negotiations.

All of the departments have a regular formula for "cost plus" payments on change orders. In the Department of Water Resources and the Department of Public Works, it is called "force account" and is the sum of all the contractors' necessary expenses in connection with the work plus a markup of 20 percent on the labor costs and 15 percent on material and equipment costs to cover the contractors' overhead and profit. In the Department of General Services' Office of Architecture and Construction it is called "time and materials" and is the sum of all the contractors' necessary expenses plus a markup of 16 percent on the total (the 16 percent was set on the basis of 10 percent for profit, 5 percent for overhead, and 1 percent for the performance bond).

The committee concurs with the view that the "cost plus" arrangement complements the competitive bidding principle in that it maintains the status quo, that it does not affect the contractors' opportunity to make a profit on the whole project. However, negotiation of price sometimes permits the state to make savings below the cost of the work figured at the "cost plus" formula. For this reason, the present alternative methods of payment—"cost plus" and negotiation—should be maintained. But a maximum limit on the amount of a negotiated price should be established for the state's protection.

The committee recommends that the departments establish by administrative rule a maximum limit defined by the departments' estimates of cost according to the regular "cost plus" formula. That is, in no case should contractors be paid more than the "cost plus" figure for changes in the contract made by the departments.

The final problem, and the most general one, which the committee considered was the relative invisibility of the change order process. The departments issue change orders on their own authority. The auditors of various levels of government are involved in the process but their interest is necessarily limited. The committee believes that because of the unusual discretion vested in administrators in this process, some provision for regular legislative review should be made. The committee recommends that the Legislative Analyst be directed to prepare this review and define its content according to his best judgment for the consideration of the 1966 Session of the Legislature and each session thereafter.

MINORITY REPORT

ASSEMBLYMAN FRANK LANTERMAN

February 18, 1965

Relative to the final draft of the Assembly Interim Committee on Ways and Means Subcommittee on State Purchasing regarding the section on the Buy American Act, the recommendations relative to amending the current existing Buy American Act appear to do considerable violence to the act based upon some erroneous assumptions made in the report. It certainly would appear that in view of the latest employment figures released from the Division of Labor Statistics and Research showing that there was a decrease of 4,500 manufacturing jobs in 1964 over 1963, that any procedure that would have an adverse effect upon employment which an amendment to this act would have would appear to be extremely ill advised.

In reviewing some basic material along the lines of discussing the California Buy American policy, it is definitely not clear whether GATT is a treaty or letter of understanding and in quoting from some of the material we find considerable support for the fact that this matter has not been clearly delineated and, therefore, until such time as the United States Supreme Court's decision is reached on the matter, there should not be any violence done to the California act.

In the so-called Allis-Chalmers case—"Although the issue was not squarely argued on appeal, a California district court of appeal held that the city's bid invitation was defective in that it merely complied with the California Buy American Act without providing for possible conflict with federal treaties." In the proposed amendment suggested in the tentative draft, the language is proposed which only covers one facet of the GATT treaty and I quote again: "GATT, however, provides three relevant escape clauses, only one of which was discussed by the Baldwin court."

It also would appear that the proposed suggested language leaves considerable to be desired because of the hazy language that currently exists. Again, taking from the Stanford Law Review discussion of the matter, the following is quoted:

"Although the interpretation of 'commercial sale' is relatively clear, the meaning of the phrase 'governmental purposes' is not. A recent unpublished California Attorney General's opinion interprets 'products purchased for a governmental purpose' very broadly. This opinion would read the exception clause to cover virtually any purchase by a government agency 'excepting those relatively infrequent occasions where a government agency . . . is engaged in a clearly commercial enterprise. This interpretation of the governmental purchases exception has been refuted in practice by the San Francisco Public Utilities Commission, which

maintains that whenever a municipality is performing a proprietary, as opposed to a governmental, function the exception is inapplicable."

Following through to the suggestion that to do violence to our currently existing act would be a matter of creating additional confusion until the United States Supreme Court has taken action, I continue quoting from the Law Review to the effect: "Therefore, unless and until a court follows the suggestion that state Buy American laws are an unconstitutional restraint on foreign commerce, attention will have to be focused on the 'commercial resale' phrase, because every undertaking by a municipal corporation within its statutory and constitutional powers is for a governmental purpose."

Still following through on the Law Review summary and to the effect that a subcommittee report did not deal with all facets of GATT, nor in the Baldwin case were any of the basic issues argued, I further quote: "The third argument that the California Buy American Act is not superseded by GATT relies on Section 1 of the Protocol of Provisional Application, which provides that Part II of GATT (which includes Article II) was to be applied provisionally 'to the fullest extent not inconsistent with existing legislation.' Since the California Buy American and Buy California Acts were enacted prior to October 30, 1947, the date selected by the original signatories for implementing Part II, those acts should still be considered valid in toto."

Further interesting developments in the activities of the federal government relative to Buy American are indicated in several current practices and procedures adopted by them. These are contained in the United States Corps of Engineers standard Form 32 as used in a recent negotiation for 20 large water-wheel generators for the "John Day Dam Project" with contract value of \$24 million. I am quoting exactly from that document as follows:

"The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954. So as to alleviate the impact of Department of Defense expenditures on the United States balance of international payments, bids offering domestic source end products normally will be evaluated against bids offering other end products by adding a factor of fifty percent (50%) to the latter, exclusive of import duties. Details of the evaluation procedure are set forth in Section VI of the Armed Services Procurement Regulation."

The following is a copy of Pages 29 and 30 of the standard form used. I think this pretty well lays out what the federal practice is. For the State of California to suddenly become benevolent at the expense of domestic manufacturers at this time would appear to be bad judgment and an aggravation to problems of unemployment.

General Provision 14, "Buy American Act," General Provision 14 is hereby deleted and the following substituted in lieu thereof:

BUY AMERICAN ACT (MAY 1964)

(a) In acquiring end products, the Buy American Act (41 U.S.C. 10a-d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "components" means those articles, materials, and supplies, which are directly incorporated in the end products;

(ii) "end products" means those articles, materials, and supplies, which are to be acquired under this contract for public use; and

(Page 29—6409)

(iii) a "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a)(iii)(B), components of foreign origin of the same type or kind as the products referred to in (b)(ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) which are for use outside the United States;

(ii) which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) as to which the Secretary determines the domestic preference to be inconsistent with the public interest; or

(iv) as to which the Secretary determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954. So as to alleviate the impact of Department of Defense expenditures on the United States balance of international payments, bids offering domestic source end products normally will be evaluated against bids offering other end products by adding a factor of fifty percent (50%) to the latter, exclusive of import duties. Details of the evaluation procedure are set forth in Section VI of the Armed Services Procurement Regulation.)

(Page 30—6407)

STANDARD FORM 32

Continuation of 1961 Edition

(Prescribed by A.S.P.R.)

My recommendations are:

(a) Disapprove AB 2626 (Petrus) 1963.

(b) Reexamine AB 2111 and AB 2953 (Meyers) 1963.

(c) Approve AB 2287 (Meyers) 1963—in principle.

Cordially yours,

FRANK LANTERMAN

o

REPORT AND RECOMMENDATIONS

on

DEFENSE OF INDIGENTS IN CRIMINAL PROCEEDINGS

by the

ASSEMBLY INTERIM COMMITTEE ON CRIMINAL PROCEDURE

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LETTER OF TRANSMITTAL

ASSEMBLY CHAMBER, STATE CAPITOL
Sacramento, January 4, 1965

HON. JESSE M. UNRUH
Speaker of the Assembly, and
MEMBERS OF THE ASSEMBLY
Assembly Chamber, Sacramento

Gentlemen:

The Assembly Interim Committee on Criminal Procedure submits the Report on the Defense of Indigents in Criminal Proceedings in California in response to House Resolution 293 of the 1964 First Extraordinary Session.

The report is the result of a public hearing conducted on this subject in San Francisco. It is also, to a large degree, the result of the voluntary endeavors of Gregory S. Stout, Esq. of the San Francisco Bar who has contributed many hours of his valuable time to this committee and the Legislature in developing the information upon which our recommendations are based.

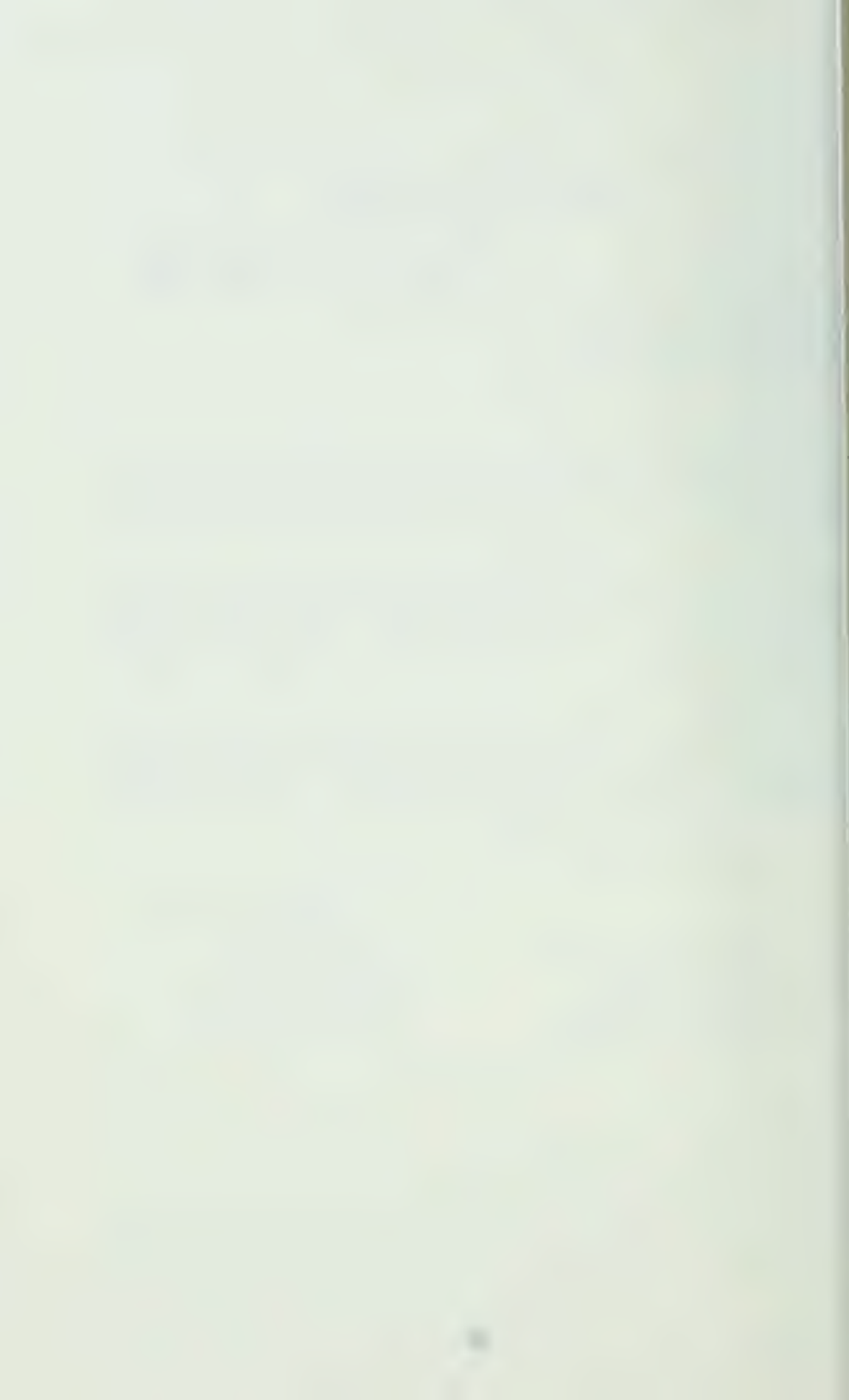
The committee recognizes, as does the Bar of the State of California, the need for a massive fortification of the defense of indigents within the system of administration of justice in our state. It feels that in this report it is presenting to the California Legislature a well considered program for achieving that fortification.

Respectfully submitted,

GORDON H. WINTON,
Chairman

ANTHONY C. BEILSON,
Vice Chairman
ROBERT W. CROWN
GEORGE DEUKMEJIAN
RICHARD J. DONOVAN

BURT M. HENSON
JOHN T. KNOX
HOWARD J. THELIN
GEORGE N. ZENOVICH



INTRODUCTION TO THE REPORT

The Supreme Court of the United States has charged the states through the Sixth and Fourteenth Amendments with the duty to provide effective counsel to indigent-accused and, in decisions subsequent to the *Gideon* case, has said that providing effective counsel requires such counsel at the earliest possible moment in time (prior to formal accusation by indictment or information) when an accused becomes a "putative defendant." No methods for implementing the constitutionally protected right to counsel have been suggested by the courts in the opinions that have been reviewed in the preparation of this report.

It would appear that the implementation of the decisions of the Supreme Court of the United States and the Supreme Court of California is a matter of local (state) political and legislative concern. There are a number of methods or modalities that can be employed for such implementation. The possibilities have been reviewed and certain choices have been made, which choices are based upon a number of assumptions which will be hereinafter set forth.

ASSUMPTIONS

At the level of the district courts of appeal and the Supreme Court of California, there exists no reserve of competent, skilled and knowledgeable experts in criminal appeals such as exists on the civil side of the law. Through liaison committees with the Judicial Council, the members of the Executive Committee of the Conference of State Bar Delegates and the Board of Governors of the State Bar of California have heard the frank statement by members of the judiciary that the quality of workmanship in criminal appeals is of a low order. Instead of a core of perhaps a thousand lawyers skilled in civil appellate practice there probably are no more than fifty in the entire state who are competent in the courts of appeal in criminal cases.

It follows therefrom that the volunteer lawyers who assist the several district courts and the Supreme Court and are appointed by those courts to represent indigent appellants are drawn essentially from novitiates to the practice whose law school training has been insufficient to acquaint them with the problems at issue and the methods of presentation and preservation of points on appeal favorable to the indigent convicted criminal.

At the trial court level it is assumed that there exists in California a far larger group of lawyers who are able to assume responsibility in the defense of indigent accused in the trial courts of California. In the large metropolitan areas there is in each such center a nucleus of competent, skilled and devoted practitioners in the art of criminal defense who are willing to assume responsibility for the defense of indigents at the trial court level if and provided that such representation does not involve too great a financial sacrifice on their respective parts. In many courts of the state there exist competent and qualified public defender offices created under general state law. Some of these offices are manned by permanent civil service officers headed by appointed officials skilled in the criminal defense. But one California defender is elected. Other public defender offices are private law offices who contract with the local board of supervisors to represent indigent accused in the trial courts.

In order to determine the most effective and economical manner of providing indigent accused with counsel at the trial and appellate court levels, a study was undertaken to determine how and in what manner selected counties at the trial court level were providing counsel to such persons. A similar study was made of the appellate courts.

SCOPE OF STUDY AND METHODS OF INQUIRY

From knowledgeable resources a selection of counties was made that use the public defender or assigned counsel system to defend indigent accused at the trial court level. The criteria employed in the selection of the counties utilized in the study related to such considerations as geographical dispersion between the north and the south. Urban, suburban and agricultural criteria were also employed. Among the counties that utilize the public defender system, Los Angeles, Orange, Alameda, San Francisco, Sacramento, Stanislaus and Imperial Counties were selected. For counties that employ the assigned counsel system, San Diego, San Mateo, Contra Costa, Ventura, Kern and San Luis Obispo Counties were chosen. In the case of public defender counties, letters were addressed to the public defender in the representative counties. In assigned counsel counties, letters were addressed to the chief administrative officer of the county. The letters to both groups were similar in format and content and requested that the following information be provided:

1. The number of indigent accused represented by the public defender or assigned counsel in the courts of the county for the fiscal years 1956 to date.
2. The annual budget.
3. The cost per case on an annual basis.
4. Additionally in assigned counsel counties, facts relating to the median or middle amount paid annually and the mode or point of greatest concentration together with the high and low spread of fees paid to assigned counsel was requested.

At the appellate court level, inquiry was made of the Administrative Office of the Courts. That office was requested to provide figures from the year 1956-57 to date giving the total number of cases and the range of fees paid together with the total annual budget appropriated to service indigent appellants before the district courts of appeal and the Supreme Court.

From the figures thus obtained a number of charts have been prepared which are set forth with appropriate descriptive material. It is hoped that the charts will be self-explanatory in large part and the material sought to be presented will be clearly set forth.

SUMMARY OF PROPOSED LEGISLATION

1. An act to amend § 27706 of the Government Code to authorize public defender offices to represent accused misdemeanants and juveniles at all court levels.

2. An act amending Penal Code § 987a to provide for the appointment of and payment to assigned counsel to represent indigent accused misdemeanants and juveniles in counties where there are no public defender services offered.

3. An act to create a state defender office charged with the responsibility of representing indigent appellants in the courts of California or in the courts of any other state or country either on direct or collateral attack of a judgment of conviction. Offices should be provided for a state defender in Los Angeles and San Francisco. The state defender would be charged with the duty of handling all cases which involve substantial questions of federal or state constitutional proportions. In addition it would be responsible for the overall handling of appeals involving criminal appellants at all court levels and would screen out of the mass of cases presented to such courts those cases of special significance as hereinbefore described. In other cases, the office would supervise court appointed and assigned counsel who would be charged with the responsibility of preparing and presenting appellate cases of lesser significance and importance.

4. An act to amend Penal Code § 1240 and § 1241, as follows:

(a) Change Penal Code § 1240 to eliminate the present \$100 restriction on costs and to provide for payment of all out-of-pocket expenses incurred by assigned counsel.

(b) Change Penal Code § 1241 by the elimination of the present provisions providing for a reasonable fee to be paid to assigned counsel and providing in lieu thereof that assigned counsel should be paid at the rate of \$25 per hour for work and labor performed in the courts of California or the courts of any county. The total fee would be fixed by the appointing court.

5. An act to provide a basic fee for court appointed and assigned counsel at the level of all trial courts where the counties lack a public defender service. At the superior level, the basic rate shall be \$15 per hour for investigation and preparation time and \$200 per day for trial time. At the municipal and justice court level, the basic rate shall be \$10 for investigation and preparation and \$150 per day trial time.

6. An act to subvent and assist counties so as to improve public defender and assigned counsel systems based upon the fiscal year 1962-1963. In the event that a county employs a calendar year as basis for its fiscal accounting purposes, the base year shall be 1963. For any improved and augmented services, the State of California will pay 70 percent of the costs of such improvements and the county 30 percent.

SUMMARY OF FACTUAL INFORMATION

A. AMENDMENT TO GOVERNMENT CODE SECTION 27706 AND PENAL CODE SECTION 987(a).

At the 1963 session of the Legislature, two bills were passed by the Legislature with reference to indigent misdemeanants. Senate Bill No. 73 by Virgil O'Sullivan, Senator from Colusa, Glenn, Tehama Counties amended Penal Code Section 987(a) to provide for the appointment of and payment to assigned counsel charged with duties of representing indigent misdemeanants at the municipal and justice court levels in the absence of a county defender system. This bill was signed by the Governor and became a law. A number of courts seeking to take advantage of this amendment to the Penal Code appointed counsel and approved their request for payment. The treasurers or other fiscal officers of certain counties have refused to honor the court order and have not made payments required thereby.

Another bill, Senate Bill No. 95, authored by Robert Lagomarsino of Ventura County was passed by the Legislature but not acted upon by the Governor. This proposed change in the law would have amended Government Code Section 27706 to provide that public defenders could be appointed to represent misdemeanant indigent accused and indigent juveniles. The proposed amendments to these sections are in the Appendices marked "A" and "C."

It is believed that these changes will positively state the legislative intention and eliminate the present confusion.

B. STATE DEFENDER OFFICE

As presently constituted, Penal Code Sections 1240 and 1241 relate to the appointment and assignment of counsel to represent indigent criminal appellants, to reimburse them for costs expended and to provide a reasonable compensation for their services. The underlying legislative theory expressed in these sections is that assigned counsel is appointed to service only the appointing court. When counsel has completed the representation of an accused before that court, his duties and obligations are in a sense terminated. For example, at the district court of appeal level, counsel's obligation ends after he has prepared and presented his briefs and has orally argued the case. Thereafter he might petition for a rehearing in that court and would be compensated therefor, but should he petition to the Supreme Court for a rehearing, he will not be compensated unless the rehearing is granted and the Supreme Court assumes jurisdiction. At the Supreme Court level and particularly in death penalty cases subject to the automatic review provided in Penal Code 1239, after preparation and presentation of briefs and oral argument and a possible petition for rehearing, his services before that court end and counsel would not be compensated for his appearances before the Governor at the clemency hearing, nor would he be compensated should he elect to pursue the remedy of cer-

tiorari in the Supreme Court of the United States. Furthermore, should counsel petition to the local federal district court in habeas corpus alleging violation of federally protected constitutional rights, he would not be compensated for such services. With reference to collateral attack on a final judgment of conviction in the courts of California, counsel is not compensated unless and until an alternative writ is granted.

As presently written, Penal Code Section 1240 expressly limits to \$100 the repayment for counsel's out-of-pocket expenses. In many instances these expenses not only exceed the \$100 limitation but are in excess of the total fees granted by the appointing court. Manifestly, it is unfair to appointed counsel who work for what is essentially an honorarium to force them to pay costs out of their own pocket.

The Administrative Office of the Courts was asked to provide information starting with the fiscal year 1956-1957 as to the number of cases in which counsel were assigned to present indigent criminal appellants. The fees paid to these counsel was also the subject of inquiry as was the total annual appropriation for such costs. The dollars appropriated for such service are as follows:

<i>Fiscal year</i>	<i>Supreme Court</i>	<i>District courts of appeal</i>
1956-57	\$2,900	\$10,295
1957-58	6,582	16,730
1958-59	5,325	20,540
1959-60	4,821	21,280
1960-61	7,037	19,349
1961-62	7,425	22,958
1962-63	6,200	25,744
1963-64	4,525	49,745

While it would appear that the absolute amount paid for services has increased in the years considered, nonetheless, in view of the complexity of litigation and the issues that counsel are called upon to inquire into, the absolute dollars paid to counsel can be only considering an honorarium when the fees paid are examined.

As regards the Supreme Court, the following chart is self-explanatory:

<i>Fiscal year</i>	<i>Number of cases in which fee was</i>								
	<i>Total cases</i>	<i>Less than \$100</i>	<i>\$100-199</i>	<i>\$200-299</i>	<i>\$300-399</i>	<i>\$400-499</i>	<i>\$500-599</i>	<i>\$600-699</i>	<i>\$700 and over</i>
1956-57	7	--	1	--	2	1	2	--	1
1957-58	15	--	1	3	2	2	2	3	2
1958-59	14	--	2	3	2	1	4	1	1
1959-60	17	--	5	3	4	3	2	--	--
1960-61	23	1	2	8	6	4	1	--	1
1961-62	17	--	2	2	3	4	1	2	3
1962-63	18	1	6	1	1	3	5	--	1
1963-64	19	--	8	6	2	1	1	1	--

The figures for the district courts of appeal are set forth in the following self-explanatory chart:

Fiscal year	Total cases	Less					\$300 and over
		\$100	\$100-	\$150-	\$200-	\$250-	
1956-57	80	21	17	21	11	3	7
1957-58	119	29	30	21	23	7	9
1958-59	149	56	28	26	20	12	7
1959-60	121	30	22	24	18	14	13
1960-61	113	22	26	22	13	14	16
1961-62	133	23	31	23	28	15	13
1962-63	183	33	42	49	23	22	14
1963-64	237	44	63	45	39	18	28

Percent increase: 1962-63 over 1961-62—27%

Percent increase: 1963-64 over 1962-63—23%

It is difficult to put a price tag on the cost of a state public defender office charged with the responsibility of representing indigent criminal appellants before the courts of this state and the courts of the United States. The salary range for the chief defender should be comparable to that currently paid the chief assistant attorney general. Deputies in the Los Angeles and San Francisco offices would have their pay scale fixed at figures comparable to assistant attorneys general. Appropriate secretarial help and office space and supplies would have to be provided. The estimated annual total for such an office is \$133,900 broken down as follows:

Chief defender	\$25,000 to \$25,000	\$25,000 to \$25,000
Assistant defender (3)	21,000 to 23,000	63,000 to 69,000
Secretarial (5)	425 to 550	25,500 to 33,000
Investigator (2)	850 to 950	20,400 to 22,800
Salaries total		\$133,900 to \$149,800
Service, supplies at 2 percent of budget	\$1,300	
Equipment at \$300 per year	900	
Grand total		\$136,100 to \$152,000

It should be noted that the table of organization includes two investigators, one for Los Angeles and one for San Francisco. As an explanation for the need for such investigators reference is made to *In Re Imbler*, 60AC535, and other recent cases which involve habeas corpus or coram nobis to attack final judgments of conviction imposing the death penalty. In *Imbler* at page 551 of the opinion reference is made by the Supreme Court of California to the fact that investigators from the Adult Authority obtained the evidence to establish the charge of testimonial perjury by prosecution witnesses. Reference is also made to *People v. Welch*, 61AC852 and *In Re Brubaker*, 61AC813 where extensive investigations were required to establish the basic charge for granting habeas corpus or coram nobis. It is believed that a state defender office should include investigation service so as to facilitate such proceedings.

The system thus provided is essentially a mixed one in that primary reliance is placed upon the state defender with additional provision for assigned counsel in what can be described as run-of-the-mine cases. Appointment of assigned counsel in such run-of-the-mine cases will continue as at present. Without definite figures upon which to base conclusions, we may assume that the fees paid to assigned counsel will be approximately three times the amounts paid currently if the proposed bill is enacted.

Employing the figures for 1963-64 for the Supreme Court, we may assume that of the 19 cases accounted for, 14 may be deemed run-of-the-mine. Employing the last figure in the column, for example in the \$100 to \$199 category, utilizing \$199, and by the number of cases set out in the column, multiplying it, similarly for \$299 times six, and \$399 times two gives a total of approximately \$2,800, which if multiplied by three, totals \$8,400.

If similar computation is made for 1963-64, upon the figures appropriate to the district court of appeal, employing the column less than \$100 through \$250 to \$299, excluding the last columns as being extraordinary cases the responsibility for which would be with the state defender office, multiplying the figures in the column by the highest figure and multiplying that total by three, the result is a total of \$118,400. If this figure is added to the \$8,400 Supreme Court figure a total cost of \$126,800 is chargeable annually to the operation of an assigned counsel system in the Supreme and district courts in combination with the defender office. When this sum is added to the previous computation of the annual costs of operation of a state public defender system and projected to 1965-66 using the percent of increases, we have a total cost of \$322,736 as contrasted with the current 1963-64 total of approximately \$54,270. The bill for the defender office is set forth in Appendix A.

Times may not be propitious to justify the creation of a new state agency. It has been said that because there is an excess of expenditures over receipts at state fiscal levels it will be impossible to budget for a new state agency at this legislative session. Assuming this to be the fiscal policy of the forthcoming session of Legislature, a bill has been proposed which will upgrade the compensation paid to assigned counsel. Despite the \$25 per hour rate set forth in the act, some discretion is given to the appellate courts to fix fees awarded to assigned counsel on a realistic basis. In many instances counsel reports an excessive number of hours as necessary to complete their work. Thus, discretion is given to the paying court to equalize the fees paid and to avoid excessive awards. Even with such discretion it is believed that the courts will roughly triple the awards to assigned counsel. If these expectations are fulfilled, the total paid to assigned counsel by the district courts of appeal for the year 1963-64 multiplied by three gives a total figure of \$149,235. Multiplying the same budget figure for the Supreme Court results in \$13,755 for a total of \$162,990 to be budgeted for counsel in the appellate courts.

If adjustment is made for the rate of increase in the work of the California appellate courts and if we apply the rate of increase of 23 percent to the previous and cumulative total, which represents three times the amount expended by the courts in 1964, it is estimated that the total cost for servicing the courts of appeal will be \$246,586 for the year 1965-66.

Recognizing that this figure is only an annual estimate of costs and considering other gains which may be reasonably expected from upgrading the fees paid to assigned counsel, it is hoped that better lawyers will be attracted to the work and that the courts will be materially aided in their decision making process.

C. SUPERIOR, MUNICIPAL AND JUSTICE COURTS

At present approximately 23 counties employ the public defender system in one of its several forms. The balance operates under an assigned counsel system. As has been previously noted, two bills have been proposed to fix and settle the responsibilities that the counties have for appointing counsel to represent accused felons, juveniles, and misdemeanants. It is assumed that with these additional responsibilities will come additional costs to the counties for the operation of whatever system they have chosen or in the future they will choose.

In order to demonstrate the current level of expenditure being made in selected counties, the following seven charts will set forth figures which represent the budget and case load picture in the selected counties. An additional five charts deal with the representation of accused misdemeanants in counties which employ the assigned counsel system. A number of conclusions are readily discernible from a close examination of the charts. It is apparent that there has been an absolute increase in the number of cases to be serviced annually at the superior court level.

CHART NO. 1

Number of Superior, Municipal and Justice Court Cases Represented by Public Defender Offices

	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64
Los Angeles County.....	110,878	114,280	118,937	123,626	127,930	128,574	130,382	132,243
Los Angeles City.....	2150,260	2136,136	2131,256	2125,624	2144,684	2135,482	2124,620	2124,667
Orange County.....	3606	3837	3934	31,099	31,205	31,275	31,446	31,720
Alameda County.....	32,301	32,714	-----	32,481	33,126	33,343	-----	34,846
San Francisco County.....	34,458	35,470	35,632	35,493	37,133	39,722	-----	313,125
Sacramento County.....	-----	-----	11,234	11,666	12,117	12,481	12,593	-----
Stanislaus County.....	1203	1270	1238	1248	1360	1527	1527	1384
Imperial County.....	191	199	1139	1141	1154	1165	1169	1175

¹ Felonies and related proceedings.

² Indigent misdemeanants including preliminary proceedings against indigent felons up to 1959.

³ Felonies and misdemeanors.

⁴ Change from fiscal to calendar year basis.

CHART NO. 2

Superior Court Felony Cases Where Counsel Appointed To Represent Indigent Accused

	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1964-64
San Diego County.....	1414	1639	1580	1668	1882	1977	11,037	11,020
San Mateo County.....	132	121	157	160	278	218	220	344
Contra Costa County...	136	200	333	367	423	537	587	850
Ventura County.....	-----	-----	-----	-----	382	361	488	606
Kern County.....	-----	-----	-----	-----	-----	-----	2653	2843
San Luis Obispo County	28	37	50	46	40	60	57	96

¹ Claims presented by counsel—not the number of cases.

² All courts—no division between superior-justice courts.

In a relative sense, material assembled by the committee indicates that if we analyze the population increase in the counties studied per 10,000 of population, our requirements have only slightly increased. Stated in another fashion, while the absolute number of cases processed by our courts has increased, relatively there is little or no increase.

The demands imposed upon the counties have been costly as indicated by the absolute dollar increase in the annual appropriations needed to service defender and assigned counsel systems. To assist, the percentage increase has been computed.

CHART NO. 3

Annual Budget—Public Defender Offices

	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64
Los Angeles County.....	\$353,891	\$415,981	\$529,858	\$661,332	\$748,469	\$936,627	\$999,730	\$1,052,666
Los Angeles City.....	\$122,488	\$129,634	\$112,730	\$95,880	\$105,024	\$114,392	\$122,821	\$129,539
Orange County.....	\$31,394	\$43,631	\$55,046	\$59,306	\$72,659	\$71,432	\$80,618	\$115,021
Alameda County.....	\$81,295	\$106,193	\$113,009	\$142,418	\$149,934	\$161,576	\$177,057	\$212,214
San Francisco County..	\$107,248	\$109,554	\$126,075	\$130,873	\$152,254	\$151,818	\$163,788	\$162,918
Sacramento County.....			\$64,060	\$79,332	\$90,965	\$119,581	\$119,572	\$126,000
Stanislaus County.....	\$10,000	\$10,000	\$10,000	\$12,500	\$15,000	\$15,000	\$16,666	\$25,000
Imperial County.....	\$9,052	\$10,016	\$9,654	\$9,646	\$9,589	\$10,792	\$11,960	\$11,598

¹ Includes preliminary felony proceedings against indigent accused. In 1959 this function assumed by Los Angeles County Public Defender.

² Estimate.

³ Felonies and misdemeanors.

CHART NO. 4

Superior Court Assigned Counsel
Total Annual Appropriation

	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64
San Diego County.....	\$24,744	\$35,552	\$31,142	\$34,250	\$46,976	\$48,740	\$61,151	\$91,933
San Mateo County.....	\$5,639	\$1,276	\$6,586	\$8,556	\$22,236	\$16,854	\$21,239	\$29,928
Contra Costa County..	\$16,425	\$26,932	\$31,616	\$42,360	\$55,297	\$61,812	\$74,944	\$106,000
Ventura County.....					\$44,361	\$36,544	\$38,164	\$39,002
Kern County.....							\$42,677	\$57,905
San Luis Obispo County	\$1,371	\$2,837	\$2,852	\$2,118	\$2,731	\$4,441	\$4,625	\$10,324

¹ Includes felony preliminary proceedings in inferior courts.

Reference is made now to the charts which average the annual cost per case to defender and assigned counsel offices. In all but two instances there has been an increase in the average annual cost per case. Only San Francisco and Imperial Counties show a downward trend. As regards assigned counsel counties, the annual cost per case has similarly increased with but one exception, Ventura County. A number of the present assigned counsel counties are contemplating the creation of public defender offices such as San Mateo, Contra Costa and Ventura Counties. It is hoped that this investigation will aid them in determin-

ing whether to turn to a defender system or maintain their current method of operation.

CHART NO. 5

Public Defender Offices—Cost Per Case

	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64
Los Angeles County-----	¹ \$32.53	\$29.13	\$27.98	\$27.99	\$26.80	\$32.78	\$32.90	\$32.65
Los Angeles City-----	² \$0.82	² \$0.95	² \$0.86	² \$0.76	² \$0.72	² \$0.84	² \$0.99	² \$1.04
Orange County-----	³ \$51.81	³ \$52.13	³ \$58.94	³ \$53.96	³ \$60.30	³ \$56.02	³ \$55.75	³ \$66.87
Alameda County-----	³ \$35.33	³ \$39.13	-----	³ \$57.40	³ \$47.96	³ \$48.33	-----	³ \$43.79
San Francisco County--	³ \$24.06	³ \$20.03	³ \$22.39	³ \$23.83	³ \$21.35	³ \$15.62	³	³ \$12.41
Sacramento County-----	-----	-----	³ \$51.91	\$47.62	\$42.97	\$48.00	¹ \$46.11	-----
Stanislaus County-----	\$49.26	\$37.04	\$42.02	\$50.40	\$41.67	\$28.46	\$31.62	\$65.10
Imperial County-----	¹ \$109.36	¹ \$101.17	¹ \$69.45	¹ \$68.41	¹ \$62.27	¹ \$65.41	¹ \$70.77	¹ \$66.27

¹ Felonies and related proceedings.

² Misdemeanors up through 1959 included preliminary felony proceedings.

³ Felonies and misdemeanors.

CHART NO. 6

Superior Court Assigned Counsel
Annual Average Cost Per Case

	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64
San Diego County-----	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00	\$40.00
San Mateo County-----	\$42.72	\$35.34	\$41.95	\$53.48	\$79.99	\$77.31	\$96.54	\$87.00
Contra Costa County--	\$121.00	\$135.00	\$95.00	\$115.00	\$131.00	\$115.00	\$128.00	\$125.00
Ventura County-----	-----	-----	-----	-----	\$116.13	\$101.23	\$90.50	\$94.36
Kern County-----	-----	-----	-----	-----	-----	-----	\$65.00	\$69.00
San Luis Obispo County	\$49.00	\$77.00	\$57.00	\$46.00	\$68.00	\$74.00	\$81.00	\$107.00

CHART NO. 7

Superior Court Assigned Counsel
¹ Median/² Mode Cost per Case

	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64
San Diego County-----	\$25/25	\$25/25	\$25/25	\$25/25	\$25/25	\$25/25	\$25/25	\$40/40
San Mateo County-----	\$25/25	\$25/25	\$25/25	\$25/25	\$75/75	\$75/75	\$75/75	\$50/50
Contra Costa County--	-----	-----	-----	-----	none	none	none	none
Ventura County-----	-----	-----	-----	-----	none	none	none	none
Kern County-----	-----	-----	-----	-----	-----	-----	35/mode	35/mode
San Luis Obispo County	\$25/20	\$31/20	\$25/25	\$26/25	\$25/25	\$36/20	\$35/25	\$70/25

¹ Statistical center.

² Statistical point of greatest concentration.

CHART NO. 8
Superior Court High-Low Spread
Fees Paid to Assigned Counsel

	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64
San Diego County.....	\$600/ \$12.50	\$1,050/ \$12.50	\$850/ \$12.50	\$1,195/ \$12.50	\$1,687/ \$12.50	\$2,278/ \$12.50	\$1,677/ \$12.50	\$3,465/ \$12.50
San Mateo County.....	\$40.00/ \$25.00	\$225/ \$25.00	\$400/ \$25.00	\$668/ \$25.00	\$1,610/ \$7.50	\$325/ \$25.00	\$3,000/ \$25.00	\$2,075/ \$25.00
Contra Costa County..								
Ventura County.....								
Kern County.....							\$800/ \$25.00	\$3,312/ \$25.00
San Luis Obispo County	\$405/ \$10.00	\$760/ \$10.00	\$486/ \$10.00	\$214/ \$10.00	\$479/ \$7.00	\$1,609/ \$10.00	\$675/ \$10.00	\$1,410/ \$25.00

Examination now will be made of the practice in municipal and justice courts. As has already been described in a number of charts, certain public defender offices that were examined handle accused indigent misdemeanants. They include the Los Angeles City defender office and the defender offices for Alameda and San Francisco Counties. Sacramento County has just recently begun to represent indigent accused misdemeanants, but no figures are available therefor. Because the budgets for Alameda and San Francisco Counties cover the representation of accused felons and misdemeanants without allocation, no differential cost figures are obtainable. Other than figures for the Los Angeles City Defender office, at a cost of approximately \$1 per case, no other cost figures are available for public defender offices who service misdemeanants.

The following self-explanatory charts are included to establish certain material relative to the operation of municipal and justice courts in counties which employ the assigned counsel system. Since none of the studied counties had figures for their municipal and justices courts which separated felony preliminary proceedings from misdemeanors in their budgets, it is impossible to do anything more than speculate about the cost of handling misdemeanors in their respective courts. However, if we examine the final charts numbered 1 to 14, they indicate the spread in fees paid to assigned counsel in municipal and justices courts. From them it is possible to hypothesize that the low figures represent fees paid for the defense of misdemeanants. Since the low figures range from \$3.25 to \$25 some idea of current practice is gained.

CHART NO. 9
Public Defender Offices
Number of Indigent Misdemeanants Represented

	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64
Los Angeles City.....	150,260	136,136	131,256	125,624	144,684	135,482	124,620	124,667
Alameda County.....	21,008	21,226		21,688	21,913	21,952	22,423	
San Francisco County..	2,220	2,865	3,025	2,768	4,166	6,476		9,252
Sacramento County.....			2639	2896	21,217	21,251	21,286	

¹ Included felony preliminary proceedings up to 1959.

² Calendar year.

CHART NO. 10

**Number of Cases Assigned Counsel to Represent
Indigent Misdemeanants**

	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64	1964-65
San Diego Municipal							747	1,271	
El Cajon, San Diego								F57	
Municipal	62	52	78	90	129	92	110	M109	
North San Diego									
Municipal	45	65	44	51	68	49	45	134	
South Bay, San Diego									
Municipal	35	35	32	56	53	81	54	166	
San Mateo Municipal	133	177	243	224	325	309	296	457	
Ventura Municipal									
and Justice					84	120	262	448	
San Luis Obispo									
Justice	50	62	62	53	69	72	89	111	140

F. Felony.

M. Misdemeanor.

CHART NO. 11

**Municipal and Justice Court Assigned Counsel
Total Annual Appropriation**

	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64	1964-65
San Diego Municipal							\$21,800	\$12,346	
El Cajon, San Diego									
Municipal	\$1,625	\$1,325	\$2,100	\$2,350	\$3,525	\$2,725	\$3,650	\$5,645	
North San Diego									
Municipal	\$2,150	\$3,000	\$2,100	\$2,500	\$3,100	\$2,160	\$2,170	\$7,500	
South Bay, San Diego									
Municipal	\$850	\$1,000	\$800	\$1,400	\$1,775	\$2,013	\$1,650	\$5,325	
San Mateo Municipal	\$3,625	\$4,940	\$8,501	\$5,970	\$14,047	\$13,781	\$14,919	\$25,109	
Ventura Municipal									
and Justice					\$6,718	\$10,195	\$22,041	\$38,266	
San Luis Obispo									
Justice	\$1,247	\$1,622	\$1,717	\$1,538	\$2,454	\$2,361	\$4,784	\$8,700	\$10,152

¹ Mode only.

CHART NO. 12

**Municipal and Justice Courts Assigned Counsel
Annual Average Cost per Case**

	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64	1964-65
San Diego Municipal							\$29.18	\$33.30	
El Cajon Municipal	\$26.21	\$25.48	\$26.92	\$26.11	\$27.33	\$29.62	\$33.18	F\$50.61	
North San Diego								M\$25.32	
Municipal	\$47.77	\$46.15	\$47.73	\$49.02	\$45.59	\$44.08	\$48.22	\$55.97	
South Bay, San Diego									
Municipal	\$24.29	\$28.57	\$25.00	\$25.00	\$33.49	\$24.85	\$30.56	\$32.08	
San Mateo Municipal	\$27.26	\$27.91	\$34.98	\$26.65	\$43.22	\$44.60	\$50.40	\$54.94	
Ventura Municipal					² M\$81.41	² M\$84.69	² M\$84.09	² M\$85.61	
and Justice					J\$71.25	J\$88.37	J\$84.32	J\$84.04	
San Luis Obispo Jus-									
tice	\$25.00	\$26.00	\$28.00	\$29.00	\$35.00	\$33.00	\$54.00	\$78.00	\$72.00

¹ Mode only.² Includes costs for felony preliminary proceedings and misdemeanor defense.

CHART NO. 13

Municipal and Justice Court Assigned Counsel¹ Median/² Mode Cost per Case

	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64	1964-65
San Diego Municipal							\$26/25	\$34/25 F\$65/25	
El Cajon Municipal	¹ /25	¹ /25	¹ /25	\$50/25	¹ /25	\$50/25	\$50/25	² M\$50/15	
North San Diego Municipal	\$50/35	\$50/35	\$50/35	\$50/35	\$50/35	\$50/35	\$50/35	\$35-40 \$15-30	
South Bay, San Diego Municipal				\$25/25	\$25/25	\$25/25	\$25/25	\$25/25	
San Mateo Municipal	\$25/25	\$25/25	\$25/25	\$25/25	\$50/25	\$50/25	\$50/25	\$50/25	
Ventura Municipal and Justice									
San Luis Obispo Justice	\$25/10	\$25/10	\$25/10	\$25/10	\$25/10	\$25/10	\$50/25	\$75/25	

¹ Mode only.² Includes costs for felony preliminary proceedings and misdemeanor defense.

CHART NO. 14

Municipal and Justice Court Assigned Counsel**High-Low Spread Fees Paid**

	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64	1964-65
San Diego Municipal							\$200/25	\$250/15 F\$100/25 \$115/ M3.25	
El Cajon Municipal	\$50/25	\$50/25	\$50/25	\$100/25	\$50/25	\$100/25	\$75/25		
North San Diego Municipal	\$100/35	\$100/35	\$100/35	\$100/35	\$100/35	\$105/35	\$100/35	\$75/15	
South Bay, San Diego Municipal				\$50/10	\$100/25	\$100/ \$12.50	\$50/10	\$150/15	
San Mateo Municipal	\$75/25	\$75/25	\$1,500/ \$15.00	\$75/25	\$110/25	\$120/25	\$205/25	\$200/25	
Ventura Municipal and Justice									
San Luis Obispo Justice	\$65/10	\$75/10	\$117/10	\$85/10	\$160/10	\$180/10	\$139/25	\$250/25	

¹ Mode only.

The only court which reported a breakdown between felony preliminary proceedings and misdemeanor trials was the El Cajon Municipal Court in San Diego County. Of a total of 166 cases handled for the fiscal year 1963-64, 57 were felony preliminary proceedings and 109 were misdemeanors. Misdemeanors represented 65½ percent of the total. The El Cajon cost per case figures vary between \$25 and \$50 for misdemeanors.

Experience and the science of demography teach us that it is poor statistical practice to employ a percentile based upon such limited experience as that of El Cajon Municipal Court. We also know that the courts handle many more misdemeanors than felonies and at a far greater rate differential than the approximate two to one figure of the El Cajon Municipal Court. However, the two to one figure may be employed in seeking to develop a tentative set of working hypotheses.

To further develop working hypotheses, an examination has been made of the relative number of misdemeanors contrasted with the number of felonies handled by the San Francisco Public Defender office. Such figures as are now presented are developed from the annual reports of that office for the years 1960-61 through 1963-64, and are set forth in the following table:

	1960-61	1961-62	1962-63	1963-64
Misdemeanors -----	4,166	6,476	no figures	9,252
Felonies -----	1,022	1,228	no figures	1,410
Total -----	5,188	7,704		10,662
Percentage of municipal court total -----	80%	80%		86%

Similar figures were developed from the annual reports of the Alameda County Public Defender office for the years in question and are as follows:

	1959-60	1960-61	1961-62	1963
Misdemeanors -----	1,688	1,913	1,952	2,423
Felonies -----	793	1,213	1,126	2,016
Total -----	2,481	3,126	3,078	4,439
Percentage of municipal court total -----	68%	61%	63%	54%

No other annual reports of defender offices for the examined counties gave significant differential comparative figures for felonies and misdemeanors.

To summarize, we have the limited experience of one municipal court which employs the assigned counsel system at El Cajon Municipal Court. It shows a ratio of two misdemeanors for each felony. The two defender office charts vary from a high of four to one for San Francisco, to a low of a little more than one to one for Alameda County. The total number of misdemeanors handled in 1962-63 by all counties in California is unavailable. The only records kept in California are arrest records which are not deemed significant.

Despite having given some absolute figures relative to the number of misdemeanors versus felonies for the El Cajon Municipal Court and the San Francisco and Alameda County Defender offices, it is impossible either to apply these absolutes or the percentiles to the annual budgets for these respective courts and offices. For example, it would be improper statistical practice to divide the El Cajon Municipal Court budget for the year 1962-63 into three parts and allocate the figure of \$1,216, to felony defense, and the difference between that figure and \$3,650 or \$2,434 to the defense of misdemeanants because traditionally courts pay more money to counsel who represent accused felons than they do to counsel who represent accused misdemeanants.

As has heretofore been pointed out, it is impossible to allocate as between felonies and misdemeanors the budgets of the defender office as represented in preceding charts since no budgets are divided in such a manner. We are left therefore with no basis upon which to project

the increased cost that will have to be met if defender offices and assigned counsel are charged with the duty of representing accused indigent misdemeanants. Accordingly, it has been necessary to fix upon an arbitrary figure which will represent the increased services and dollars demanded if statewide defender services are charged with the duty of representing significant misdemeanants. Therefore, it has been estimated that a 33 percent increase in budgeted dollars will be needed to service indigent accused misdemeanants in the future under the proposed legislation. This figure is selected because of differential in pay between counsel charged with the duties of representing misdemeanants versus felons and the absence of a valid method of computing the actual number of the significant misdemeanor-accused who will require the services of counsel. In a sense then the figure 33 $\frac{1}{3}$ percent is nothing more than an arbitrary percentile based upon the assumptions that have been developed herein.

Two charts are hereinafter set forth and are self-explanatory. They represent a combination of charts heretofore included and combine the charts for public defender and assigned counsel counties in the two significant statistical classifications deemed most important in this study. They are the number of cases and the absolute dollars budgeted for representation. It is interesting to note that the rate of increase for cases and dollars between 1962-63 and 1963-64 was the same, namely, 11 percent. While the Judicial Council's figure for superior court felonies is 35,276, according to this survey, the total number of cases handled by defender or assigned counsel in superior courts was 41,475 in the same year. The difference represents such proceedings as motions to revoke probation and mental illness commitment proceedings in the various forms, all of which under the law require representation by counsel.

CHART NO. 15
Total Annual Budget for Defender Offices and Amounts
Paid to Assigned Counsel

	1962-63	1963-64
Los Angeles	\$999,730	\$1,052,666
Orange	80,618	115,021
Alameda	177,057	212,214
San Francisco	163,788	162,918
Sacramento	119,572	126,000 ¹
Stanislaus	16,666	25,000
Imperial	11,960	11,598
San Diego	61,151	91,933
San Mateo	21,239	29,928
Contra Costa	74,944	106,000
Ventura	38,164	39,002
Kern	42,677	57,905
San Luis Obispo	4,625	10,324
Total	\$1,935,012	\$2,170,048

¹ Estimate

Rate of increase 1963-1964 over 1962-1963—11%

CHART NO. 16
**Total Number of Indigent Felons Represented by Public
 Defender Offices and Assigned Counsel**

	1962-63	1963-64
Los Angeles -----	30,382	32,243
Orange -----	1,446	1,920
Alameda -----	2,016	3,000
San Francisco -----	1,300	1,410
Sacramento -----	2,593	2,737
Stanislaus -----	527	384
Imperial -----	169	175
San Diego -----	1,037	1,020
San Mateo -----	220	344
Contra Costa -----	587	850
Ventura -----	488	606
Kern -----	653	843
San Luis Obispo -----	57	96
Total -----	41,475	45,428

Rate of increase 1963-1964 over 1962-1963—11%

Turning now to the totals of Chart No. 15, the total amount budgeted to service indigent accused in 1962-1963, in the counties surveyed, was \$1,935,012. The counties surveyed as of July 1, 1963, had a population of 12,930,800 as compared to the total population of California of 17,675,000. Therefore counties surveyed have approximately 72 percent of the total state population. The difference, or 23 percent, will be one of the variables considered in projecting the total cost for an augmented statewide defender service. The other variable is the annual rate of increase, and for purposes of this study it is assumed that the 11-percent figure remains a constant and will therefore be utilized as the other variable.

If the 23-percent increase factor previously described is applied to the total dollars budgeted by the counties surveyed in 1962-1963, it is estimated that the total amount budgeted for such services on a statewide basis is \$2,687,516. As has therefore been described, it is estimated that if the bills proposed herein are enacted in laws, namely, those which require the appointment of counsel in significant misdemeanor cases, a 33-percent increase in the number of cases and dollars will be necessary to service these situations. Accordingly, applying the 33 $\frac{1}{3}$ -percent factor to the statewide total cost of \$2,687,516, a new total is obtained, which represents the base year 1962-1963 if both variables are considered. The new total, therefore, is \$3,583,388. If the 11-percent annual increase variable is now applied to this total so as to cover the fiscal years 1963-1964; 1964-1965; 1965-1966, the last being the year for which the Legislature will be budgeting should they enact this program, a total of \$4,900,743 is obtained.

To summarize, the \$4,900,743 total figure is the product of the application of three variables to the total dollars budgeted for all defender services in California in 1962-1963 for the counties surveyed. The variables are: that proportion that the population of the counties surveyed bore to the total state population, or 23 percent; the variable arbitrarily fixed and assigned to increased demands placed upon defender services by requiring the defense of significant

misdemeanor cases, or $33\frac{1}{3}$ percent; and finally, the third variable is the rate of increase between 1962-1963 and 1963-1964, or 11 percent. Obviously, deviation in any of these variables would materially affect the conclusions herein presented, but they are the best that can be developed under all of the circumstances attendant upon the preparation and development of this report.

The enactment of the grant-in-aid or subsidy bill by the Legislature as proposed herein provides that the state will pay 70 percent of the estimated cost of augmented services and the counties 30 percent. As has been heretofore developed, the base year figure is \$3,583,388. The estimated budget cost for 1965-66 is \$4,900,743. The difference between these two sums is \$1,317,305. Applying the 70-30-percent formula thereto means that the state will pay \$922,148 and the counties \$395,307 of the total.

NONSTATUTORY RECOMMENDATIONS

From this survey it is apparent that there is a total absence of uniformity of nomenclature employed by the district attorneys, public defenders, courts, the Attorney General and the Judicial Council concerning the movement of criminal cases through the courts. The absence of a standard nomenclature means that this study and any future surveys will be comparing apples, oranges and bananas. While all are fruit, there the similarity ends. It is assumed that the Judicial Council has power to regulate the form of the reports by government agencies annually filed with it. A uniform system of reporting to be developed by the Judicial Council is recommended.

ACKNOWLEDGMENTS

During the course of preparation of this survey and report, the services of many government officials were employed. The demands made of them were unique and required many hours of effort on their part in order to respond to the inquiries. We acknowledge with grateful appreciation and thanks the efforts of the county administrators, judges, and defenders of the counties included in this survey. I. J. Shane of the Judicial Council supplied the committee with the material concerning appeals in criminal cases. Dr. A. LaMont Smith of the School of Criminology, University of California at Berkeley, was of assistance in the preparation of a number of the charts which were utilized by this survey. Terry Baum, of the Office of the Legislative Counsel prepared the proposed bills. To the ladies of the State Bar office in San Francisco, without whose willing and friendly cooperation this report would not have been possible, our grateful thanks.

SUMMARY

Budget for 1965-66 to service combined state defender and assigned counsel system for appellate courts -----		\$322,736
Budget for 1965-66 to service assigned counsel for appellate courts -----	\$246,586	
Costs of servicing counties to upgrade defender and assigned counsel systems -----	922,148	922,148
TOTAL -----	<u>\$1,168,734</u>	<u>\$1,244,884</u>

APPENDICES
COMMITTEE RECOMMENDED
LEGISLATION



APPENDIX A—ASSEMBLY BILL 662

LEGISLATIVE COUNSEL'S DIGEST

State Public Defender.

Creates Office of State Public Defender, headed by State Public Defender, who is to be appointed by Governor for term of four years. Prescribes qualifications and salary. Authorizes him to appoint staff and require establishment of offices in Los Angeles and San Francisco, as well as permitting establishment of other offices.

Generally requires State Public Defender to represent in California appellate courts a person who was convicted of crime under California law or who is confined in state prison and who seeks relief with respect to such conviction or confinement, if the person is financially unable to employ counsel, but permits withdrawal and assignment of other counsel where it appears case does not present constitutional issue or issue of substantial statewide importance. Authorizes State Public Defender also to represent such a person seeking relief in U.S. Supreme Court unless case does not appear to have substantial merit.

Specifies that State Public Defender shall not undertake to represent person who is represented by county or city public defender.

Requires county public defender to represent persons charged with crimes triable in municipal or justice court, in addition to cases triable in superior court. Limits authority of county public defender to take cases up on appeal, to cases in which the conviction was in a municipal or justice court.

An act to add Part 6.7 (commencing with Section 15400) to Division 3 of Title 2 of, and to amend Section 27706 of, the Government Code, relating to counsel in criminal cases.

The people of the State of California do enact as follows:

SECTION 1. Part 6.7 (commencing with Section 15400) is added to Division 3 of Title 2 of the Government Code, to read:

PART 6.7. STATE PUBLIC DEFENDER

CHAPTER 1. APPOINTMENT, QUALIFICATIONS, AND OFFICES

15400. There is in the state government an Office of the State Public Defender. The office is in the charge of a chief, who shall be known as the State Public Defender.

15401. The State Public Defender shall be appointed by the Governor and shall hold office for the term of four years. He must, on appointment, be an attorney at law admitted to practice law before the Supreme Court of California for at least 10 years and admitted to practice before the Supreme Court of the United States of America. He must be a person especially learned in the subjects of criminal law and constitutional law.

15402. The annual salary of the State Public Defender is twenty-five thousand dollars (\$25,000).

15403. The State Public Defender shall appoint a chief assistant and, pursuant to civil service, such deputies and other personnel as he may need for the proper performance of his duties.

15404. The State Public Defender shall maintain offices in Los Angeles and San Francisco and in such other places as may appear necessary.

CHAPTER 2. DUTIES

15410. In any case in which a person who has been convicted of a crime under the laws of this state appeals his case to any appellate court of this state or seeks to attack his conviction collaterally in any such court, or in any case in which a person confined in a state prison in this state seeks to attack in any court of this state the legality of his confinement, and such person alleges to such court that he is financially unable to employ counsel, the court shall appoint the State Public Defender to represent him, or if he makes application for representation directly to the Office of the State Public Defender, the State Public Defender shall undertake to represent him.

If, however, it appears to the State Public Defender that such person if financially able to employ counsel, he shall withdraw as soon as this can be done without prejudice to such person's rights in the case, subject to approval of the court in which proceedings are pending if proceedings have already been commenced. If the State Public Defender concludes that the case is not one presenting any constitutional question or is not one presenting issues of substantial statewide importance, he shall likewise withdraw as soon as this can be done without prejudice to such person's rights in the case and subject to approval of the court in which proceedings are pending if proceedings already have been commenced, and upon such withdrawal the court may appoint other counsel for such person.

15411. In any case in which a person who has been convicted of a crime under the laws of this state or who is confined in a state prison in this state wishes to seek, or has already taken steps to obtain, relief from the United States Supreme Court with respect to such conviction or confinement, and applies to the Office of the State Public Defender for counsel, the State Public Defender shall undertake to represent if it appears that such person is financially unable to employ counsel, unless the case does not appear to have substantial merit.

15412. The State Public Defender shall not undertake to represent any person who is represented by a county or city public defender.

SEC. 2. Section 27706 of said code is amended to read:

27706. The public defender shall perform the following duties:

(a) Upon request of the defendant or upon order of the court, he shall defend, without expense to the defendant, any person who is not financially able to employ counsel and who is

1 charged with the commission of any contempt or offense triable
2 in the *superior, municipal, or justice* court at all stages of the
3 proceedings in any such court, including the preliminary ex-
4 amination. The public defender shall, upon request give counsel
5 and advice to such person about any charge against him upon
6 which the public defender is conducting the defense, and shall
7 prosecute all appeals to a higher court or courts of any person
8 who has been convicted in a *municipal or justice court*, where,
9 in his opinion, the appeal will or might reasonably be expected
10 to result in the reversal or modification of the judgment of con-
11 viction.

12 (b) Upon request, he shall prosecute actions for the collec-
13 tion of wages and other demands of any person who is not
14 financially able to employ counsel, where the sum involved
15 does not exceed one hundred dollars (\$100), and where, in the
16 judgment of the public defender, the claim urged is valid and
17 enforceable in the courts.

18 (c) Upon request, he shall defend any person who is not
19 financially able to employ counsel in any civil litigation in
20 which, in the judgment of the public defender, the person is
21 being persecuted or unjustly harassed.

22 (d) Upon order of the court, he shall represent any person
23 who is not financially able to employ counsel in proceedings
24 under Chapter 4 (commencing with Section 5400) of Part 1 of
25 Division 6 and under Chapter 1 (commencing with Section
26 5000) of Part 1 of Division 6 of the Welfare and Institutions
27 Code.

28 (e) Upon order of the court, he shall represent any person
29 who is entitled to be represented by counsel but is not finan-
30 cially able to employ counsel in proceedings under Chapter 2
31 (commencing with Section 500) of Part 1 of Division 2 of
32 the Welfare and Institutions Code when such proceedings are
33 concerned with a person alleged to be or who has been found
34 to be within the description of Sections 601 or 602 of the Wel-
35 fare Institutions Code.

APPENDIX B—ASSEMBLY BILL 661

LEGISLATIVE COUNSEL'S DIGEST

Compensation of appointed counsel.

Amends Secs. 1240, 1241, Pen.C.

Provides for reimbursement of all expenses, rather than only cost of preparing defendant's brief, incurred by appointed counsel in representing defendant in case of automatic appeal in death sentence case. Provides that fee for counsel appointed by Supreme Court or district courts of appeal in criminal case shall be not less than \$25 per hour.

An act to amend Sections 1240 and 1241 of the Penal Code, relating to compensation of counsel in criminal cases.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1240 of the Penal Code is amended to
2 read:

3 1240. In any case where an automatic appeal is taken,
4 as provided in Section 1239, and where counsel has been
5 appointed by the court to appear for the defendant, ~~the cost~~
6 ~~of preparing the defendant's brief required in any such~~
7 ~~criminal case shall be paid such counsel shall be reimbursed~~
8 by the State from the current appropriation for the support
9 of the Supreme Court ~~for all expenses he has incurred in rep-~~
10 ~~resenting the defendant; in an amount not to exceed one~~
11 ~~hundred dollars (\$100).~~ Claim for payment of such cost
12 reimbursement for such expenses shall be presented by counsel
13 to the Clerk of the Supreme Court in such form as the clerk
14 prescribes. If the claim is in order, the clerk shall transmit it
15 to the State Controller, who shall draw his warrant in payment
16 thereof and transmit it to the clerk for delivery to the payee.

17 SEC. 2. Section 1241 of said code is amended to read:

18 1241. In any case in which counsel has been appointed by
19 the Supreme Court or by a district court of appeal to represent
20 a party to any appeal or proceeding in a criminal matter, the
21 court shall fix a reasonable fee, *not less than twenty-five dol-*
22 *lars (\$25) per hour,* for such counsel which shall be paid from
23 the General Fund. Claim for the payment of such fee shall be
24 presented by counsel to the clerk of the court allowing such
25 fee in such form as the clerk shall prescribe. If the claim is in
26 order, the clerk shall transmit it to the State Controller who
27 shall draw his warrant in payment thereof and transmit it to
28 the clerk for delivery to the payee.

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ASSEMBLY COMMITTEE REPORTS
1963-1965

INTERIM COMMITTEE ON CRIMINAL PROCEDURE
REGULATION AND CONTROL OF FIREARMS

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JANUARY 1965

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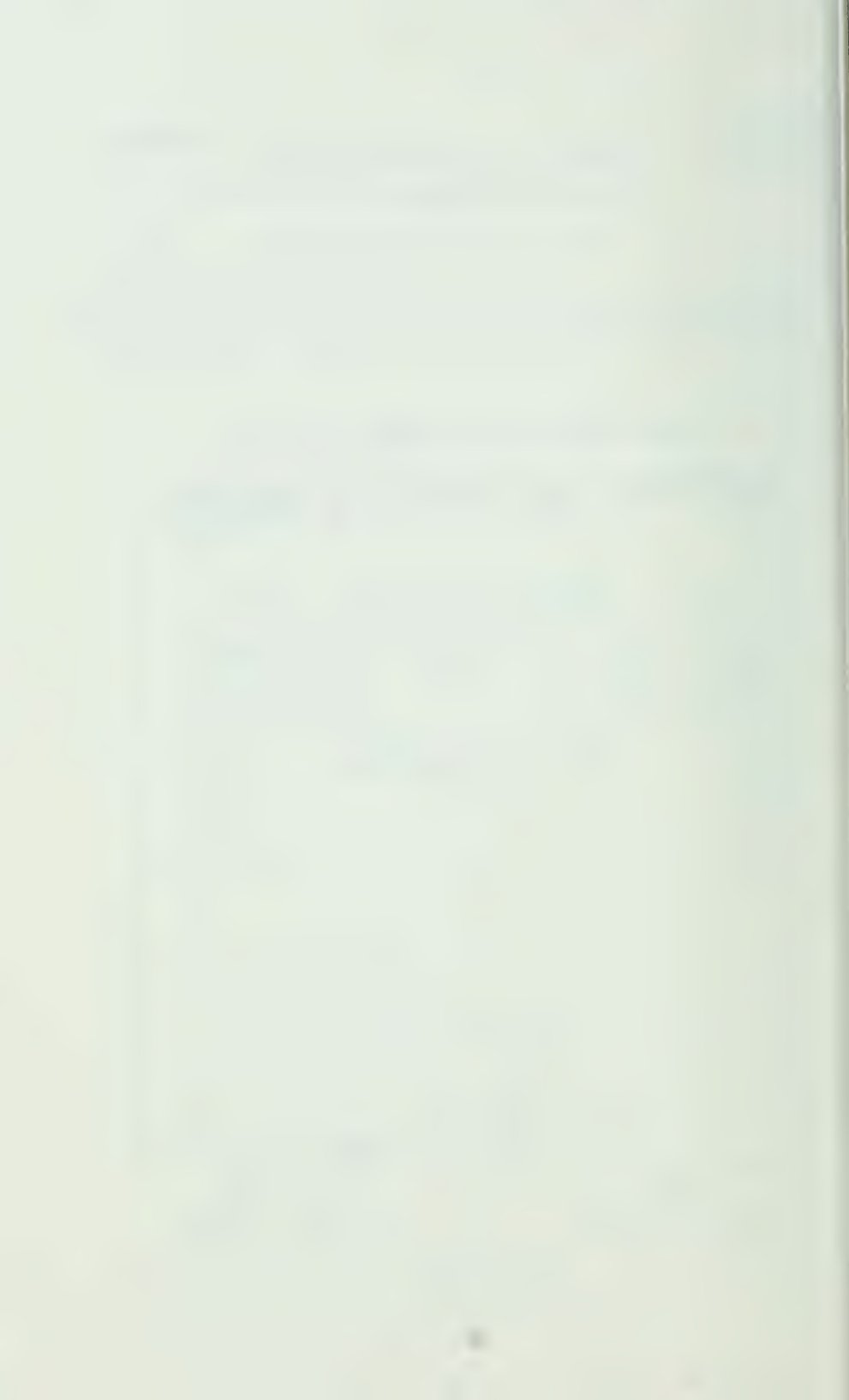


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LETTER OF TRANSMITTAL

ASSEMBLY CHAMBER, STATE CAPITOL
Sacramento, January 4, 1965

HON. JESSE M. UNRUH, *Speaker of the Assembly*
and Members of the Assembly
Assembly Chamber, Sacramento

Gentlemen :

The Assembly Interim Committee on Criminal Procedure submits the Report on Regulation and Control of Firearms in response to House Resolution 26 of the 1964 First Extraordinary Session.

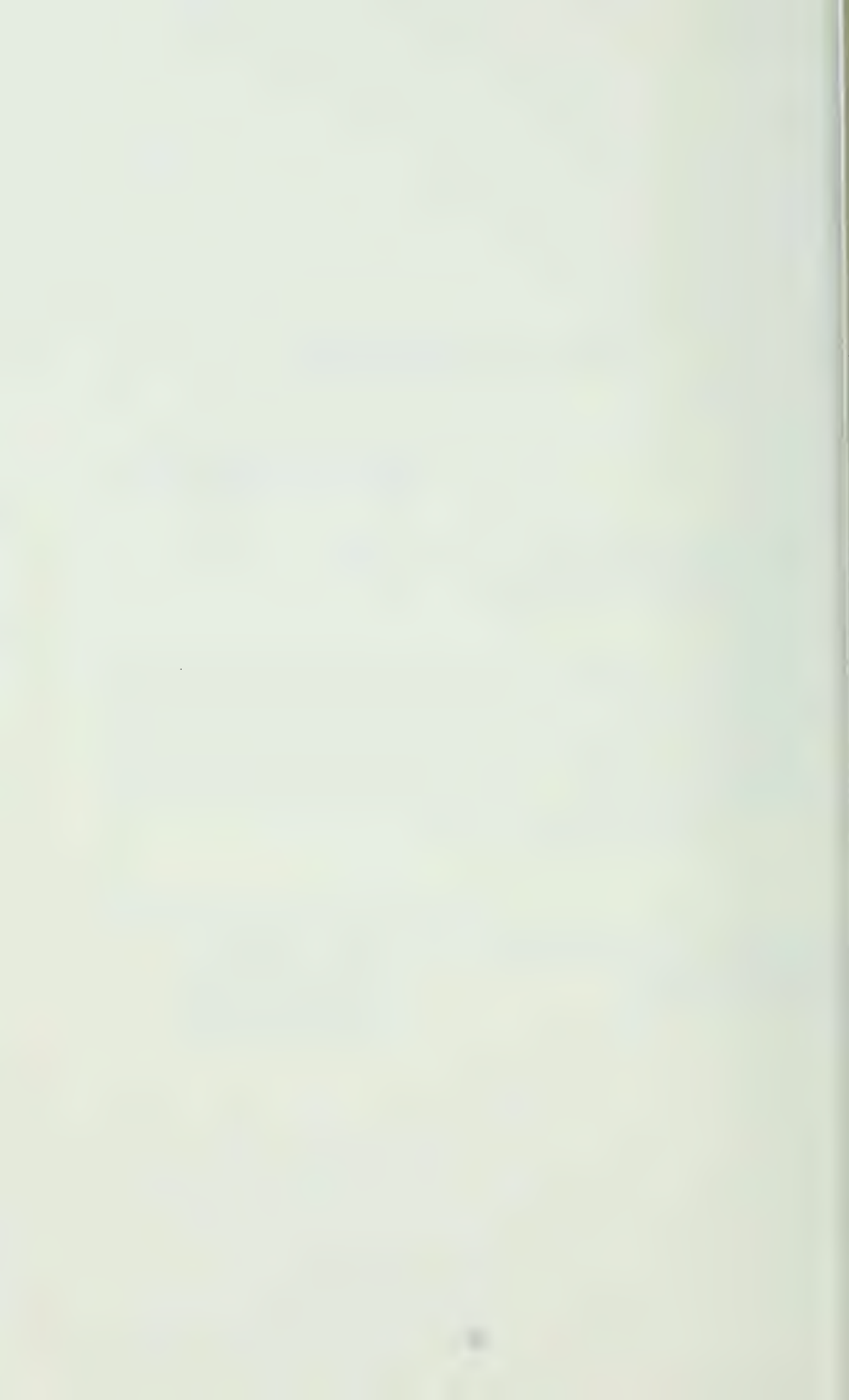
The committee recommendations embody what are felt to be constructive additions to the criminal law in this area, and they are herewith commended to you.

Respectfully submitted,

GORDON H. WINTON, JR., *Chairman*

ANTHONY C. BELENSON, *Vice Chairman*
ROBERT W. CROWN
GEORGE DEUKMEJIAN
RICHARD J. DONOVAN

BURT M. HENSON
JOHN T. KNOX
HOWARD J. THELIN
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HISTORICAL BACKGROUND OF THE REGULATION AND CONTROL OF FIREARMS *

"No one shall come before the justices, or go, or ride armed." (Statute of Northumberland, 1328, 2 Edw. III, c.3.) This statute is still in force in England. Similar prohibition on carrying offensive weapons in public places appeared in colonial Massachusetts (Criminal Code of the Province of Mass., c. 18, Sec. 6), and was reenacted after the American Revolution (2 Mass. Laws, 1780-1800, Sec. 653).

Curiously enough, the first statute to prohibit carrying concealed weapons was enacted in a frontier state (Kentucky Acts 1812-1813, c. 89). The statute was held unconstitutional (*Bliss v. Commonwealth*, 2 Litt. 90 (Ky. 1822)). Notwithstanding savages and wild animals, the struggle for law and order against self-help and vigilantism continued. The State Constitution was amended (Ky. Const., Art. XIII, Sec. 25 (1850)) and another statute prohibiting the carrying of concealed weapons was enacted (Ky. Rev. Stat., v. I, p. 414 (Stanton, 1860)). This statute was sustained under the amended Constitution (*Hopkins v. Commonwealth*, 3 Bush. 480 (Ky. 1868)).

Under the English common law, it was a misdemeanor to go armed in public places but not criminal to carry a concealed weapon. Early American legislative and judicial experience was precisely opposite to the English view. The early statutes prohibited concealed rather than openly carried weapons. (Ky. Acts 1812-1813, c. 89, *supra*; Ind. Laws 1819, c. 23; Ark. Rev. Stat., c. 44, Div. 8, Art. I, Sec. 37 (1837)). When a statute undertook prohibition of weapons carried both concealed and openly (Ga. Laws 1837, p. 90), the court sustained the statute for concealed weapons but held it invalid for openly carried ones (*Nunn v. State*, 1 Ga. 243 (1846)).

The Constitution of the United States provides that "a well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed" (Amend. II). Like all of the provisions in the Bill of Rights, this has been held to be a restriction only on the power of Congress and the federal government, and not on the power of the states (*Presser v. Illinois*, 116 U.S. 252, *United States v. Cruikshank*, 92 U.S. 542, 553). Similar or identical provisions in numerous state constitutions have been repeatedly held to confer a collective and not an individual right to bear arms. Such provisions guarantee the arming of a state militia for the common defense and for warfare. They do not restrict a state from requiring an individual to obtain a license to carry a firearm. They do not prevent a state from regulating an individual in the manufacture, transport, disposition and possession of weapons in order to preserve the peace and prevent crime (*People v. Persce*, 204 N.Y. 397, *People v. Warden of City Prison*, 154 App. Div. 413, *Commonwealth v. Patson*, 231 Pa. 46, affirmed, 232 U.S. 138).

* This article is reproduced from the report of the New York Joint Legislative Committee on Firearms and Ammunition, 1962, pp. 10-11.

FEDERAL REGULATION AND CONTROL OF FIREARMS

ROY HOWLAND *

Assistant Superintendent in Charge (Enforcement)
Alcohol and Tobacco Tax Division
Bureau of Internal Revenue

There are two major firearms acts which are enforced by the Alcohol and Tobacco Tax Division. They are the National Firearms Act, which is known as Title 26, United States Code, Chapter 53, and the Federal Firearms Act, which is known as Title 15, United States Code, Chapter 18. The two terms, "National Firearms Act" and "Federal Firearms Act," are easily confused because of the similarities in title, so, in order to avoid this, I would like to mention them sequentially, starting with the National Firearms Act.

The regulations for the National Firearms Act are found in Part 179, Title 26, of the Code of Federal Regulations. This law was enacted on June 26, 1934, and has had several subsequent revisions. It was enacted for the purpose, primarily, of controlling those types of firearms which were most commonly used by gangsters during the '20's and the '30's. The law controls the possession, manufacture and transfers of these types of firearms: machine guns, sawed-off shotguns, sawed-off rifles, silencers and a few other weapons other than pistols and revolvers. These other types of weapons might be key guns, firearms concealed in cigarette lighters, firearms concealed in microphones, firearms other than standard garden variety of pistols and revolvers.

Under the National Firearms Act, it is legal for a person to own a machine gun. It is legal for a person to own a sawed-off shotgun. But this ownership is highly regulated and controlled by the federal government. Control of these firearms is achieved through the process of mandatory registration in the case of any firearm covered by the National Firearms Act. There is also a heavy transfer tax, \$200 in the case of most firearms, in order to transfer a firearm from one person to another. A transfer to a police agency would be an exempted transfer. Though it would be controlled, it would not be a taxable transfer. There is also a manufacturing tax on sawed-off shotguns and machine guns, and this is \$200 on each firearm. There are restrictions on importation. One may not import a sawed-off shotgun into the United States without specific authority to import that particular gun. This is difficult to achieve. A person wishing to import a firearm must make a showing to the satisfaction of our department that the firearm is unique and that it cannot be obtained in the United States. Also, there is a provision in the regulations to regulate dealers in these types of firearms under the National Firearms Act.

A violation of any of the provisions of the National Firearms Act is a felony, and it is punishable by imprisonment for a term of five years

* The following statement was prepared by Mr. Howland and presented to the Committee on October 19, 1964, in Room 4102 of the State Capitol in Sacramento as a part of the Committee's public hearing on the control of concealable weapons in California.

or a fine of \$2,000 or both in the judgment of the court. Our history in prosecution has been that severe sentences are often handed down by the courts.

The second of our acts that we enforce is the Federal Firearms Act. The regulations for the Federal Firearms Act are found in Part 177, Title 26, of the Code of Federal Regulations. This law was enacted on June 30, 1938, in order to achieve control over the interstate traffic of all firearms. As used in the Federal Firearms Act, the term "firearms" includes *any* weapon by whatever name known which is designed to expel a projectile or projectiles by the action of an explosive and also includes a firearm muffler or a firearm silencer or any part or parts of such a weapon. Control of these firearms under the Federal Firearms Act is achieved primarily by licensing all dealers in firearms who deal in interstate commerce, by licensing all manufacturers of firearms who manufacture firearms in interstate commerce and by licensing all importers. Certain acts are made unlawful by Section 902 of the Federal Firearms Act, and I have paraphrased these provisions for the Committee.

It is unlawful for any unlicensed dealer to deal in firearms in interstate commerce. It is unlawful to receive firearms in interstate commerce knowing or having reasonable cause to believe that the firearms were shipped by an unlicensed dealer. It is unlawful for any licensed manufacturer or dealer to ship to a person who is required to have a license in his state without having that license exhibited to the manufacturer or dealer at the time of sale. It is unlawful to ship a firearm to any person knowing or having reasonable cause to believe that that person is under indictment or has been convicted of a crime punishable by imprisonment for more than one year or that the person is a fugitive from justice. It is unlawful under the Federal Firearms Act for any person who is under indictment or has been convicted of a crime punishable by imprisonment for more than one year or who is a fugitive to ship or transfer any firearm in interstate commerce. It is unlawful for any person who is under indictment or who has been convicted of a crime punishable by imprisonment for more than one year or any fugitive from justice to receive any firearm in interstate commerce. It is unlawful to ship or transport any firearm in interstate commerce knowing or having reasonable cause to believe that the firearm is stolen or has been stolen. It is unlawful to receive, to conceal, to store, barter, sell, or otherwise dispose of any firearm in interstate commerce knowing or having reasonable cause to believe that that firearm was stolen. It is also unlawful to transport any firearm in interstate commerce where the serial number has been altered, obliterated or removed.

Any violation of the Federal Firearms Act is similarly punishable by imprisonment for five years and/or \$2,000 as the court may decide.

Those are brief outlines of the provisions.

Dealers, under the Federal Firearms Act, pay a \$1 annual licensing fee. Manufacturers, under the Federal Firearms Act, pay a \$25 annual licensing fee. Under the Federal Firearms Act, there are also record-keeping requirements which we find very useful, for dealers must ac-

count for all firearms they receive and all firearms that they dispose of.*

Chairman Winton: Suppose you have a manufacturer in California who does not sell anything in interstate commerce but confines his business to California alone. Would he come within the federal regulations?

Mr. Howland: No, he would not, but it would be pretty difficult for him to achieve that isolated status.

Chairman Winton: Because he would have to get parts or something through interstate commerce, is that the idea?

Mr. Howland: That is correct.

Assemblyman Henson: I was wondering when a weapon ceases to be defined as a weapon. What do you have to do when you have a machine gun that you want to just keep as an heirloom or something like that? What do you have to do with it in order to be clear of federal law?

Mr. Howland: Well, as matters now stand, a machine gun is always a machine gun. It may be rendered inoperative, and it may be transferred without paying tax, but it must be registered with the Treasury Department, and any subsequent transfers, though tax free, must be made pursuant to a written order form.

Assemblyman Henson: Well, yes, but do you have to pour concrete down a barrel or solder up the mechanism or turn it into something else?

Mr. Howland: Physically, we consider a machine gun to be rendered inoperative or unserviceable when the breech has been welded with a metal arc weld and the barrel has been welded to the receiver.

Assemblyman Henson: It doesn't make any difference to you whether it is operative or not operative. It will still have the same tax on it. Is that right?

Mr. Howland: No. Assuming that the person who has an inoperative machine gun that was lawfully registered transfers it to another person, this would be done without payment of tax.

Assemblyman Henson: Let us take the sawed-off shotgun business here in California. Under federal law, it is legal to have a shotgun with a barrel less than 18 inches, providing it is registered and a tax is paid. Is that right?

Mr. Howland: Yes, that is true.

Assemblyman Henson: And under California state law, it is illegal.

Mr. Howland: It is a contraband item in California.

Assemblyman Henson: I have read a little bit about that women have some kind of a gun for protection in their purses, something that shoots a teargas. Is this classified as a weapon subject to registration or taxation, under these federal laws?

Mr. Howland: Not if it fires gas. If it fired a projectile, such as a .22-caliber bullet, yes, it would be covered by the National Firearms Act.

Assemblyman Henson: But not if it fires teargas.

Mr. Howland: No.

* Mr. Howland was questioned by the Committee following his formal presentation. The questions and answers are reproduced below.

Chairman Winton: Just one further question that Mr. Henson's questions brought to mind. What do you define as a machine gun in the federal law?

Mr. Howland: A machine gun, under federal law, is any firearm which shoots, or is designed to shoot, more than one bullet with one function of the trigger. Whether or not it actually fires that way, if it was intended to at its original manufacture, it remains a machine gun. Are there any other questions from the Committee? Yes, Mr. Thelin.

Assemblyman Howard Thelin: Mr. Howland, you mentioned the federal requirement of registration. From the standpoint of your Bureau, is the purpose of that registration for tax purposes?

Mr. Howland: This is the basic legislation that was enacted as a tax act. The purpose of registration was to identify the firearms and freeze them in the hands of the original possessors.

Assemblyman Thelin: Well, is it for the purpose of being able to know whom to tax or whom not to tax, or is it to aid law enforcement?

Mr. Howland: The idea being, I conclude, that if you find a firearm in the possession of a person who is not the registered owner and there is actually a registered owner on record, a taxable transfer has occurred, so it is an aid to collecting taxes.

Assemblyman Thelin: You are sure?

Mr. Howland: Yes.

COMPARATIVE LAWS REGULATING AND CONTROLLING FIREARMS IN THE UNITED STATES *

More than a quarter of a million serious crimes are committed with weapons annually in the United States, and the number is on the increase.

The legislative problem posed for the 51 American jurisdictions (50 states and the District of Columbia), charged with the major responsibility of criminal law enforcement in the United States, suggests itself: to enact statutes adapted to prevent these crimes and occur-

TABLE 1.
ESTIMATED OFFENSES INVOLVING WEAPONS COMMITTED
IN THE UNITED STATES, 1960

Crime	Estimated number		Change 1960 over 3-year average	
	1960	1957-1959 average	Number	Percent
TOTAL.....	228,340	196,850	+31,490	+16
Murder.....	9,140	8,290	+850	+10
Robbery.....	88,970	72,540	+16,430	+23
Aggravated assault.....	130,230	116,020	+14,210	+12

—Uniform Crime Reports (1960) p. 2.

Excluded Are the Following Crimes or Occurrences Usually or Always Involving Weapons

Crime or occurrence	Number, 1960	Change, 1960
Forcible rape.....	15,560 (est.).....	+1,320, or +9 percent over 3-year average
Weapons, carrying, possessing.....	38,120 (actual arrests).....	+42, or +2 percent over preceding year
Fatal accidents with firearms.....	2,300.....	+1,120, or +6 percent over preceding year
Suicides.....	19,450.....	

rences before they happen, and, at the same time, preserve the legitimate interests of individual liberty, training for national defense, hunting, target shooting and trophy collecting. The divergency of state solutions to this problem is perhaps best illustrated by the statutes of our two newest states.

* This article is reproduced from the *Report of the New York Joint Legislative Committee on Firearms and Ammunition*, 1962, pp. 11-16.

The State of Hawaii has a comprehensive, consecutive and concise group of provisions entitled, "Firearms and Ammunition" (Rev. Laws Hawaii (1955) c. 157). Firearms are defined to include rifles and shotguns (Sec. 157-1). Visitors to the state must register their weapons with a local police chief within 48 hours (Sec. 157-2). A permit from the police chief is required for possession on the premises of any firearm with a barrel less than 18 inches in length. Licensees must either be citizens over 20 years of age or duly accredited foreign representatives. For an on-premises permit, there is no fee (Sec. 157-3). Rifles and shotguns having barrels more than 18 inches in length, as well as ammunition therefor, must be kept on the premises, except when being transported from the place of purchase in a wrapper or when actually being used for hunting or target shooting (Sec. 157-6). Persons convicted of a crime involving violence or narcotics may not lawfully possess such rifles, shotguns or ammunition (Sec. 157-7); neither may anyone under 20 years of age, except when actually engaged in hunting or target shooting, and then only if over the age of 16, accompanied by an adult and duly licensed as a hunter (Sec. 157-4). The manufacture, possession and disposition of machine guns, submachine guns, automatic rifles, cannons, firearm silencers, bombs and bombshells are outlawed (Sec. 157-8). So also is the defacement of firearms (Sec. 157-10). Permits to carry a pistol, revolver or ammunition therefor, as distinguished from on-premises possession of a firearm, may be issued by the police only in cases of fear of injury to person or property. Persons under 20 and those previously convicted of a felony or adjudged insane are ineligible. The fee for this permit to carry is \$10 (Sec. 157-9). Manufacture and sale of firearms similarly require licensing by the same authority and at the same fee (Secs. 157-30, 157-31). Exemptions from these pro-

TABLE 2.

RESTRICTIONS ON CARRYING FIREARMS CONCEALED

(Jurisdictions with density of population equal to or greater than national average appear in **bold**)

REQUIRE LICENSE			NO LICENSE REQUIRED				
			Prohibit generally	Prohibit in settlements	Allow pistols	Allow if no intent	No prohibition
TOTAL: 28			16	1	2	2	2
Ala.	Iowa	N.D.	Ariz.	Neb.	N.M.	Ark.	Alaska
Calif.	Me.	Ore.	Idaho	Ohio		La.	N.C.
Colo.	Mass.	Pa.	Ill.	Okla.			
Conn.	Mich.	R.I.	Kan.	S.C.			
Del.	Miss.	S.D.	Ky.	Tenn.			
D.C.	Nev.	Va.	Md.	Tex.			
Fla.	N.H.	Wash.	Mo.	Utah			
Ga.	N.J.	W.Va.	Mont.	Wisc.			
Hawaii	N.Y.	Wyo.					
Ind.							

visions are made for police departments, sheriffs, military and naval forces of the state and the United States, mail carriers, law enforcement officers and duly authorized organizations (Sec. 157-11).

The State of Alaska, on the other hand, has no statute regulating manufacture, transport, disposition, possession or defacement of firearms, or other weapons. A single statute makes criminal careless use of firearms, and then apparently only when injury results (Alaska Comp. Laws Ann. (1949), c.4, Sec. 65-4-20).

If a single explanation for such divergence is possible, then it must be in terms of difference in density of population. Alaska, with virtually no regulation of firearms and weapons, is by far the least densely populated state with only 9.4 persons per square mile. Hawaii, with comprehensive regulation, has a density of population almost double the national average (50.5) with 98.6. The State of New York, with 350.1, has a density of population almost seven times the national average. The significance of density of population for firearms regulation in the United States is apparent in the stringency of statutes controlling the carrying of concealed firearms.

Forty-four of the 51 American jurisdictions flatly prohibit the carrying of pistols and revolvers concealed, and an additional state prohibits such carrying in settled parts. Of these jurisdictions, 28 provide for licensing such carrying. The significance of density of population is apparent in this distribution. Of the half-dozen states that do not prohibit such carrying, only two have a density of population equal to or greater than the national average. Of the 45 jurisdictions prohibiting such carrying, 27 have such density.

In these regulations, the historic factor of whether the firearm is carried openly or concealed has frequently been decisive. Apparently in only 9 (Conn., D.C., Hawaii, Ind., Mass., N.M., N.Y., Tex., W.Va.) of the 45 prohibiting jurisdictions, does the prohibition extend to openly carried firearms. It is usual in such jurisdictions to exclude possession on premises (place of business or abode, or one's own property), as distinguished from carrying on or about one's person, for certain well-defined categories of persons, such as aliens, drug addicts or peddlers, ex-felons or persons convicted of crimes of violence, habitual drunkards, incompetents, or minors. Only two states require licenses for such possession, Hawaii in the case of rifles and shotguns as well as pistols and revolvers, and New York in the case of pistols and revolvers. A third state (Mich.) requires inspection by a peace officer of such firearms in order to assure safety.

The appropriate authority for licensing has been the subject of considerable comment, particularly by the county judges in 56 counties of New York, in the responses to the questionnaire of the Joint Legislative Committee. New York has a dual authority: in the City of New York and the County of Nassau, the police commissioner; in the remaining 56 counties, the county judge having his office in the county in which application may duly be made. What is the comparative law in jurisdictions that license possession of firearms?

The usual term of such license is one year with three states providing expiration at the end of the succeeding year (Iowa, Maine, N.Y.) and one state three years (Ga.). License fees vary from 50 cents (Ga., Mass.,

Ore., S.D.) to \$10 (Hawaii) and even \$20 (W.Va.). Customarily, full age, good character and absence of a criminal record are required. The latter is variously defined, ranging from conviction of a felony, through conviction of a crime of violence, to conviction of any crime. Notwithstanding this requirement, only three states make the taking of fingerprints compulsory (Calif., N.J., N.Y.), and in only two others

TABLE 3.

TYPES OF LICENSING AUTHORITY FOR POSSESSION

Police	Judicial	Other admin.	Either of three	Either police or judicial	Either police or admin.
Ala. Calif. D.C. Hawaii Ind. Iowa Nev. N.J. N.Y. (6 co's) Ore. Pa. Wyo.	Del. Ga. N.Y. (56 co's) Va. W.Va.	Fla. Mich. R.I.	Colo. Mass.	N.D. S.D. Wash.	Conn. Me. Miss. N.H.

is such practice discretionary with the licensing authority (Conn., Ind.). Nearly all of these jurisdictions provide that the license be carried with the weapon and produced on demand by a peace officer. This requirement, omitted from the existing law in New York, has been supplied in the bill introduced in behalf of the Joint Legislative Committee. About half of the states with a judicial licensing authority require publication by the applicant of his notice to apply (Del., W.Va.).

In two respects, the licensing requirements in New York are notably less stringent than a representative group of other states. In eight states, a proper purpose, usually fear of injury to person or property, must be established (Del., Hawaii, Ind., Mass., N.H., N.D., R.I., Va.). Two of these states also make target shooting a proper purpose (Ind., Mass.) and one both target shooting and hunting (N.H.). Five states that license possession require the posting of security, amounting to either \$100 (Fla., Ga.), \$300 (R.I.), \$2,000 (certain licenses, Miss.) or \$3,500 (W.Va.). The bond in West Virginia accrues to any person damaged by accidental, negligent, improper or unlawful use of the weapon.

The most strategic control of firearms by a state is effective regulation of their transfer. Three methods are in current use: licensing of dealers; permits for purchasers; and the keeping of a register by dealers. Probably, the licensing of dealers is most effective of the three methods: any violation imperils a business investment. Yet less than half of the jurisdictions that license possession also seek control of transfer by licensing dealers (Ala., Calif., D.C., Hawaii, Ind., Iowa, N.H., N.J., N.Y., N.D., S.D., Wash., Pa.), with only a handful requiring

permits of purchasers (Mass., Mich., N.J.) or the keeping of a register (R.I., Wyo.). A few states that do not license possession nevertheless undertake control of transfer either by licensing dealers (N.C., Tenn.), requiring permits of purchasers (N.C.), or providing for a register (Ill., La., Mo., N.C., Utah, Vt.). The significance of state control of transfer by license transcends state boundaries. So long as a state has such licensing requirement, it is a federal crime to ship any firearm, firearm silencer, or revolver or pistol ammunition, from outside the state to anyone within it not licensed to purchase (15 U.S.C., Sec. 902(c)).

About a third of the American jurisdictions prohibit defacement of firearms and about half outlaw machine guns. Most jurisdictions provide for confiscation and destruction of contraband weapons, although some states auction such confiscated weapons and others retain them for use by peace officers. A universal exemption covers peace officers and military personnel. Additional penalties for the use of firearms in the commission of crime is a frequent provision. By far, less frequent are statutory presumptions, either of possession of a weapon arising from presence in a place (usually an automobile) where such weapon is found, or of defacing a weapon arising from possession of the same, or of unlawful intent arising from unlicensed possession of a firearm. When such presumptions have been enacted, grave constitutional questions concerning the reasonableness of the relationship between the fact presumed and the fact proven has caused many courts to hold such statutes invalid (see, e.g., *People v. Murquia*, 6 Cal. 2d 190, 57 P. 2d 115; *Everett v. State*, 208 Ind. 145, 195 (N.E. 77)). The recommendations of the National Conference of Commissioners on Uniform Acts (Uniform Pistol Act, Uniform Firearm Act, Uniform Machine Gun Act) have met with acceptance *in toto* only by a handful of jurisdictions.

Unlike the states which have residual police power, the capability of the federal government in domestic affairs is limited to powers delegated by the Constitution. The most formidable of these powers in the control of crime is the power to tax: considerations of state boundaries are irrelevant to its exercise and it may operate on purely local and intrastate situations. Moreover, the fact that the effect of a given tax (e.g., on narcotics, or on bookmakers and wagers), is primarily regulatory and only incidentally productive of revenue, does not invalidate the tax. Yet Congress has used this power with much more restraint than it has exercised others in the control of firearms and ammunition.

In 1927, under the postal power, pistols and revolvers were declared nonmailable, except to certain federal agencies and officers (18 U.S.C. Sec. 1715). When Congress exercised its taxing power in the National Firearms Act of 1934 (26 U.S.C. Secs. 2720-2733m, 3260-3266), pistols and revolvers—included in the original draft of the bill—were deleted from the definition of a firearm. "Firearms" were defined to include only the sensational weapons of gang warfare, machine guns, firearm silencers and sawed-off shotguns (i.e., ones with barrels less than 18 inches unless .22 caliber, in which case the exempt barrel length could be 16 inches). For such "firearms," steep annual taxes were imposed

on dealers (\$200), pawnbrokers (\$300) and manufacturers (\$500) (26 U.S.C. Sec. 3260), and a tax of \$200 levied on anyone transferring them (26 U.S.C. Sec. 2720). Pistols and revolvers were relegated to the usual 10 percent excise or duty levied on manufacturers or importers, with the usual exemptions for purchases by federal, state or local authorities (26 U.S.C. Sec. 2700). Yet in 1938 when Congress sought to regulate the interstate and foreign transport of firearms in the so-called Federal Firearms Act (15 U.S.C. Secs. 901-909), the term "firearm" was broadly defined to include "any weapon, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosive and a firearm muffler or firearm silencer or any part or parts of such weapon" (15 U.S.C. Sec. 901(3)). Pistol and revolver ammunition were also brought within the Act (15 U.S.C. Sec. 901(7)). Under this Act, manufacturers and dealers were licensed for shipment and receipt of firearms and such ammunition, and such shipment or receipt to or by convicts, persons under indictment and fugitives from justice was prohibited. By requiring a license to purchase firearms or such ammunition, a state would automatically make a federal crime of shipments from outside its borders to unlicensed manufacturers and dealers within them (15 U.S.C. Sec. 902 (c)).

REGULATION AND CONTROL OF FIREARMS IN CALIFORNIA

TERRY L. BAUM

Deputy Legislative Counsel

I. THE GENERAL PATTERN

There are some types of firearms that are generally prohibited in California, such as sawed-off shotguns. Machine guns are subject to a high degree of control, so that the average person must have a license to possess one at all.

Conventional pistols and revolvers are not subject to such strict controls, and rifles and shotguns are subject to still less control. As for conventional pistols and revolvers—concealable firearms—a dealer must be licensed, but persons other than dealers can make casual sales without a license. There are restrictions on the sale of such firearms to felons, narcotic addicts, mental patients, and minors under 18. It is not necessary to obtain a license or permit to own or possess such a firearm but some formalities, such as a delay in delivery, are required for most sales. Generally, a license is necessary to carry such a firearm concealed.

There are restrictions on the sale of conventional rifles and shotguns to minors and mental patients, but a license is not necessary to sell such a firearm, or to own or possess one. Although “dealers” in concealable firearms must maintain a register of sales and report sales to law enforcement agencies, this is not required of dealers in rifles and shotguns (or of nondealers selling concealable firearms).

There are numerous provisions prohibiting the bringing or sending of firearms into correctional and mental institutions and possession of firearms therein or possession in other specified places.

There are numerous provisions that penalize particular acts involving firearms that jeopardize safety and provisions that impose increased minimum terms or restrict probation or other benefits where another act is committed, or the perpetrator is arrested, while armed with a firearm (or other deadly or dangerous weapon).

It should be noted that this summary deals only with state law. There are at least some ordinances imposing further restrictions on possession of firearms, and there are appellate department decisions upholding such ordinances against the contention of state preemption (*People v. Jenkins*, 207 Cal. App. 2d Supp. 904, *People v. Commons*, 64 Cal. App. 2d Supp. 925).

II. FIREARMS GENERALLY

Under this heading we summarize those laws that actually refer broadly to “firearms,” without limitation, or to guns, or, still more broadly, to deadly weapons, dangerous weapons, or weapons, or otherwise use language of such breadth that they apply at least to rifles

and shotguns in addition to handguns. We do not here refer to any devices covered by the State Fireworks Law (Sec. 12500, *et seq.*, H. & S.C.), even though some of those devices might also fall within a broad definition of firearm.

A. Sale

It is a misdemeanor to sell a firearm to a minor under age 16 (Sec. 12551, Pen.C.), and it is a misdemeanor to sell a firearm to a minor who is at least 16 years of age but not over 18 years of age without consent of his parent or guardian (Sec. 12550, Pen.C.). A stricter rule, applicable only to concealable firearms, is discussed below (IV A).

Every person who knowingly sells (or gives) a firearm to a person who is a mental patient in any hospital or institution *or on parole therefrom* is guilty of a misdemeanor (Sec. 5671, W. & I.C.).

Knowing sale or purchase of a firearm from which the serial number, etc., has been removed, is a misdemeanor (Sec. 537e, Pen.C.).

B. Possession and Use

There are numerous provisions prohibiting possession of firearms within, or bringing or sending firearms into, various correctional and mental institutions. Thus, any person not authorized by law who brings a firearm into a "reformatory" or the grounds thereof is guilty of a felony (Sec. 171a, Pen.C.). It is a felony to give or attempt to give a firearm to a state prisoner employed in a road camp pursuant to Sections 2760-2774 of the Penal Code or to a state prisoner employed in a public park or forest pursuant to Sections 2780-2792 of the Penal Code (Secs. 2772, 2790, Pen.C.).

Except when otherwise authorized by law, or by an appropriate officer, any person who knowingly brings or sends a firearm into, or knowingly assists in bringing or sending a firearm into, any state prison or prison road camp or prison forestry camp, or other prison camp or prison farm or any other place where prisoners of the state prison are located under the custody of prison officials, officers or employees, or any jail or any county road camp in this state, or within the grounds belonging or adjacent to any such institution, is guilty of a felony (Sec. 4574, Pen.C.). Every person confined in a state prison or who, while being conveyed to or from any state prison or while at any prison road camp, prison forestry camp, or other prison camp or prison farm or while being conveyed to or from any such place or while under the custody of prison officials, officers or employees, possesses or carries upon his person or has under his custody or control any firearm is guilty of a felony (Sec. 4502, Pen.C.), as is any person who, while lawfully confined in a jail or county road camp, possesses therein any firearm (Sec. 4574, Pen.C.). Possession, or allowing possession, of firearms by patients in mental institutions is forbidden and there is provision for confiscation of firearms so possessed (Secs. 5670, 5672, W. & I.C.).

Various provisions authorize removal of firearms from persons arrested or detained pursuant to law. A peace officer may search for dangerous weapons any person whom he has legal cause to arrest, whenever he has reasonable cause to believe that the person possesses a dangerous weapon. If the officer finds a dangerous weapon, he may

take and keep it until the completion of the questioning, when he shall either return it or arrest the person. The arrest may be for the illegal possession of the weapon (Sec. 833, Pen.C.). It is further provided that any person making an arrest may take from the person arrested all offensive weapons which he may have about his person and must deliver them to the magistrate before whom he is taken (Sec. 846, Pen.C.; see also Sec. 4003, Pen.C., re receipting for weapons by desk clerk or others at jail). When a person charged with a felony is supposed by the magistrate before whom he is brought to have on his person a dangerous weapon, the magistrate may direct him to be searched in his presence, and the weapon to be retained, subject to his order, or to the order of the court in which the defendant may be tried (Sec. 1542, Pen.C.). There is authorization for removal of firearms from a person detained or apprehended for mental examination (Sec. 5672, W. & I.C.).

Every person who shoots any firearm from or upon a public road or highway is guilty of a misdemeanor (Sec. 374c, Pen.C.). It is provided that the board of supervisors of a county may prohibit and prevent the unnecessary firing and discharge on or into the highways and other public places and may pass all necessary ordinances regulating or forbidding such acts (Sec. 25840, Gov.C.). Any person who with intent to do great bodily injury maliciously and willfully discharges a firearm at a vehicle on a highway or occupant thereof is guilty of a felony (Sec. 23110, Veh.C.). It is an offense for a person to shoot at an official traffic control device, traffic guidepost, traffic signpost, or historical marker (Sec. 21464, Veh.C.).

Every person who willfully discharges any firearm within 500 feet of any magazine or any explosive manufacturing plant is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment for not more than one year, or by both (Sec. 12401, H. & S.C.).

It is a misdemeanor for a person, without permission of the owner, to enter private lands under cultivation or enclosed by a fence, belonging to or occupied by another, or to enter upon private uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering such lands, and there discharge any firearm (subd. (n), Sec. 602, Pen.C.).

Various provisions regulate possession of firearms in game refuges and other refuges. Possession is generally prohibited but subject to exceptions for possession pursuant to permit issued by the Fish and Game Commission, and exceptions for transportation in a prescribed manner and other specified exceptions (Secs. 10500, 10501, 10506, 10650, 10651, 10655, 10659, F. & G.C.). It is unlawful for any person, other than the owner, person in possession of the premises, or a person having the express permission of the owner or person in possession of the premises, to hunt, or to discharge, while hunting, any firearm, within 150 yards of any occupied dwelling house, residence, or other building or any barn or other outbuilding used in connection therewith (Sec. 3004, F. & G.C.).

It is unlawful to take birds or mammals with firearms when intoxicated (Sec. 3001, F. & G.C.). It is unlawful to shoot at any game bird

or mammal, with exceptions, from a powerboat, sailboat, motor vehicle, or airplane (Sec. 3002, F. & G.C.). Every person who while taking any bird or mammal kills or injures another person by the use of any firearm used in such taking and who knowingly either abandons such person or fails to render to such injured person all necessary aid possible under the circumstances is guilty of a felony (Sec. 3009, F. & G.C.; see also Secs. 12150-12152, re consequences of wounding or killing a human being while hunting). There are restrictions on use of firearms for taking particular creatures (See, e.g., Sec. 6854, F. & G.C.) (See Sec. 12006, F. & G.C., re penalties). The Department of Fish and Game is required to furnish information on the safe handling of firearms which shall be distributed free of charge to applicants for hunting licenses by the person appointed and authorized to issue such licenses (Sec. 3033, F. & G.C.). A person under 18 is not to be issued a hunting license unless he has previously held a license or has completed a course in the safe use of firearms as prescribed (Sec. 3032, F. & G.C.).

Possession of a firearm from which the identifying number, etc., has been removed is an offense (Sec. 537e, Pen.C.).

Every person who has upon him any deadly weapon with intent to assault another is guilty of a misdemeanor (Sec. 467, Pen.C.), and every person who, except in self-defense, in the presence of any other person, draws or exhibits any firearm, whether loaded or unloaded, or any other deadly weapon whatsoever, in a "rude, angry or threatening manner," or who, in any manner, unlawfully uses the same in any fight or quarrel is guilty of a misdemeanor (Sec. 417, Pen.C.).

Every person who maliciously and willfully discharges a firearm at an inhabited dwelling or occupied building, is guilty of a felony (Sec. 246, Pen.C.), and it is a misdemeanor for a person to fire any "gun or pistol" in an "unincorporated town" (Sec. 415, Pen.C.).

That the offender was armed with a dangerous or deadly weapon causes robbery to be first degree (Sec. 211a, Pen.C.), and when a person committing burglary is armed with a deadly weapon or while in the commission of the burglary arms himself with a deadly weapon, the offense is first-degree burglary (Sec. 460, Pen.C.).

There are still provisions relating particularly to dueling (combat with deadly weapons, fought between two or more persons by previous agreement or upon a previous quarrel) prohibiting dueling itself and related acts (Secs. 225-231, Pen.C.; Art. II, Sec. 2, Calif. Const.). Assault with a deadly weapon is a distinct offense and is punished more severely where the offender knows or reasonably should know that the victim is in one of a number of specified categories of peace officer (Sec. 245, Pen.C.). Separate sections, imposing different penalties, punish assault with a deadly weapon by a person confined in a state prison (Secs. 4500, 4501, Pen.C.).

Increased minimum penalties are prescribed for felonies where defendant was armed with a deadly weapon at the time of commission of the offense or was armed with a concealed deadly weapon at the time of arrest (Secs. 3024, 3024.5, Pen.C.; see Secs. 969c and 1158a, Pen.C., re charging possession of a deadly weapon and the verdict on this issue). Possession or use of a deadly weapon can affect eligibility for

probation (Sec. 1203, Pen.C.) and bring the habitual criminal law into operation (Sec. 644, Pen.C.), and it can affect the right to engage in a licensed business or occupation (See Sec. 6886.1, B. & P.C., re collection agencies, Sec. 7528, B. & P.C., re detective agencies.).

There are provisions requiring persons operating or managing a hospital or part thereof or a pharmacy, and physicians, to report to law enforcement agencies gunshot wounds (Secs. 11160-11162, Pen.C.) and provisions requiring garagemen to report what appear to be bullet holes in cars (Secs. 10653, 10655, Veh.C.).

An exemption from attachment and execution can be claimed for one "gun" to be selected by the owner (Sec. 690.15, C.C.P.).

Special provisions govern disposition of firearms that are exhibits in criminal cases (Sec. 1419, Pen.C.).

III. RIFLES AND SHOTGUNS

Under this heading we refer to provisions limited to rifles or shotguns or both.

It is unlawful to use or possess a shotgun larger than 10-gauge, or to use or possess a shotgun capable of holding more than six cartridges at one time (Sec. 2010, F. & G.C.).

It is unlawful to possess a loaded rifle or shotgun in any vehicle or conveyance, or its attachments, which is standing on or along or is being driven on or along any public highway or other way open to the public (Sec. 2006, F. & G.C.).

An exemption from attachment or execution can be claimed for one rifle or shotgun (Sec. 690.2, C.C.P.; see also Sec. 690.15, C.C.P., previously discussed).

Sawed-off shotguns are specially dealt with. A "sawed-off shotgun" under California law is a shotgun having a barrel or barrels of less than 18 inches in length, or any weapon made from a rifle or shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches (Sec. 12020, Pen.C.). It is unlawful to sell, possess, etc., such a weapon in this state and it is subject to seizure and destruction as a nuisance (Secs. 12020, 12028, 12029, Pen.C.; but apparently peace officers could be authorized to possess such a weapon—see Sec. 12002, Pen.C.). Additional penalties can be imposed for commission of a felony while armed with a sawed-off shotgun (Sec. 12022, Pen.C.).

IV. CONCEALABLE FIREARMS

The bulk of the law relating to sale and possession of "handguns" in particular is found in Chapter 1 (commencing with Section 12000) of Title 2 of Part 4 of the Penal Code, known as the Dangerous Weapons' Control Law. In addition to certain contraband weapons, this law relates to firearms capable of being concealed upon the person, i.e., firearms having a barrel less than 12 inches in length (but does not apply to "antique pistols or revolvers incapable of use as such") (Sec. 12001, Pen.C.). It is the law relating solely to such concealable firearms that is discussed in this part of the summary.

A. Sale

Persons engaged in the business of selling such firearms (or who advertise or offer or expose for sale such a firearm) must be licensed by the city or county, but it does not appear that the law spells out any qualifications to be licensed (Sec. 12071, Pen.C.). Anyone who engages in such a business without a license is guilty of a misdemeanor (Sec. 12070, Pen.C.) and a license may be revoked for violation of any of its conditions (Sec. 12071, Pen.C.). Every person in the business of selling, leasing or otherwise transferring such firearms is required to keep a register wherein information relative to all transactions is recorded. Recorded are such things as time of sale, date of sale, name of seller, place where sold, make, model, manufacturer's number, caliber and other identification marks of the pistol, revolver, or firearm (Sec. 12073, Pen.C.), and detailed information as to the name, address, and description of the purchaser and the salesman (Secs. 12076 and 12077, Pen.C.). It is an offense for a buyer to give a fictitious name or address (Sec. 12076, Pen. C.). Transfers of such firearms without identifying marks are prohibited (Sec. 12094, Pen.C.). A report of the information recorded in the register is forwarded on the date of sale to the Bureau of Criminal Identification and Investigation, and to the head of the city police department, or, if none, to the county sheriff (Sec. 12076, Pen.C.). A dealer may not deliver such a firearm within three days of application for purchase, and when the firearm is delivered it must be unloaded and securely wrapped. The firearm may not be delivered except to a person personally known to the dealer, or to a person who presents clear evidence of his identity (Sec. 12071, Pen.C.). It is a condition of a dealer's license that such a firearm, or imitation thereof, or placard advertising sale or transfer thereof, shall not be displayed in any part of the premises where it can readily be seen from the outside (Sec. 12071, Pen.C.). The prohibitions relating to the sale of concealed firearms do not apply in sales to persons properly identified as officers of police departments, sheriffs' departments, and district attorneys' offices, or to authorized representatives of cities, cities and counties, counties, state or federal government for use by such governmental agencies (Sec. 12078, Pen.C.).

It is unlawful for a dealer to deliver such a firearm to a person he has reason to believe is an alien, a narcotic addict, or a person who has been convicted of a felony* or a person under 18 years of age (Sec. 12072, Pen.C.).

Although a person must be licensed to engage in *the business* of selling firearms capable of being concealed upon the person, it is not required that a person be licensed to make a casual sale. A person not in the business of selling such firearms is not subject to the requirement of keeping a register or reporting, but he is also subject to the same prohibition against selling such a firearm to a person he has cause to believe is an alien, a narcotic addict, a felon or a person under

* A full and unconditional pardon based on a certificate of rehabilitation restores the felon's rights with respect to firearms, unless he was convicted of a felony involving use of a dangerous weapon (Sec. 4852.17, Pen.C.; see also Sec. 4853, re effect of pardons generally), but so-called expungement of a record pursuant to Section 1203.4 of the Penal Code for a person who has successfully completed probation does not (see Sec. 1203.4, Pen.C.).

18 years of age, and apparently is also subject to the requirement that delivery not be made for three days and that the firearm be delivered securely wrapped and unloaded. Where neither seller nor buyer holds a dealer's license, the sale may be made only if the buyer is personally known to the seller (Sec. 12072, Pen.C.).

It is a misdemeanor to sell, buy or receive a pistol or revolver which does not bear the manufacturer's number or other mark of identification in its original condition or as restored, or a distinguishing mark or number assigned by the Bureau of Criminal Identification and Investigation (Sec. 12094, Pen.C.).

B. Possession and Use

It is a crime for an alien, a person convicted of a felony, or a narcotic addict to own or possess, or have in his custody or control, a firearm capable of being concealed upon the person (Sec. 12021, Pen.C.). It does not appear, however, that any provision states that a person under 18 (knowing transfer to whom of such a firearm is generally prohibited) is himself guilty of an offense in buying or possessing such a firearm.

With the exceptions noted above, purchase and possession of a concealable firearm are not restricted. But generally a license (perhaps more often called a "permit") is required to carry such a firearm concealed. Such a license is issued by the appropriate law enforcement agency head on showing of good cause for issuance and good moral character of the applicant, and only after a prescribed investigation by C.I. & I. Otherwise, it is an offense for a person to carry such a firearm concealed on his person or concealed within a vehicle under his control, and such firearms so carried are subject to seizure and destruction. Prescribed records of licenses must be kept by the issuing agency and copies must be forwarded to C.I. & I. (Secs. 12025, 12028, 12050-12054, Pen.C.).

The requirement of a license for the carrying of a concealed firearm does not apply to or affect any of the following:

- (1) Possession of a firearm at a person's place of residence or business (Sec. 12026, Pen.C.).
- (2) Carrying of firearms openly in a belt holster (Sec. 12025, Pen.C.).
- (3) Sheriffs, marshals, policemen and other duly appointed peace officers (subd. (a), Sec. 12027, Pen.C.).
- (4) Possession or transportation by a merchant of unloaded firearms as merchandise (subd. (b), Sec. 12027, Pen.C.).
- (5) Members of the military or naval forces of the United States or the National Guard, when on duty (subd. (c), Sec. 12027, Pen.C.).
- (6) Duly authorized military or civil organizations while parading, or the members thereof when going to and from meetings of their organizations (subd. (d), Sec. 12027, Pen.C.).
- (7) Guards or messengers of common carriers, banks and other financial institutions while actually engaged in guarding or delivery functions (subd. (e), Sec. 12027, Pen.C.).

(8) Members of target-shooting clubs while using firearms on target ranges and going to and from such ranges (subd. (f), Sec. 12027, Pen.C.).

(9) Licensed hunters or fishermen while hunting or fishing or going to and from a hunting or fishing expedition (subd. (g), Sec. 12027, Pen.C.).

The scope of category (3), above, must be considered in the light of the dozens of sections, which we do not attempt to collect here, providing that specified personnel are, or have the powers of, peace officers. We do note certain provisions which are somewhat more specific in conferring a right to carry concealable firearms concealed (Sec. 308, P.U.C., re Public Utilities Commission personnel; Sec. 129, Lab.C., re I.A.C. personnel; Sec. 607f, Civ.C., re humane officers; Sec. 1406, Gov.C., re special policemen protecting public property).

Removal, alteration, or obliteration of identifying marks or unauthorized affixing of such a mark is an offense (Secs. 12090, 12093, Pen.C.). There is provision for assignment of a distinguishing number or mark by C.I. & I. (Sec. 12092, Pen.C.). Knowing possession of a pistol or revolver without original or properly assigned mark is an offense (Sec. 12094, Pen.C.).

Additional penalties are provided for commission of a felony while armed with a concealable firearm, without a license to carry such a firearm concealed (Sec. 12022, Pen.C.).

V. MISCELLANEOUS

A. *Machineguns*

Chapter 2 (commencing with Section 12200) of Title 2 of Part 4 of the Penal Code regulates machine guns. A machine gun is defined to include all firearms known as machine rifles, machine guns or sub-machine guns capable of discharging automatically and continuously loaded ammunition of any caliber in which the ammunition is fed to such gun from or by means of clips, discs, drums, belts or other separable mechanical device and all firearms which are automatically fed after each discharge from or by means of clips, discs, drums, belts or other separable mechanical device having a capacity greater than 10 cartridges (Sec. 12200, Pen.C.). The sale of machine guns to, and purchase and possession of machine guns by, police departments, city marshals, sheriff's offices and military or naval forces of California or of the United States are permitted, but in order for a corporation, firm or individual to have legal possession of a machine gun, a permit from the Chief of the Bureau of Criminal Identification and Investigation is required (Secs. 12201, 12220 and 12230, Pen.C.). Such permit is issued upon a showing of good cause (and never to a person under 21) (Sec. 12230, Pen.C.). Licenses to sell machineguns may be granted only by the Chief of the Bureau of Criminal Identification and Investigation subject to prescribed conditions, and the breach of any of these conditions will result in revocation of the license (Sec. 12250, Pen.C.). It does not appear that the statutes prescribe qualifications to secure such a license.

B. Pistols Which Are Not Concealable Firearms

Chapter 3 (commencing with Section 12350) of Title 2 of Part 4 of the Penal Code, regulates the sale of pistols other than those defined in Section 12001 of the Penal Code, i.e., those with a barrel length of 12 inches or longer. A person in the business of selling such pistols is required to keep a register in which the name, age, occupation and residence of each purchaser, together with the number or other mark of identification, if any, on the pistol sold is entered, and said register is required to be open to the inspection of peace officers at all times (Sec. 12350, Pen.C.). Violation of these provisions is a misdemeanor (Sec. 12351, Pen.C.).

C. Others

It is unlawful to use or possess any firearm commonly known as a "cane gun" or a gun of similar character (Sec. 2008, F. & G.C.), and it is unlawful to set or cause to be set or placed any "trap gun," i.e., a firearm loaded with other than blank cartridges and connected with a string or other contrivance contact with which will cause the firearm to be discharged (Sec. 2007, F. & G.C.), but there is a limited authorization for use of coyote guns (Sec. 162, Ag.C.).

With exceptions for use and possession by members of the armed forces and duly authorized peace officers, it is an offense to buy, sell, receive, dispose of, conceal, or possess a sniper scope. As defined, this does not mean a telescopic sight generally, but only an attachment designed for or adaptable for use on a firearm which through the use of a projected infrared light source and electronic telescope, enables the operator to determine visually and locate the presence of objects during the nighttime (Sec. 468, Pen.C.).

With exceptions for a city, county, state, or federal civil officer or a member of the armed forces possessing it for official use, it is an offense to possess a silencer (Secs. 12500-1, 12520, Pen.C.).

There are provisions governing sale and possession of tear gas equipment (Secs. 12400-12435, Pen.C.).

LEGISLATIVE HEARING ON REGULATION AND CONTROL OF FIREARMS IN CALIFORNIA

On October 19, 1964, the Assembly Committee on Criminal Procedure conducted a hearing in Room 4202 of the State Capitol in Sacramento. Seeking to limit the scope of their inquiry to an area of primary concern to law enforcement agencies throughout the state, the testimony received by the Committee was confined to comments concerning the regulation and control of concealable weapons in California. The following persons appeared before the Committee and presented their views. The transcript of the hearing is available through the office of the chairman of the Committee.

PERSONS TESTIFYING ON THE CONTROL OF CONCEALABLE WEAPONS IN CALIFORNIA (IN ORDER OF APPEARANCE)

Roy W. Howland

John McInerny for the Honorable Edmund G. Brown, Governor of the State of California

Mr. A. L. Coffey

Arlo E. Smith for the Honorable Thomas Lynch, Attorney General of the State of California

Honorable John Misterly

Gladys Sargent

Honorable Hilliard Comstock

Ellis Shamp

B. G. Simms

Harlon B. Carter

Carl C. Cowles

George Difani

Mrs. James C. Whitney

Delbert E. Schell

Harvey W. Sharrar

R. M. Modisette

Vernon J. Smith

William F. Croft

R. L. Belt

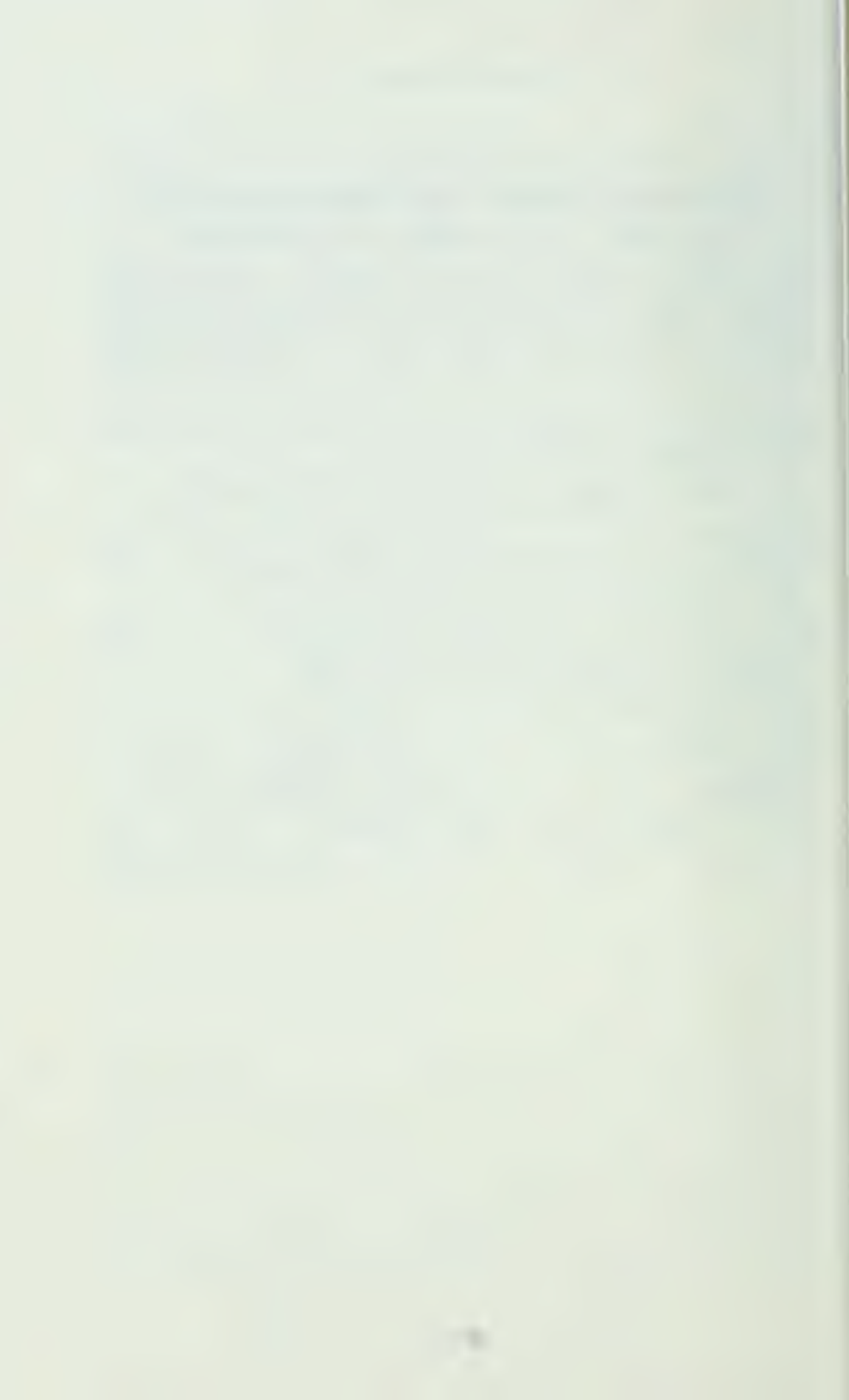
Frank J. Hillendahl

James E. Fields

William B. Edwards

William A. Wacker

E. F. Sloan



REGULATION AND CONTROL OF FIREARMS
COMMITTEE RECOMMENDATIONS

COMMITTEE RECOMMENDED LEGISLATION

Assembly Bill 389

Bill provides: That the theft of any firearm, regardless of value, shall be defined as grand theft.

Justification: One of the major sources of firearms used in various criminal acts is through theft. The Committee views with particular alarm, therefore, the theft of firearms, and believes that such theft is of sufficient seriousness to warrant prosecution as grand theft regardless of the monetary value of the particular firearm stolen.

Recommendation: Amend *Penal Code*, Section 487 to include within its definition of grand theft the taking of any firearm.

An act to amend Section 487 of the Penal Code, relating to firearms.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 487 of the Penal Code is amended to
2 read:
3 487. Grand theft is theft committed in any of the follow-
4 ing cases:
5 1. When the money, labor or real or personal property
6 taken is of a value exceeding two hundred dollars (\$200);
7 provided, that when domestic fowls, avocados, olives, citrus or
8 deciduous fruits, nuts and artichokes are taken of a value ex-
9 ceeding fifty dollars (\$50); provided, further, that where the
10 money, labor, real or personal property is taken by a servant,
11 agent or employee from his principal or employer and aggre-
12 gates two hundred dollars (\$200) or more in any 12 consecu-
13 tive month period, then the same shall constitute grand theft.
14 2. When the property is taken from the person of another.
15 3. When the property taken is an automobile, a *firearm*,
16 horse, mare, gelding, any bovine animal, any caprine animal,
17 mule, jack, jenny, sheep, lamb, hog, sow, boar, gilt, barrow
18 or pig.

LEGISLATIVE COUNCIL'S DIGEST

Amends Sec. 487, Pen.C.

Classifies as grand theft the theft of any firearm.

COMMITTEE RECOMMENDED LEGISLATION

Assembly Bill 390

Bill provides: That *Penal Code*, Section 12021 is broadened to make criminal the ownership or possession of a concealable weapon by a person addicted to dangerous drugs. Further, that the maximum term of imprisonment for violation of the section is increased from 5 to 15 years. Further, that it is a crime for a felon who used a firearm in the commission of the felony of which he was convicted to own, possess or have in his custody or control any firearm.

Justification: In view of the growing problems surrounding the use of dangerous drugs, the Committee feels that an appropriate change in the criminal law is called for to include dangerous drug addicts under the same prohibitions concerning the ownership or possession of concealable weapons that presently apply to narcotic addicts.

Because of the extreme seriousness of violation of the prohibitions against the ownership or possession of a concealable weapon, the Committee also feels that an increase in the maximum sentence for such violation is desirable.

Finally, the Committee feels that conviction of a felony in which a firearm was used is sufficient indication that the convicted felon is not a desirable person to own or possess or have in his custody a firearm. It recommends that such ownership or possession or custody be prohibited.

Recommendation: That *Penal Code*, Section 12021 be amended as outlined in Committee-recommended legislation, A.B. 390.

An act to amend Section 12021 of, and to amend the heading of Chapter 6 (commencing with Section 12550) of Title 2, Part 4 of, and to add Article 2 (commencing with Section 12560) to Chapter 6, Title 2, Part 4 of, the Penal Code, relating to firearms.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12021 of the Penal Code is amended
2 to read:

3 12021. Any person who is not a citizen of the United
4 States and any person who has been convicted of a felony
5 under the laws of the United States, of the State of Califor-
6 nia, or any other state, government, or country, or who is
7 addicted to the use of any narcotic drug or of any dangerous
8 drug as defined in Section 4211 of the Business and Profes-
9 sions Code, who owns or has in his possession or under his
10 custody or control any pistol, revolver, or other firearm capa-
11 ble of being concealed upon the person is guilty of a public
12 offense, and shall be punishable by imprisonment in the state
13 prison not exceeding five 15 years, or in a county jail not
14 exceeding one year or by a fine not exceeding five hun-
15 dred dollars (\$500), or by both.

16 SEC. 2. The heading of Chapter 6 (commencing with Sec-
17 tion 12550) of Title 2 of Part 4 of the Penal Code is amended
18 to read:

19 CHAPTER 6. ~~SALE OF GUNS TO MINORS~~
20 MISCELLANEOUS
21

22 SEC. 3. A heading is added preceding Section 12550 of
23 said code, to read:

24 Article 1. Minors
25

26 SEC. 4. Article 2 (commencing with Section 12560) is
27 added to Chapter 6 of Title 2 of Part 4 of said code, to read:

LEGISLATIVE COUNSEL'S DIGEST

Firearms.

Amends Sec. 12021, and heading of Ch. 6 (commencing with Sec. 12550), Title 2, Pt. 4, adds Art. 2 to Ch. 6, Title 2, Pt. 4, Pen.C.

Broadens Sec. 12021, Pen.C., which now makes criminal the ownership or possession of a concealable firearm, or having such a firearm in one's custody or control, in the case of an alien, felon, or narcotic addict, to apply also to a person addicted to any "dangerous drug," as defined. Increases maximum term of imprisonment for violation of such section from 5 to 15 years. Makes it a crime for a felon who used firearm in commission of the felony of which he was convicted, to own, possess, or have in his custody or control, any firearm, not only concealable firearm.

Article 2. Felons

1
2
3 12560. Every person who has been convicted of a felony
4 under the laws of the United States, of the State of California,
5 or of any other state, government, or country and who used a
6 firearm in the commission of such felony, who owns or has in
7 his possession or under his custody or control any firearm is
8 punishable by imprisonment in the state prison not exceeding
9 15 years, or in a county jail not exceeding one year or by a
10 fine not exceeding five hundred dollars (\$500), or by both such
11 term of imprisonment and such fine.

COMMITTEE RECOMMENDED LEGISLATION

Assembly Bill 391

Bill provides: That no person under the age of 18 shall have a concealable weapon in his possession unless accompanied by a parent or guardian.

Justification: The Committee feels that because of the particularly dangerous and sensitive nature of concealable weapons, minors under the age of 18 should be discouraged from the possession of such weapons. However, the Committee also recognizes the desirability of such activities as organized gun matches, competitive shoots, etc. It believes, however, that in participating in such activities, minors under the age of 18 should be accompanied by a responsible adult.

Recommendation: That Section 12021.5 be added to the *Penal Code* to prohibit persons under the age of 18 from possessing a concealable weapon unless accompanied by a parent or guardian.

*An act to add Section 12021.5 to the Penal Code,
relating to firearms.*

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12021.5 is added to the Penal Code, to
- 2 read:
- 3 12021.5. Every person under 18 years of age who, while in
- 4 any place other than his place of residence and when not ac-
- 5 companied by his parent or guardian, has on his person or
- 6 under his custody or control in such place, any pistol, revolver,
- 7 or other firearm capable of being concealed upon the person,
- 8 is guilty of a misdemeanor.

LEGISLATIVE COUNSEL'S DIGEST

Firearms.

Adds Sec. 12021.5, Pen.C.

Provides that every person under 18 years of age who, while in any place other than his place of residence and when not accompanied by his parent or guardian, has on his person or under his custody or control in such place, any pistol, revolver, or other firearm capable of being concealed upon the person, is guilty of a misdemeanor.

COMMITTEE RECOMMENDED LEGISLATION

Assembly Bill 392

Bill provides: That the purchaser of a concealable weapon from a dealer shall affix his date of birth in addition to his name and address to the dealer's register. Further, if the purchaser resides in a district other than the one in which the purchase is made, a copy of the triplicate sheet of the register shall be sent by the Bureau of Criminal Identification and Investigation to the appropriate law enforcement agency in the district of the purchaser's residence.

Justification: The addition of the date of birth to the dealer's register will expedite the investigation of the purchase by the appropriate law enforcement agencies.

Furthermore, the notification of the appropriate law enforcement agency when a purchase is made outside of the purchaser's place of residence will better enable local law enforcement to maintain records of concealable weapons within their jurisdictions.

Recommendation: That *Penal Code*, Sections 12076 and 12077 be amended as outlined in Committee-recommended legislation, A.B. 392.

An act to amend Sections 12076 and 12077 of the Penal Code, relating to sale of firearms.

The people of the State of California do enact as follows:

SECTION 1. Section 12076 of the Penal Code is amended to read:

12076. The purchaser of any firearm capable of being concealed upon the person shall sign, and the dealer shall require him to sign his legal name and affix his residence address *and date of birth* to the register in triplicate, and the salesman shall affix his signature in triplicate as a witness to the signature of the purchaser. Any person furnishing a fictitious name or address *or knowingly furnishing an incorrect birth date* and any person violating any of the provisions of this section is guilty of a misdemeanor.

The triplicate sheet of the register shall, on the date of sale, be placed in the mail, postage prepaid, and properly addressed to the Bureau of Criminal Identification and Investigation at Sacramento and the duplicate shall be mailed, postage prepaid, to the chief of police, or other head of the police department of the city or county wherein the sale is made. Where the sale is made in a district where there is no municipal police department the duplicate sheet shall be mailed to the sheriff of the county wherein the sale is made.

If, on receipt of the triplicate sheet, it appears to the bureau that the purchaser resides in a district other than that to which the duplicate is required to be mailed, the bureau shall make an additional copy and transmit it to the head of the municipal police department, if any, in the district in which the purchaser resides or, if none, to the sheriff of the county in which he resides.

SEC. 2. Section 12077 of said code is amended to read:

12077. The register provided for in this article shall be substantially in the following form:

FORM OF REGISTER

Original

Serial No. -----

Sheet No. -----

LEGISLATIVE COUNSEL'S DIGEST

Firearms.

Amends Secs. 12076, 12077, Pen.C.

Requires person purchasing concealable firearm from dealer to affix birth date to register and makes it a misdemeanor knowingly to affix an incorrect birth date. Modifies the form of the register to provide space for birth date.

Provides that if, on receipt of the triplicate sheet of the register, it appears to the Bureau of Criminal Identification and Investigation that the purchaser resides in a district other than that to which the duplicate is required to be mailed, the bureau shall make an additional copy and transmit it to the head of the municipal police department, if any, in the district in which the purchaser resides or, if none, to the sheriff of the county in which he resides.

DEALER'S RECORD OF SALE OF REVOLVER OR PISTOL
STATE OF CALIFORNIA

Notice to dealers: This original is for your files. If spoiled in making out, do not destroy. Keep in books. Fill out in triplicate.

A carbon copy must be mailed on the day of sale to the State Bureau of Criminal Identification and Investigation at Sacramento, and a carbon copy must be mailed at the same time to the head of police commissioners, chief of police, city marshal, town marshal, or other head of police department of the municipal corporation, wherein the sale is made, or to the sheriff of your county if the sale is made in a district where there is no municipal police department. Violation of this law is a misdemeanor. Use carbon paper for duplicate. Use indelible pencil.

Sold by _____, Salesman _____
City, town or township, _____
Description of arm (state whether revolver or pistol) _____
Maker _____, number _____, caliber _____
Name of purchaser _____, age _____ years
Permanent residence (state name of city, town or township, street and number of dwelling) _____
Date of birth _____
Height _____ feet, _____ inches. Occupation _____
Color _____, skin _____, eyes _____, hair _____
If traveling or in locality temporarily, give local address: _____

Signature of purchaser: _____
(Signing a fictitious name or address is a misdemeanor)
(To be signed in triplicate)
Witness: _____ Salesman.
(To be signed in triplicate)
Duplicate and triplicate carbon copies.

Series No. _____
Sheet No. _____

DEALER'S RECORD OF SALE OF REVOLVER OR PISTOL
STATE OF CALIFORNIA

Notice to dealers: Two duplicate carbon copies are required. They must be mailed on the day of sale as set forth in the original of this registered page. Violation of this law is a misdemeanor.

Sold by _____, Salesman _____
City, town or township, _____
Description of arm (state whether revolver or pistol) _____
Maker _____, number _____, caliber _____
Name of purchaser _____, age _____ years
Permanent address (state name of city, town or township, street and number of dwelling) _____
Date of birth _____

- 1 Height ----- feet, ----- inches. Occupation -----
2 Color -----, skin -----, eyes -----, hair -----
3 If traveling or in locality temporarily, give local address:
4 -----
5 Signature of purchaser: -----
6 (Signing a fictitious name or address is a misdemeanor)
7 (To be signed in triplicate)
8 Witness: -----, Salesman.
9 (To be signed in triplicate)
10 (Any person signing a fictitious name or address *or know-*
11 *ingly affixing an incorrect birth date* to said register and any
12 person violating any of the provisions of this section is guilty
13 of a misdemeanor.)

COMMITTEE RECOMMENDED LEGISLATION

Assembly Bill 393

Bill provides: That a person who has been involuntarily confined in a mental institution for 30 days or more may not own, possess or have in his custody or control any firearm unless he has obtained a certificate in prescribed manner that he can do so without endangering others.

Justification: The Committee feels that the possession of any firearm by a person who has been involuntarily committed to a mental institution is a question that requires particular attention in the criminal law. While it is reluctant to place an undue burden on any person who has been released from such an institution, it also feels that the possible dangers in the possession of firearms by such persons justify the requirement of an affirmative certification of their ability to possess firearms before they are allowed to do so.

Recommendation: That Section 5672 be added to the *Welfare and Institutions Code* as outlined in Committee-recommended legislation, Assembly Bill 393.

Concurring note: Mr. Beilenson prefers limiting the scope of criminality of this section to *knowing possession* of a concealable weapon.

An act to add Section 5672 to the Welfare and Institutions Code, relating to firearms.

The people of the State of California do enact as follows:

SECTION 1. Section 5672 is added to the Welfare and Institutions Code, to read:

5672. No person who has ever been involuntarily confined in any public or private mental hospital or sanitarium for a period of 30 days or more shall own or have in his possession or under his custody or control any firearm unless there has been issued to such person a certificate as hereafter described in this section and such person has not, subsequent to the issuance of such certificate, again been involuntarily confined for a period of 30 days or more in any such hospital or sanitarium.

A certificate meeting the requirements of this section must be a written statement that is either part of a broader certificate of competency or a separate document and that is issued, on application of the person who was confined, either at the time of release or at a later date, by the head of the institution in which such person was confined or by the superintendent of any California state hospital, stating that in the opinion of the person issuing the certificate, based either on his own knowledge or on the opinions of members of his staff or on records of the institution, the applicant is a person who may possess a firearm without endangering others. If a person applies to a superintendent of a California state hospital for such a certificate and the applicant has not been confined in that hospital, or if the superintendent believes that a current mental examination is necessary to enable him to determine whether or not such a certificate shall be issued, the superintendent shall cause such person to be examined by a member of the staff of the hospital and may otherwise investigate the case. The superintendent may charge a reasonable fee for such examination and investigation.

Every person who owns, possesses, or has under his custody or control any firearm in violation of this section is guilty of a misdemeanor.

LEGISLATIVE COUNSEL'S DIGEST

Firearms.

Adds Sec. 5672, W. & I.C.

Makes it a crime for a person who has been involuntarily confined in a mental institution for 30 days or more to own, possess or have under his custody or control any firearm unless he has obtained from head of a mental institution, in prescribed manner, a certificate that he can do so without endangering others, and he has not thereafter been so confined for such period.

COMMITTEE RECOMMENDED LEGISLATION

Assembly Bill 394

Bill provides: That a concealable weapon may be concealed in a vehicle without a license to do so when the vehicle is parked, unoccupied and locked.

Justification: At the present time, a concealable weapon may not be concealed by any person within a vehicle that is under his control or direction unless he has a license to carry it concealed. Under interpretations of this section of the *Penal Code*, a person wishing to leave his firearm in a parked vehicle is required to leave the firearm unconcealed. In the Committee's view, this situation is a potential invitation to the theft of the unattended firearm and to other crime.

The Committee feels that it is desirable to allow a firearm under this section to be concealed in the vehicle, providing that, when this is done, the vehicle is parked, unoccupied and locked.

Recommendation: That *Penal Code*, Section 12025 be amended as provided in the following legislation.

An act to amend Section 12025 of the Penal Code, relating to firearms.

The people of the State of California do enact as follows:

SECTION 1. Section 12025 of the Penal Code is amended to read:

12025. Except as otherwise provided in this chapter, any person who carries concealed upon his person or concealed within any vehicle which is under his control or direction any pistol, revolver, or other firearm capable of being concealed upon the person without having a license to carry such firearm as provided in this chapter is guilty of a misdemeanor, and if he has been convicted previously of any felony or of any crime made punishable by this chapter, is guilty of a felony.

Firearms carried openly in belt holsters are not concealed within the meaning of this section, nor are knives which are carried openly in sheaths suspended from the waist of the wearer.

It is not a violation of this section to leave a firearm in such a place in a parked, unoccupied and locked vehicle that the firearm is not visible from outside the vehicle.

LEGISLATIVE COUNSEL'S DIGEST

Firearms.

Amends Sec. 12025, Pen.C.

Modifies section penalizing the concealed carrying of a concealable firearm without a license to do so by providing that it is not a violation of the section to leave a firearm in such a place in a parked, unoccupied and locked vehicle that the firearm is not visible from outside the vehicle.

ADDITIONAL COMMITTEE RECOMMENDATIONS

I.

The Committee is aware of the problems that presently exist within the existing statutory definitions of firearms in the California codes. It feels that rather than taking an *ad hoc* approach and attempting to rewrite present definitions to include new types of particularly offensive weapons (e.g., "the enforcer") as they develop, it would be wiser to redraft the California definitions to conform with the comparable federal definitions.

The Committee is presently working on such a conformity statute, and it will be presented as a part of the Committee's proposals to the 1965 Regular Session.

II.

The Committee is also aware of problems involving the ownership, possession, sale and use of antique weapons, and it is willing to consider proposals for redefinitions in this area during the 1965 Regular Session.

III.

The Committee has a continuing interest in proposals for changing the mechanics of issuing permits to carry concealable weapons including the proposal that the sheriffs of the various counties should be the sole issuing officers for such permits. However, the committee wishes to consider this question further with particular emphasis on developing carefully defined and meaningful standards which, if met, would entitle an applicant to obtain such a permit.

ADDITIONAL COMMITTEE RECOMMENDATIONS (Continued)

PROPOSED DRAFTS

The following three bills have been drafted in response to Committee recommendations I and II on the preceding page.

I.

Assembly Bill 395

An act to amend Section 12200 of the Penal Code, relating to machine guns.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12200 of the Penal Code is amended to
2 read:
3 12200. The term machine gun as used in this chapter means
4 any weapon which shoots, or is designed to shoot, automatically
5 or semiautomatically, more than one shot, without manual re-
6 loading, by a single function of the trigger. shall apply to and
7 include all firearms known as machine rifles, machine guns, or
8 submachine guns capable of discharging automatically and con-
9 tinuously loaded ammunition of any caliber in which the am-
10 munition is fed to such gun from or by means of clips, disks,
11 drums, belts or other separable mechanical device and all fire-
12 arms which are automatically fed after each discharge from or
13 by means of clips, disks, drums, belts or other separable me-
14 chanical device having a capacity greater than 10 cartridges.

LEGISLATIVE COUNSEL'S DIGEST

Amends Sec. 12200, Pen.C.

Redefines machine gun to conform with definition in federal law, as any weapon which shoots, or is designed to shoot, automatically or semiautomatically, more than one shot, without manual reloading, by a single function of the trigger.

I.

Assembly Bill 396

An act to amend Sections 12001 and 12020 of the Penal Code, relating to weapons.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12001 of the Penal Code is amended to
2 read:

3 12001. "Pistol," "revolver," and "firearms capable of be-
4 ing concealed upon the person" as used in this chapter apply
5 to and include all firearms having a barrel less than 12 inches
6 in length.

7 This chapter does not apply to antique pistols or revolvers
8 incapable of use as such.

9 *Nothing in this chapter shall be construed as authorizing the*
10 *manufacture, importation into the state, keeping for sale, offer-*
11 *ing for sale, or giving, lending, or possession of any sawed-off*
12 *shotgun, as defined in Section 12020.*

13 SEC. 2. Section 12020 of said code is amended to read:

14 12020. Any person in this state who manufactures or causes
15 to be manufactured, imports into the state, keeps for sale, or
16 offers or exposes for sale, or who gives, lends, or possesses any
17 instrument or weapon of the kind commonly known as a black-
18 jack, slung shot, billy, sandclub, sandbag, sawed-off shotgun,
19 or metal knuckles, or who carries concealed upon his person
20 any explosive substance, other than fixed ammunition or who
21 carries concealed upon his person any dirk or dagger, is guilty
22 of a felony, and upon conviction shall be punishable by im-
23 prisonment in the county jail not exceeding one year or in a
24 state prison for not less than one year nor more than five years.

25 As used in this section a "sawed-off shotgun" means a shot-
26 gun having a barrel or barrels of less than 18 inches in length,
27 *or a rifle having a barrel or barrels of less than 16 inches in*
28 *length*, or any weapon made from a rifle or shotgun (whether
29 by alteration, modification, or otherwise) if such weapon as
30 modified has an overall length of less than 26 inches.

LEGISLATIVE COUNSEL'S DIGEST

Amends Secs. 12001, 12020, Pen.C.

Changes definition of "sawed-off shotgun" so as to include a rifle having a barrel or barrels of less than 16 inches in length.

Specifies that nothing in the Dangerous Weapons Control Law shall be construed as authorizing the manufacture, importation into the state, keeping for sale, offering for sale, or giving, lending, or possession of any sawed-off shotgun, as defined in Sec. 12020, Pen.C.

II.

Assembly Bill 397

An act to amend Section 12001 of the Penal Code, relating to firearms.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12001 of the Penal Code is amended to
2 read:

3 12001. "Pistol," "revolver," and "firearms capable of be-
4 ing concealed upon the person" as used in this chapter apply
5 to and include all firearms having a barrel less than 12 inches
6 in length.

7 This chapter does not apply to *unloaded antique or historical*
8 *pistols, or revolvers or other firearms incapable of use as such*
9 *by reason of being mechanically inoperative or by reason of*
10 *the immediate inaccessibility of ammunitions with which to*
11 *load the same.*

LEGISLATIVE COUNSEL'S DIGEST

Amends Sec. 12001, Pen.C.

Changes the exemption from the Dangerous Weapons' Control Law from antique pistols and revolvers incapable of use as such, to unloaded antique or historical pistols, revolvers or other firearms incapable of use as such by reason of either being mechanically inoperative or immediate inaccessibility of proper ammunition.

APPENDIX I

December 18, 1964

THE HONORABLE GORDON WINTON, JR.
Chairman, Criminal Procedure Committee
State Capitol
Sacramento, California

Dear Gordon:

In general, I approve the Criminal Procedure Committee report on gun regulations but have these comments.

I suggest some consideration be given to a change in proposed Penal Code Section 12021.5 relating to the possession of concealable firearms by persons under the age of 18. I understand that there are some youth pistol shooting groups which have target practice under the supervision of an adult who is qualified and trained in the use of firearms. Many parents would normally not be in attendance at these youth target practice sessions.

You might want to consider some addition to proposed Penal Code Section 12021.5 along these lines: "When not accompanied by his parent or guardian or when not under the supervision of an adult qualified and trained in the use of firearms . . ."

I have some reservations about the practical operation of proposed Section 5672 of the Welfare and Institutions Code relating to the ownership or possession of firearms by a person who has been involuntarily confined in a mental hospital. The way the bill now reads, it would seem that the following factual situation could occur: A person owning a firearm is committed to a mental hospital and confined for more than 30 days. While he is confined in the mental hospital, he has no practical method of divesting himself of ownership of the firearm which would normally be left at his home. To make this effective, it would seem you would also either have to require his family to surrender the firearm to a police agency after confinement of 30 days or provide for some abatement or confiscation procedure. I am inclined to think that this proposal might be too complicated and involve more administrative expense than the protection is worth.

An alternative Section 5672 of the Welfare and Institutions Code might be to prohibit a person from purchasing or acquiring a firearm after he has been committed to a mental institution, unless he obtains a certificate of competency.

Sincerely,

BURT HENSON
State Assemblyman

o

ASSEMBLY INTERIM COMMITTEE REPORTS
1963-1965

Interim Committee on Criminal Procedure
PAROLE AND PROBATION

MEMBERS OF COMMITTEE

GORDON H. WINTON, JR., *Chairman*

ANTHONY C. BEILENSON, *Vice Chairman*

BURT M. HENSON

ROBERT W. CROWN

JOHN T. KNOX

GEORGE DEUKMEJIAN

HOWARD J. THELIN

RICHARD J. DONOVAN

GEORGE N. ZENOVICH

WILLIAM H. KEISER, *Committee Consultant*

BARRY D. KEENE, *Legislative Intern*

A. LaMONT SMITH, *Special Consultant on
Parole and Probation Problems*

January 1965



Published by the

ASSEMBLY

OF THE STATE OF CALIFORNIA

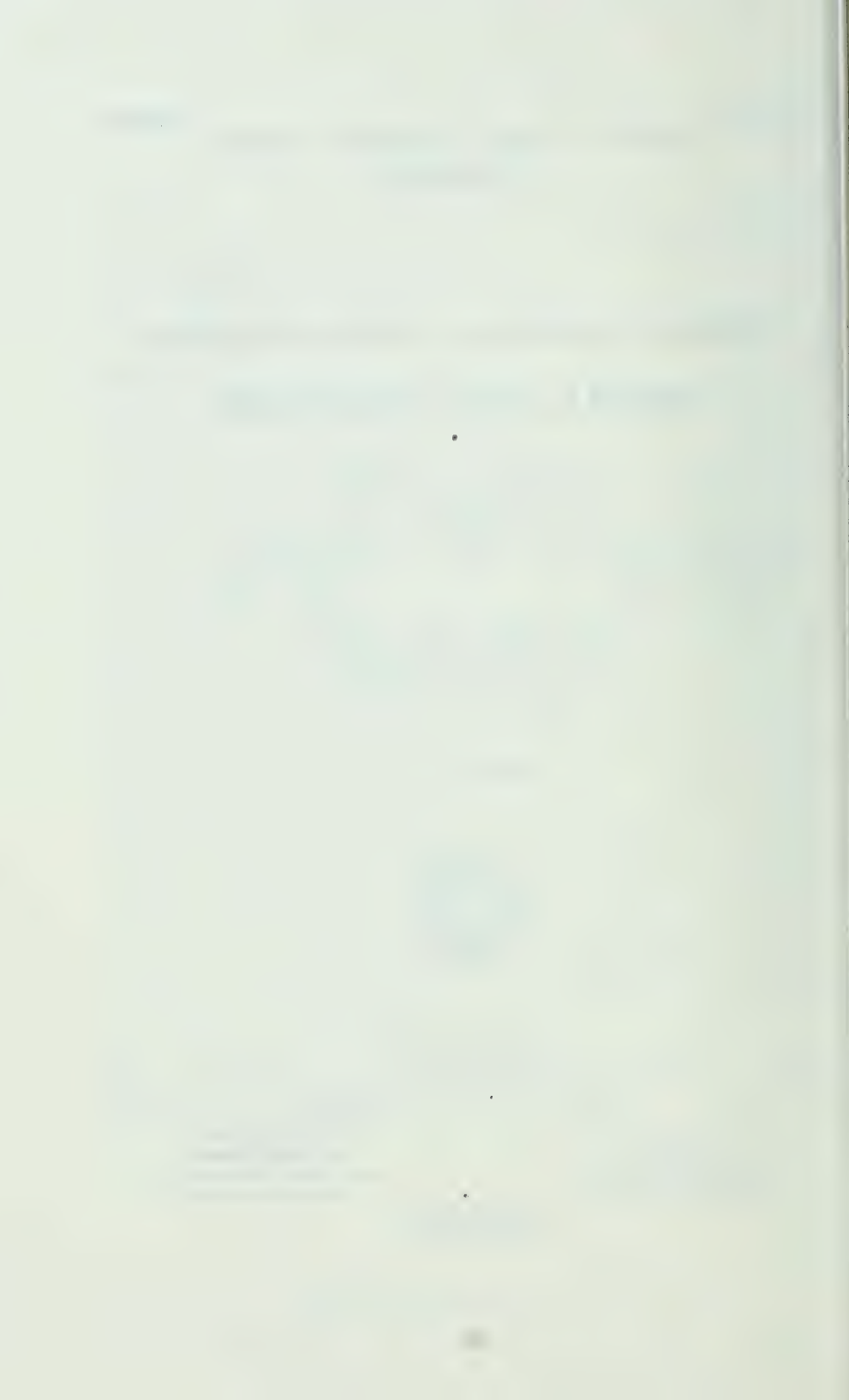
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Speaker

HON. CARLOS BEE
Speaker pro Tempore

HON. JEROME R. WALDIE
Majority Floor Leader

HON. ROBERT MONAGAN
Minority Floor Leader

JAMES D. DRISCOLL
Chief Clerk



LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON CRIMINAL PROCEDURE
SACRAMENTO, January 4, 1964

HON. JESSE M. UNRUH, *Speaker of the Assembly*
and Members of the Assembly
Assembly Chamber, Sacramento, California

Gentlemen:

The principal function of this report is to inform the Members of the Legislature concerning our interim study of *probation, parole*, and related matters. Testimony was received from city, county, and state officers together with persons experienced in the administration of justice.

The committee heard of many problems and various solutions. Our recommendations for legislation will provide a realistic approach toward meeting some of these problems. In recognition of the need and interest in considering alternatives, the committee staff was instructed to develop legislative measures embodying proposals suggested by the witnesses and to prepare special reports on pertinent topics.

Copies of the complete transcript of our hearing and of this report were sent to all chief county probation officers, boards of supervisors, state executive agencies concerned, and other groups interested in this area. Additional reports concerning the work of this committee in other areas will be submitted pursuant to House Resolution 500.

Respectfully submitted,

GORDON H. WINTON, JR., *Chairman*

ANTHONY C. BEILENSON, *Vice Chairman*

ROBERT W. CROWN

GEORGE DEUKMEJIAN

RICHARD J. DONOVAN

BURT M. HENSON

JOHN T. KNOX

HOWARD J. THELIN

GEORGE N. ZENOVICH

READERS' GUIDE

The design of this report is intended to provide Legislators with a quick reference to the justification for adoption of the 12 recommended measures. Secondly, it furnishes a composite of testimony by various witnesses on the subject areas.

In addition to the use for legislative references, it is hoped that the page citations to the complete statements in the transcript will provide a guide for citizens or public officials interested in securing additional information on these topics.

The report is arranged in three chapters to permit selective consideration of the contents. Chapter I, "Legislative Hearings," presents the names, position, and the agency represented by hearing witnesses and persons filing statements with the committee. They are arranged in accordance with the topic upon which they had been invited to comment. In the course of the two days of hearings a considerable volume of historical, philosophical and general background information was presented and recorded, but only selected portions directly related to proposed legislative measures have been included in this report. Chapter II, "Committee Recommendations for Legislation," contains 12 bills with a brief explanation of the purposes, justification, and some pertinent statements from the testimony. In some instances agency reports providing more factual data have been placed immediately after the proposed bill. Chapter III, "Topical Commentaries," lists as an index a compilation of statements by various witnesses on particular topics. These are based upon the transcript of the testimony during the hearings. The appendices include a compilation of code sections governing eligibility for probation or parole and an implementing resolution by the Adult Authority. A detailed report concerning the first two years' experience by Orange County with the Work Furlough Rehabilitation Law should be a valuable guide for other counties considering its adoption.

The time and effort expended by the witnesses and the staff of all participating agencies in preparation for the hearing and in responding to subsequent inquiries is gratefully acknowledged.

A. LAMONT SMITH, D.P.A.
Special Consultant

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E. Employment for paroled prisoners—men and women.*	
F. Camps and employment on public works for parolees.*	
G. State sponsored institute on sentencing practices and procedures.*	
H. Recall of commitment pursuant to <i>Penal Code</i> Section 1168.*	
I. Restoration of civil rights for parolees.*	

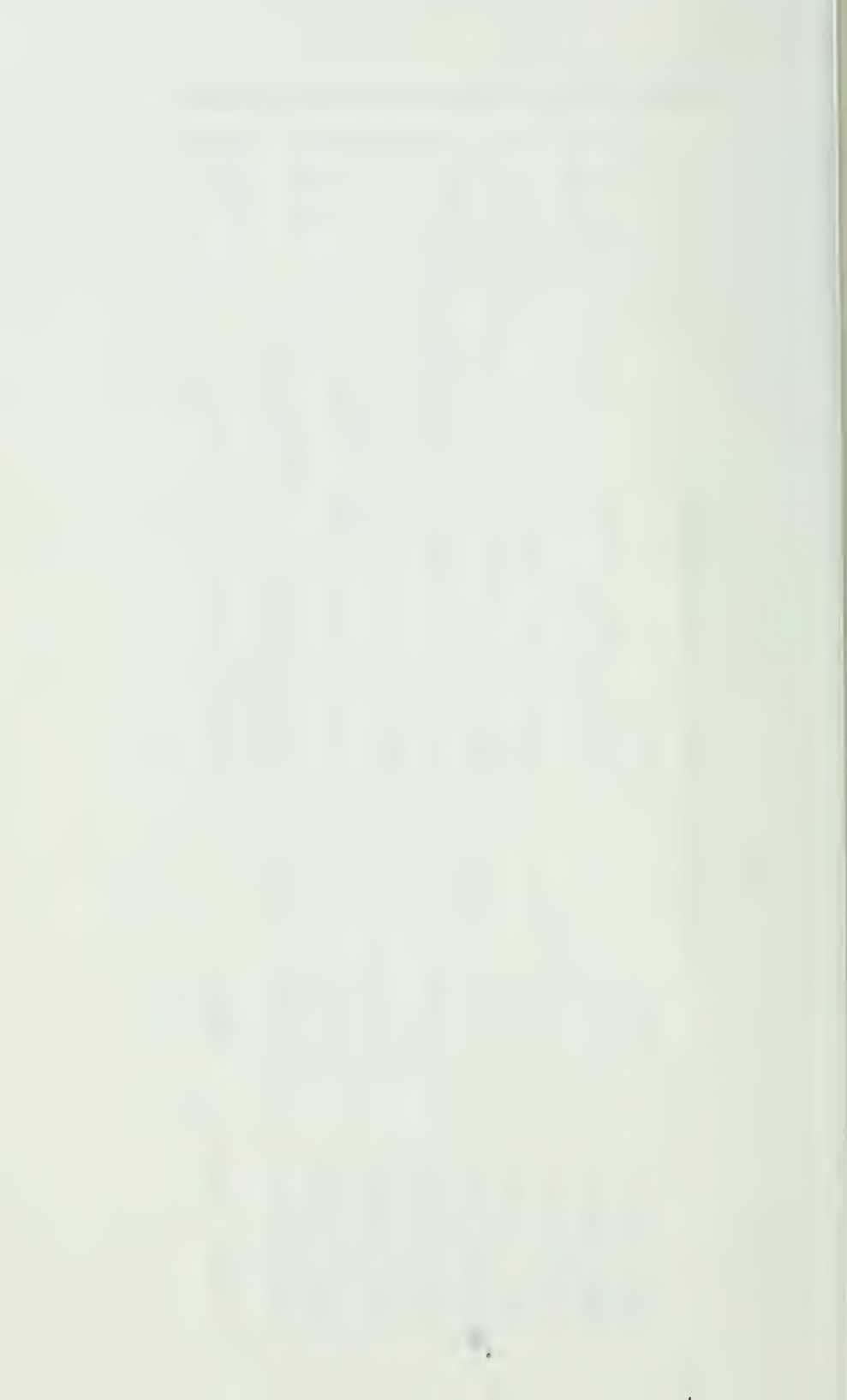
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* Available through the office of the chairman.

ROSTER OF QUOTED WITNESSES

<i>Name</i>	<i>Position</i>	<i>Agency</i>	<i>Page</i>
Brewer, John W.	Chairman	California Adult Authority	16, 46, 62, 66
Canlis, Michael	Sheriff	San Joaquin County	24, 31, 39
Davis, George F.	Associate Social Research Analyst	California Youth Authority	15, 45
Dunbar, Walter	Director	Department of Corrections	24, 25, 38, 41, 46, 56, 66
Keldgord, Robert	California Consultant	National Council on Crime and Delinquency	16, 25, 51, 52
Lewis, Elizabeth (Mrs.)	Chairman	Board of Trustees, California Institution for Women	45
Lohman, Joseph D.	Dean	School of Criminology	57
McGee, Richard A.	Administrator	Youth and Adult Corrections Agency	24
Mull, Archibald	President	California Council on Crime and Delinquency	15, 41, 53
Silver, Joseph R.	Executive Director	Northern California Service League	33, 34, 37
Terzian, Hrayr	Legislative Chairman	California Probation, Parole and Correctional Association	23, 24, 37
Thornton, Warren	President	Chief Probation Officers' of California	15, 23



CHAPTER I

LEGISLATIVE HEARINGS



PROBATION AND PAROLE IN CALIFORNIA

CHAPTER I

Legislative Hearings

On March 10 and 11, 1964, the Assembly Interim Committee on Criminal Procedure met in the State Capitol in Sacramento to hear testimony on probation and parole problems in California. The hearings were held pursuant to House Resolutions 190, 396 and 533. The following witnesses appeared before the committee.

PAROLE AND PROBATION: THE PROBLEM AREAS

PAROLE AND PROBATION PROBLEMS IN CALIFORNIA:

THE BROAD VIEW

Richard A. McGee, Chairman
California Board of Corrections
Archibald Mull, Chairman
California Council on Crime and Delinquency

LEGISLATIVE COMMENTS

Honorable Byron W. Rumford
Assemblyman, 17th District
Honorable Milton Marks
Assemblyman, 21st District

THE PROBLEMS OF REHABILITATION

Joseph Lohman, Dean
School of Criminology, University of California

PROBATION IN CALIFORNIA

Hrayr Terzian, Legislative Chairman
California Probation, Parole and Correctional Association
Warren Thornton, President
Chief Probation Officers' Association of California

STANDARDS AND OPERATION OF THE CALIFORNIA PAROLE SYSTEM

John W. Brewer, Chairman
California Adult Authority
Walter Dunbar, Director of Corrections
State of California

ADDITIONAL LEGISLATIVE COMMENTS

Honorable Don Mulford
Assemblyman, 16th District

RECIDIVISM AMONG ADULT PROBATIONERS

George F. Davis, Associate Social Research Analyst
California Youth Authority

PAROLE AND PROBATION: APPROACHES TO THE PROBLEM AREAS AND THE NEEDS FOR ACTION

ACTION BY PRIVATE CITIZEN GROUPS

Robert Keldgord, California Consultant
National Council on Crime and Delinquency
Joseph R. Silver, Executive Director
Northern California Service League

SPECIAL NEEDS OF WOMEN ON PAROLE

Mrs. Elizabeth Lewis, Chairman
Board of Trustees of the California Institution for Women

MINORITY GROUPS AND THEIR SPECIAL NEEDS

Joint statement by

Dr. Leroy R. Weekes, President

Los Angeles Urban League

and

Wesley Brazier, Executive Secretary

Los Angeles Urban League

MEETING THE NEEDS ON THE LOCAL LEVEL: AN EXAMPLE

Michael Canlis, Sheriff

San Joaquin County

WRITTEN STATEMENTS

"Relationship Between Economic Conditions, Crime and Parole Violation in California"

by Dr. Stuart Adams

Statement of the Friends Committee on Legislation

by Joe Gunterman

Letter from Heman G. Stark, Director, California Youth Authority, to Honorable Gordon H. Winton, Jr., dated March 6, 1964.

Letter from Justice Raymond E. Peters of the California Supreme Court to committee staff dated February 20, 1964.

Letter from Professor Paul W. Tappan of the Harvard Law School to Honorable Gordon H. Winton, Jr., dated March 5, 1964.

List of written material submitted to the committee by various witnesses and available in offices of the Assembly Committee on Criminal Procedure.

On the basis of testimony received at these hearings and of additional information developed by the committee and its staff, a 12-point legislative program is recommended to the 1965 Session of the California Legislature in the areas of probation and parole. In the interest of economy, prefatory material to these recommendations is omitted here. However, users of this report are referred to copies of the hearing transcript which are available through the office of the chairman of the committee. They are also referred to a topical compilation prepared by the committee consultant A. LaMont Smith that reviews probation and parole in California in terms of (1) its importance within the criminal system, (2) current probation practices and procedures, (3) probation results by (a) county class, (b) probation granted, (c) offense, (d) sex, (e) age, (f) recommendations, (g) conditions and (h) time on probation, and (4) experimental programs in the field. This compilation is also available through the office of the chairman.

CHAPTER II

COMMITTEE RECOMMENDED LEGISLATION

Committee Recommended Legislation—A.B. 1475

Purpose

Permit, with concurrence of the district attorney, extended use of adult probation by the courts and removal of their authority to increase restrictions on parole eligibility by ordering service of consecutive sentences.

Justification

In 1957 an amendment to Section 1203 of the Penal Code restored to the courts authority to grant probation, *in unusual cases*, to persons convicted of robbery, burglary, or arson. Since that date there appears to have been no significant increase in the number of such cases granted probation. The proposed measure would permit needed flexibility in the law safeguarded by the requirement of mutual agreement by the court and district attorney.

Effective operation of the indeterminate sentence law and recognition of progressive institutional treatment is hampered by variations in parole eligibility established at time of sentence when offenders have multiple charges. (See Appendix C)

Selected Statements by Hearing Witnesses

MR. A. MULL †: California has some of the most restrictive, prohibitive adult probation legislation in the nation. We feel that the time is right for an extensive reevaluation of Section 1203 of the *Penal Code*. We feel that oftentimes the defendant may represent an excellent probation risk (on the basis of emotional stability, good employment record, personality measurement tests, psychiatric and psychological evaluation, etc.) and still be legally ineligible for probation under the current code. We feel that a person's eligibility for probation should be determined strictly on his individual merit, rather than by a catch-all section of the law. (P. 25.)*

CHAIRMAN WINTON: I suggest another question about the cases which are sent to state prisons and are ineligible by law for probation. This suggests to me that perhaps some of these cases that are now ineligible for probation should be made eligible. (See Appendix A.) There might be success in probation there, too.

MR. DAVIS: I would agree with you. *Penal Code*, Section 1203 which describes eligibility for probation is so confusing that I doubt many of us understand it. I don't. I have talked to a very few probation officers who do. It's extremely difficult. (P. 127.)* There is at present no statistical evidence to suggest that a reasonable increase in the rate of probation will produce a compensating increase in the rate of recidivism.* (P. 124.)

MR. THORNTON: I would like to close by making two positive suggestions for your study which may assist in solving some of

* Hearing transcript, office of the chairman.

† Chairman, California Council on Crime and Delinquency.

our correctional problems. One, and speaking as Chief Probation Officer representing the Chief Probation Officers' Association of California, remove all the restrictions there are for the granting of probation in felony cases with the exception of murder. Allow the judge to make an individual decision on each case whether confinement in the state prison is necessary or whether confinement in the county jail is necessary and/or whether probation is the best for society and the prisoner. Make each case an individual judgment as to disposition, make it mandatory that no sentence can be given by a superior court or imposed without a presentence report for the judge to read. This protects the people of the State of California just as well as it protects the defender. (P. 68.)*

MR. R. KELDGORD †: Some comment was also offered yesterday in respect to the Adult Probation Law, Section 1203 of the *Penal Code*, and again Mr. Davis referred to this. We feel that this is a section of the law which bears close scrutiny. We are certainly aware of the current study, the joint committee on the revision of the Penal Code being chaired by Senator Regan. We know that some testimony has been taken by that committee in respect to revision of Section 1203. The figure which the chairman here was considering a few minutes ago, I believe, is from January 1963 Senate Fact Finding Committee on Judiciary Report on Post Conviction Procedures, and the figure that I believe is correct is 42 percent. They found at that time that 42 percent of the defendants in adult probation were statutorily ineligible for probation. Now I have just today learned that there is a very recent California State Supreme Court decision (*People v. Alotis*, dated January 30, 1964) which would seem to have the effect of liberalizing the Adult Probation Law and the adult probation responsibilities. As I understand it, and I am not an attorney, this decision has the effect of saying that in all misdemeanors, the defendant may be legally eligible for probation.

The astronomical cost involved in the misuse or nonuse of adult probation really gives us a lot of cause for concern. This report, the Senate Post Conviction Procedures Report, showed that between 1958 and 1961, there was a 2.2-percent decrease in the use of adult probation in the State of California. This report also predicted that even this very small percentage, only 2.2-percent increase in commitments to prison, still made necessary the use of institution space costing \$15 million, so we are talking not only about concepts. We are certainly talking about dollars and cents. (Pp. 134, 135.)*

MR. BREWER: First, there is a question of the eligibility for parole. I believe that study should be given to the problem of whether or not laws governing the eligibility for parole should be made more uniform, so that at least the truly exceptional cases might be examined by the Adult Authority. (P. 80.)*

* Hearing transcript, office of the chairman.

† California Consultant National Council on Crime and Delinquency.

A.B. 1475

LEGISLATIVE COUNSEL'S DIGEST

Penalties for crimes.

Provides that in cases in which, under Sec. 1203, Pen.C., a defendant is now absolutely ineligible for probation, the judge may, if the case is an unusual one, if the interests of justice would be served thereby, and if the district attorney concurs, grant probation.

Generally eliminates authorizations for imposition of consecutive sentences. Eliminates special restriction on parole of persons undergoing consecutive sentences.

An act to amend Sections 19a, 669, 1203, and 12022, and to repeal Section 3043, of the Penal Code, relating to penalties for crimes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19a of the Penal Code is amended to
2 read:

3 19a. In no case shall any person sentenced to confinement
4 in a county or city jail, or in a county or joint county penal
5 farm, road camp, work camp, or other county adult detention
6 facility, or committed to the sheriff for placement in any such
7 county adult detention facility, on conviction of a misde-
8 meanor, or as a condition of probation upon conviction of
9 either a felony or a misdemeanor, or upon commitment for
10 civil contempt, or upon default in the payment of a fine upon
11 conviction of either a felony or a misdemeanor, or for any
12 other reason except upon conviction of more than one offense
13 when consecutive sentences have been imposed; be committed
14 for a period in excess of one year; provided, however, that the
15 time allowed on parole shall not be considered as a part of
16 the period of confinement.

17 SEC. 2. Section 669 of said code is amended to read:

18 669. When any person is convicted of two or more crimes,
19 whether in the same proceeding or court or in different pro-
20 ceedings or courts, and whether by judgment rendered by the
21 same judge or by different judges, the terms of imprisonment
22 for all such crimes shall run concurrently. the second or other
23 subsequent judgment shall direct whether the terms of impris-
24 onment or any of them to which he is sentenced shall run con-
25 currently, or whether the imprisonment to which he is or has
26 been sentenced upon the second or other subsequent conviction
27 shall commence at the termination of the first term of
28 imprisonment to which he has been sentenced; or at the ter-
29 mination of the second or subsequent term of imprisonment
30 to which he has been sentenced; as the case may be; provided,
31 however, if the punishment for any of said crimes is expressly
32 prescribed to be life imprisonment, whether with or without
33 possibility of parole; then the terms of imprisonment on the
34 other convictions, whether prior or subsequent, shall be merged
35 and run concurrently with such life term. In the event that

1 the court at the time of pronouncing the second or other judg-
2 ment upon such person had no knowledge of a prior existing
3 judgment or judgments, or having knowledge, fails to deter-
4 mine how the terms of imprisonment shall run in relation to
5 each other, then, upon such failure so to determine, or upon
6 such prior judgment or judgments being brought to the atten-
7 tion of the court at any time prior to the expiration of 60
8 days from and after the actual commencement of imprison-
9 ment upon the second or other subsequent judgments, the
10 court shall, in the absence of the defendant and within 60 days
11 of such notice, determine how the term of imprisonment upon
12 said second or other subsequent judgment shall run with
13 reference to the prior incomplete term or terms of imprison-
14 ment. Upon the failure of the court so to determine how the
15 terms of imprisonment on the second or subsequent judgment
16 shall run, the term of imprisonment on the second or subse-
17 quent judgment shall run concurrently.

18 The State Board of Prison Directors shall advise the court
19 pronouncing the second or other subsequent judgment of the
20 existence of all prior judgments against the defendant, the
21 terms of imprisonment upon which have not been completely
22 served.

23 SEC. 3. Section 1203 of said code is amended to read:

24 1203. After the conviction by plea or verdict of guilty of a
25 public offense not amounting to a felony, in cases where dis-
26 cretion is conferred on the court or any board or commission
27 or other authority as to the extent of the punishment, the
28 court, upon application of the defendant or of the people or
29 upon its own motion, may summarily deny probation, or at a
30 time fixed may hear and determine in the presence of the de-
31 fendant the matter of probation of the defendant and the
32 conditions of such probation, if granted. If probation is not
33 denied, and in every felony case in which the defendant is
34 eligible for probation, before any judgment is pronounced,
35 and whether or not an application for probation has been
36 made, the court must immediately refer the matter to the pro-
37 bation officer to investigate and to report to the court, at a
38 specified time, upon the circumstances surrounding the crime
39 and concerning the defendant and his prior record, which
40 may be taken into consideration either in aggravation or
41 mitigation of punishment. The probation officer must there-
42 upon make an investigation of the circumstances surrounding
43 the crime and of the prior record and history of the defendant,
44 must make a written report to the court of the facts found
45 upon such investigation, and must accompany said report with
46 his written recommendations, including his recommendations
47 as to the granting or withholding of probation to the defendant
48 and as to the conditions of probation if it shall be granted.
49 The report and recommendations must be made available to
50 the court and the prosecuting and defense attorneys at least
51 two days prior to the time fixed by the court for the hearing

1 and determination of such report and must be filed with the
2 clerk of the court as a record in the case at the time of said
3 hearing. By written stipulation of the prosecuting attorney
4 and the defense attorney, filed with the court, or by oral
5 stipulation in open court made and entered upon the minutes
6 of the court, the time within which the report and recommen-
7 dations must be made available and filed, under the preceding
8 provisions of this section, may be waived. At the time or
9 times fixed by the court, the court must hear and determine
10 such application, if one has been made, or in any case the
11 suitability of probation in the particular case, and in con-
12 nection therewith must consider any report of the probation
13 officer, and must make a statement that it has considered such
14 report which must be filed with the clerk of the court as a
15 record in the case. If the court shall determine that there are
16 circumstances in mitigation of punishment prescribed by law,
17 or that the ends of justice would be subserved by granting
18 probation to the defendant, the court shall have power in its
19 discretion to place the defendant on probation as hereinafter
20 provided; if probation is denied, the clerk of the court must
21 forthwith send a copy of the report and recommendations to
22 the Department of Corrections at the prison or other institu-
23 tion to which the defendant is delivered.

24 In every misdemeanor case, the court may, at its option
25 refer the matter to the probation officer for investigation and
26 report or summarily deny probation or summarily grant pro-
27 bation.

28 The Legislature hereby expresses the policy of the people of
29 the State of California to be that, except in unusual cases where
30 the interest of justice demands a departure from the declared
31 policy, no judge shall grant probation to any person who shall
32 have been convicted of robbery, burglary or arson, and who
33 at the time of the perpetration of said crime or any of them or
34 at the time of his arrest was himself armed with a deadly
35 weapon (unless at the time he had a lawful right to carry the
36 same), nor to a defendant who used or attempted to use a
37 deadly weapon upon a human being in connection with the
38 perpetration of the crime of which he was convicted, nor to
39 one who in the perpetration of the crime of which he was con-
40 victed wilfully inflicted great bodily injury or torture, nor to
41 any such person unless the court shall be satisfied that he has
42 never been previously convicted of a felony in this state nor
43 previously convicted in any other place of a public offense
44 which would have been a felony if committed in this state.

45 *Except as hereafter provided in this section*, probation shall
46 not be granted to any person who shall have been convicted
47 of burglary with explosives, rape with force or violence, mur-
48 der, assault with intent to commit murder, attempt to commit
49 murder, train wrecking, kidnaping, escape from a state prison,
50 conspiracy to commit any one or more of the aforementioned
51 felonies, and who at the time of the perpetration of said crime

1 or any of them or at the time of his arrest was himself armed
2 with a deadly weapon (unless at the time he had a lawful
3 right to carry the same), nor to a defendant who used or at-
4 tempted to use a deadly weapon upon a human being in con-
5 nection with the perpetration of the crime of which he was
6 convicted, nor to one who in the perpetration of the crime of
7 which he was convicted wilfully inflicted great bodily injury
8 or torture, nor to any defendant unless the court shall be satis-
9 fied that he has not been twice previously convicted of felony
10 in this state nor twice previously convicted in any other place
11 or places of public offenses which would have been felonies if
12 committed in this state; nor to any defendant convicted of the
13 crime of burglary with explosives, rape with force or violence,
14 murder, attempt to commit murder, assault with intent to mur-
15 der, train wrecking, extortion, kidnaping, escape from a state
16 prison, violation of Sections 286, 288 or 288a of this code, or
17 conspiracy to commit any one or more of the aforesaid felonies,
18 unless the court shall be satisfied that he has never been previ-
19 ously convicted of a felony in this state nor previously con-
20 victed in any other place of a public offense which would have
21 been a felony if committed in this state; nor to any defendant
22 unless the court shall be satisfied that he has never been pre-
23 viously convicted of a felony in this state nor convicted in any
24 other place of a public offense which would have been a felony
25 if committed in this state and at the time of the perpetration
26 of said previous offense or at the time of his arrest for said
27 previous offense he was himself armed with a deadly weapon
28 (unless at the time he had a lawful right to carry the same)
29 or he personally used or attempted to use a deadly weapon
30 upon a human being in connection with the perpetration of said
31 previous offense or in the perpetration of said previous offense
32 he wilfully inflicted great bodily injury or torture; nor to any
33 public official or peace officer of the state, county, city, city and
34 county, or other political subdivision who, in the discharge of
35 the duties of his public office or employment, accepted or gave
36 or offered to accept or give any bribe or embezzled public
37 money or was guilty of extortion.

38 *In unusual cases, otherwise subject to the preceding para-*
39 *graph, in which the interests of justice would best be served*
40 *thereby, the judge may, with the concurrence of the district*
41 *attorney, grant probation.*

42 No probationer shall be released to enter another state of the
43 United States, unless and until his case has been referred to the
44 California Administrator, Interstate Probation and Parole
45 Compacts, pursuant to the Uniform Act of Out-of-state Pro-
46 bationer and Parolee Supervision.

47 In those cases in which the defendant is not eligible for
48 probation, the judge may in his discretion refer the matter
49 to the probation officer for an investigation of the facts rele-
50 vant to sentence. The probation officer must thereupon make
51 an investigation of circumstances surrounding the crime and

1 the prior record and history of the defendant and make a
2 written report to the court of the facts found upon such
3 investigation.

4 SEC. 4. Section 3043 of said code is repealed.

5 ~~3043. No prisoner who has had imposed upon him two or~~
6 ~~more consecutive sentences may be paroled until he has served~~
7 ~~at least two calendar years of the aggregate of such consecu-~~
8 ~~tive sentences.~~

9 SEC. 5. Section 12022 of said code is amended to read:

10 12022. Any person who commits or attempts to commit any
11 felony within this state while armed with any of the weapons
12 mentioned in Section 12020 or while armed with any pistol,
13 revolver, or other firearm capable of being concealed upon the
14 person, without having a license or permit to carry such firearm
15 as provided by this chapter, upon conviction of such felony or
16 of an attempt to commit such felony, shall in addition to the
17 punishment prescribed for the crime of which he has been convicted,
18 be punishable by imprisonment in a state prison for not
19 less than five nor more than 10 years. Such additional period
20 of imprisonment shall ~~commence upon the expiration or other~~
21 ~~termination of the sentence imposed for the crime of which he~~
22 ~~is convicted and shall not run concurrently with such sentence~~
23 *the sentence for the crime of which he was convicted.*

24 Upon a second conviction under like circumstances the additional
25 period of imprisonment shall be for not less than 10
26 years nor for more than 15 years, and upon a third conviction
27 under like circumstances the additional period of imprisonment
28 shall be for not less than 15 nor more than 25 years,
29 such terms of additional imprisonment to run consecutively.

30 Upon a fourth or subsequent conviction under like circumstances
31 the person so convicted may be imprisoned for life or
32 for a term of not less than 25 years, within the discretion of
33 the court in which the fourth or subsequent conviction was had.

34 SEC. 6. Nothing in this act shall be deemed to impair the
35 validity of any sentence or term heretofore imposed or determined
36 if such sentence or term was valid under the laws
37 applicable when it was imposed or determined.

OFFICE OF LEGISLATIVE COUNSEL
Sacramento, September 10, 1964

PENALTIES FOR CRIMES—No. 6831

Dear Mr. Winton:

Pursuant to your request, we have prepared the enclosed bill relating to probation and consecutive sentences.

We have attempted to draft this bill so that imposition of consecutive sentences would generally not be permitted in the future, but we have attempted also not to invalidate previously imposed consecutive sentences. We did, however, include a repeal of Section 3043, imposing a special restriction on parole of persons undergoing consecutive sentences; and, this repealer would appear to affect those undergoing consecutive sentences on the effective date of the bill. We did not eliminate the special provision governing the time of commencement of a term of imprisonment for escape in Section 4530 of the Penal Code.

Very truly yours,

A. C. MORRISON
Legislative Counsel

By
TERRY L. BAUM
Deputy Legislative Counsel

Mr. Henson dissents from this recommendation with respect to probation authority for serious offenses and parole authority for consecutive sentences.

Committee Recommended Legislation—A.B. 1476

Purpose

Subsidize county probation and correctional services in a degree proportionate to: (1) the benefit derived by the state from the receipt of case history reports on newly committed prisoners and (2) purchases by the county of products of correctional industries.

Justification

Present law (Penal Code Section 1203c.) requires the county probation officer to submit a report to the Department of Corrections on each adult *not* eligible for probation and committed to prison. *Crime in California—1962* reports that of 27,084 convicted felony offenders, 75 percent plead guilty. In such cases there is not a trial, there is no transcript of the proceedings containing any explanation of the circumstances of the offense. Prison and parole authorities need this information as well as the individual's social history for making essential decisions regarding correctional treatment or determining the length of sentence.

There are about 4,000 prison inmates idle for lack of suitable industrial enterprises. Despite the population growth of the state, with a corresponding increase in the prison populations, the maximum dollar gross production allowed for each prison industry has not been substantially changed since originally established over twenty years ago. There is a limit to which prison industrial enterprises can be diversified, as mandated by law, because of the opposition of the various special interest groups.

The state pays inmate workers in industries an average of about eight cents per hour on a sliding scale which ranges between two cents to sixteen cents per hour, but is required by Section 2871 of the *Penal Code* to sell the products at "a prevailing market price." The resulting cash increment is placed in a "revolving fund" which is used to finance the daily operations of the industrial program and long-term expansion or capital outlay programs. Transfer of any surplus accumulated in this fund from industrial operations must be transferred to the general fund of the state. Since 1944 a total of \$2,300,000 has been transferred into the general fund, the most recent amount being \$600,000. †

The utilization of a portion of this accumulating surplus which accrues in the fund to finance a county subsidy appears justified.

The board of supervisors in each county can best determine the proper division of rehabilitation personnel between the correctional facilities and the probation services. The qualification of the personnel preparing reports for the state should not be less than those required and verified by state procedures.

† Letter, August 20, 1964, State Treasurer to committee chairman. See Topic B: Laws Governing Sale of Products of Correctional Industries, office of the chairman.

Selected Statements by Hearing Witnesses

MR. THORNTON: These services are to the state courts and not to county courts, so why should the local property owner be subjected to paying what in fact is a state function? Subsidy has been provided for years for maintenance and operation of county-operated boys' and girls' schools by the Youth Authority to our juvenile courts. Not only maintenance and operation, but capital outlay for construction of boys' ranches is provided by the state at this time. (P. 69)*

MR. TERZIAN: Regardless of what system of responsibility is devised, it is to the advantage of both the state and the county that state funds be available to the counties. The state, I suspect, cannot continue to build institutions at a cost of \$10,000 per bed. Neither the state nor the counties could possibly build enough beds to house every delinquent or criminal who might be considered for an extended period of institutionalization. Neither can local tax sources support a higher and more effective level of probation services. Incidentally, probation departments are virtually the only major county departments which are almost wholly dependent on local tax support. At the same time, counties do apparently provide a service to the state. Each felon placed on probation, instead of being sent to the penitentiary relieves the state of a burden. The probation officer's report, prepared on felons ineligible for probation, is another service to the state.

In any event, the magnitude of the problem of reasonably sized workloads, the fact that the state and counties provide services for each other would certainly argue that the state and even federal financial assistance to local probation departments would be in order and advantageous to all parties concerned.

This is not to suggest that subsidy is the final answer to all probation problems. Probation must be examined itself, must develop programs of caseload management and classification, and we know there is no unanimity of opinion on the desirability of state subvention. There is a minority of opinion which expresses concern that subsidy would also mean control of standards as well as money. This is a valid concern and should be a part of any consideration directed towards the development of a program of subsidy. But we are convinced that until there are funds available other than local we shall continue to lose ground and numbers alone can beat us. (P. 63)*

MR. THORNTON: In 1962 there were 22,600 felony convictions by our superior court, of which only 5,200 went to the state prison. The local county government cared for three-quarters of these felony convictions at the local level. As a matter of fact, the county placed 70 percent of the cases they handled, without sentence to the state prison, on probation. I want to make it clear, however, that nearly one-half of all those from the superior court cases who were convicted of a felony and placed on probation did serve a part of their probation in the county jail. They in fact then were confined, even though they were granted probation supervision from three to five years. (P. 64)*

* Hearing transcript, office of the chairman.

MR. W. DUNBAR †: As to probation, we really aren't practicing probation, and we are giving it a dirty name when we set a ratio of 1 to 250. This really isn't supervising the person in the community on a casework basis for control and protection. . . .

It is about time that we put probation on the spot and, at least on a subsidy basis in one or two selected counties, really put probation to the test. I am sure probation officers would appreciate this and that it would prove its value in terms of our goal. (P. 88)*

SHERIFF CANLIS:‡ I also would like to recommend to you that there be a subvention to the county jails of materials that are produced by the Department of Corrections prison industries program such as bedding, clothing, food, jail equipment and similar items. These items should be furnished to us at a greatly reduced cost, because right now they're pricing us right out of the market. At a greatly reduced cost, it would most certainly increase the development of new programs in the jail, it would upgrade the jails themselves and would have the added benefit of creating additional activities.

I would also recommend that this Legislature give strong support to the increase of probation services in California, because this is a most valuable tool at the local level to keep first offenders from progressing into prison and to make available to the court a realistic program in the community. (P. 180)*

ASSEMBLYMAN DONOVAN: Do you mean, for instance, a state participation on a sharing basis in the probation programs in the county?

MR. MCGEE: I have no formula to suggest to you. We have a lot of people who are theoretically on probation, but they aren't getting the kind of supervision that the public believes they are getting. If we want that, we have to pay for it, and I don't think the counties, 58 of them, are going to do it. (P. 18)*

If we are to avoid a backbreaking tax load, we must, in large measure, substitute control and treatment in the community for expensive incarceration. We cannot successfully do that without strengthening our parole supervision resources. (P. 12)*

MR. ZENOVICH: I noticed in the brochure here the report of the Saginaw project, and in light of all the testimony that has come before us today, I am just wondering if you can give an opinion on your feeling about, say, allocating state money in the budget and allocating it to the county level, to work something out on the basis of this Saginaw, Michigan, project. (P. 106)*

*Hearing transcript, office of the chairman.

† Director of Corrections, State of California.

‡ Sheriff, San Joaquin County.

MR. DUNBAR: I believe in Item Number One I made three recommendations, and one of them was to actually subsidize, on a demonstration basis, one or two counties to actually demonstrate what they could do as far as probation is concerned under what we might say, ideal circumstances, or good standards.

R. KELDGORD: Yesterday, Mr. Mull indicated to you that, in our opinion, the basic problem in California probation is a lack of manpower, pointing out that we presently need a 25-percent increase in qualified personnel if we are to perform a creditable probation job. (P. 131) *

We feel that the best way of providing for such additional staff is by means of a state subsidy to local probation departments. We note that such programs have been successful in New York (the first state to enact the probation subsidy law in 1955) and Ohio, Colorado, Indiana and Washington, all in 1959. Perhaps the most dramatic example of strengthened local probation services is the experience of the Saginaw project which was alluded to by the previous speaker, Mr. Davis. This was a project which was undertaken by our counterpart in the State of Michigan, the Michigan Council on Crime and Delinquency, and as I am sure most of you know, since we made copies of the report available to the committee, the project demonstrated that by strengthening local probation services, commitments to state prison could be reduced by about 50 percent and that recidivism could be reduced by about 50 percent. The only thing I have to add to the report itself is that subsequent to the publishing of that report it is our understanding that because of the emphasis placed upon the local probation services, Michigan has been able to close cell blocks in two of their state prisons, one of them in southern Michigan and another in Jackson. In Indiana, which is one of the other states which now have the subsidy law, they have been able to reduce their inmate population in two years by about 1,200 persons, and they feel that this is directly attributable to the strengthening of the local services.

We feel so strongly and so much in favor of a probation subsidy law or project that unless such a measure is independently introduced in 1965 in the Legislature, we are planning to seek and certainly will want to support and, if necessary, sponsor, a state subsidy bill.

* Hearing transcript, office of the chairman.

DEPARTMENT OF FINANCE
Sacramento, November 12, 1964

HON. GORDON H. WINTON
Member of the Assembly
Room 5159 State Capitol
Sacramento, California

Attention : Mr. Barry Keene

Dear Mr. Winton :

Subject : County Probation Subsidies

You have requested my opinion of the Department of Finance position on proposed legislation involving the Correctional Industries Revolving Fund. Such legislation would encourage counties to purchase equipment and other products from this revolving fund, with the resulting profits being redistributed for use of county probation departments.

The Department of Finance would not oppose such a bill if it did not divert normal profits of the revolving fund away from the State General Fund, and did not impose heavy facility investments by the state at this time. I have been assured that the cost accounting system is adequate to determine the net profit on the types and quantities of products purchased by the counties, so that identification of such profits is mechanically practical, at some additional cost.

A hurried review of the revolving fund does indicate, however, that the products which counties might purchase do not normally have large profits. Even a substantial increase in such products might not produce substantially greater profits, since we are using people more than machines to make such products. This obviously is the only way in which increased production can make a significant contribution to the reduction of idle time among prisoners.

The problem of competition with private industries, and union resistance, are situations of which I am sure you are aware. I merely mention this since legislation of this nature must take these problems into account.

In summary, I feel that such a bill would not be opposed by this department if sufficient protection was provided so that normal General Fund profits would not be diverted to the counties. However, I feel that excess profits due to county business will not be great, and probably will not provide the amount of money you would need to have any great benefits towards strengthening county probation offices. Also at this time, because of the tight revenue situation, we could not support any large capital outlay expenditures from the General Fund to expand existing prison manufacturing facilities.

Sincerely,

ROY M. BELL
Assistant Director

A.B. 1476

LEGISLATIVE COUNSEL'S DIGEST

Department of Corrections Industries.

Amends Secs. 2714, 5091, 5092, adds Sec. 2714.5, Pen.C.

Provides for payment to a county (1) which has purchased goods for services from institutions in Department of Corrections, (2) whose probation officer has filed with the department the reports required by Section 1203c, Penal Code, (3) whose probation personnel preparing such reports meet certain standards prescribed by Director of Corrections, and (4) which has applied for the payment, of 50 percent of amount paid for such goods or services. Increases sum required to be retained in Correctional Industries Revolving Fund.

Provides generally that normal maximum production of industry established by Correctional Industries Commission shall be \$400,000, whereas present formula for maximum is \$350,000 adjusted by institutional population growth and by wholesale price factors.

Requires notice and hearing for establishing industry with production over \$400,000 rather than \$25,000. Eliminates requirement of hearing on increase to amount below usual maximum. Permits commission to require notice and hearing when establishing industry with production not exceeding \$400,000 or increasing production to amount not exceeding that amount.

Provides that in any case in which the actual production of an industry during any year is less than the maximum established for it, the commission shall ascertain the amount of the difference between the actual production and the maximum allowed for such industry and shall, during the next fiscal year, augment the maximum permitted production otherwise permitted for another industry or other industries by the amount of such difference.

An act to amend Sections 2714, 5091, and 5092 of, and to add Section 2714.5 to, the Penal Code, relating to industries in institutions in the Department of Corrections.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2714 of the Penal Code is amended to
- 2 read:
- 3 2714. There is hereby constituted a permanent revolving
- 4 fund in the sum of not less than ~~seven hundred and thirty~~
- 5 ~~thousand dollars (\$730,000)~~ *eight hundred thousand dollars*
- 6 *(\$800,000)*, to be known as the Correctional Industries Re-
- 7 volving Fund to be used to meet the expenses necessary in the
- 8 purchasing of materials and equipment, salaries, construction
- 9 and cost of administration of the work program of the Depart-
- 10 ment of Corrections in the prisons and institutions under its
- 11 jurisdiction *and to make payments pursuant to Section 2714.5.*
- 12 Such fund may also be used to refund deposits either errone-
- 13 ously made or made in cases where delivery of products cannot
- 14 be consummated. Said fund shall at all times contain the
- 15 amount of ~~seven hundred and thirty thousand dollars (\$730,-~~

1 ~~000~~ *eight hundred thousand dollars (\$800,000)* after it has
2 once reached that amount, either in cash or assets, consisting
3 of raw materials and finished or unfinished products inventory
4 at cost, or both, or proper charges made under this section.
5 Money received from the rendering of services or the sale of
6 products in the prisons and institutions under the jurisdiction
7 of the Department of Corrections shall be paid to the State
8 Treasurer monthly and shall be credited to said revolving
9 fund. At such time as the Director of Corrections or the
10 Director of Finance decide that the balance in said revolving
11 fund is greater than is necessary to carry out the purposes of
12 this section, either shall so inform the State Controller and
13 request a transfer of the unneeded balance from the said
14 revolving fund to the General Fund of the State of California.
15 The Controller is authorized to transfer such balances upon
16 the request of the Director of Finance.

17 The revolving funds created by Sections 2710, 2710.1, 2710.2,
18 2713, 2720, and 2746 of the Penal Code are abolished and the
19 Controller shall transfer the balances in said revolving funds
20 to the Correctional Industries Revolving Fund herein created.

21 SEC. 2. Section 2714.5 is added to said code, to read:

22 2714.5. (a) In any case in which (1) a county did, during
23 the preceding fiscal year, purchase services or products pro-
24 duced in prisons or other institutions under the jurisdiction of
25 the Department of Corrections, and (2) the probation officer
26 of such county did, during such preceding fiscal year, fully
27 comply with Section 1203c by furnishing all reports required
28 by that section, and (3) during such preceding fiscal year all
29 probation personnel (other than clerical personnel) employed
30 in preparing such reports met the standards prescribed pur-
31 suant to subdivision (b) of this section, and (4) the county
32 board of supervisors makes application for the payment here-
33 after described, the Director of Corrections shall, by the close
34 of the first month of the current fiscal year, pay to such county
35 from the Correctional Industries Revolving Fund a sum equal
36 to 50 percent of the amount of the price of purchases by the
37 county during the preceding fiscal year of services and prod-
38 ucts produced in prisons and other institutions under the juris-
39 diction of the Department of Corrections. Such sum may be
40 used only for payment of salaries of personnel in the sheriff's
41 department and probation department of the county and on
42 the staff of the county board of parole commissioners or of the
43 county industrial farm or industrial road camp.

44 (b) The standards of training, experience and competency
45 that probation personnel must meet if the county is to qualify
46 for the payment described in subdivision (a) shall be substan-
47 tially equal to those applicable to comparable categories of
48 state parole agents. Compliance with such standards shall be
49 certified to in the application of the county board of super-
50 visors. The Director of Corrections may request that the quali-
51 fications of any such personnel be verified by the successful
52 completion of an examination by the State Personnel Board
identical to that for certification of state parole agents.

1 SEC. 3. Section 5091 of the Penal Code is amended to read:
2 5091. The Correctional Industries Commission shall:

3 (a) Recommend productive industrial and agricultural en-
4 terprises in the prisons and institutions under the jurisdiction
5 of the Department of Corrections in such volume and of such
6 kinds as to eliminate unnecessary idleness among the inmates
7 and to provide diversified work activities which will serve as
8 means of vocational education as well as of occupation and
9 financial support.

10 (b) Determine the advisability and suitability of establish-
11 ing, expanding, diminishing, or discontinuing any industrial or
12 agricultural enterprise involving a gross annual production
13 of more than twenty-five thousand dollars (\$25,000) value, but
14 less than three hundred fifty thousand dollars ~~(\$350,000)~~ *four*
15 *hundred thousand dollars (\$400,000)* value and authorize or
16 prohibit such action. The Correctional Industries Commission
17 shall determine the gross annual production, within the limit
18 set above, of each new enterprise at the time of its establish-
19 ment. The annual production so set shall not be increased until
20 a public hearing concerning the proposed increase has been
21 held before the Correctional Industries Commission. It shall be
22 the duty of the commission annually, to adjust the maximum
23 gross annual production value of three hundred fifty thousand
24 dollars ~~(\$350,000)~~ permitted for each enterprise, the purpose
25 of such adjustment being to keep said limit in balance with
26 changes in population of state correctional institutions and
27 changes in cost of production. Such adjustment shall be made
28 in the following manner:

29 1. The maximum limitation of three hundred fifty thousand
30 dollars ~~(\$350,000)~~ shall serve as a base figure as of December
31 31, 1954, for such computation.

32 2. The maximum limitation shall be increased or decreased
33 in the same proportion as the population of state correctional
34 institutions shall have increased or decreased in comparison
35 with their population on December 31, 1954.

36 3. The maximum limitation shall be further increased or
37 decreased in the same proportion as the Wholesale Price Index
38 of the United States Bureau of Labor Statistics shall have
39 increased or decreased in comparison with such wholesale price
40 index as of December 1954.

41 The maximum gross annual limitation on production as ad-
42 justed in accordance with the above formula shall replace and
43 serve in lieu of the three hundred fifty thousand dollars ~~(\$350,~~
44 000) limitation until the next annual adjustment is made by
45 the commission. It shall apply to enterprises previously au-
46 thorized as well as to those authorized during the current
47 period, and such adjustment may be made without public
48 hearing.

49 "Population of state correctional institutions," as used in
50 this subsection, is the total number of persons in institutions
subject to the jurisdiction of the Department of Corrections

1 under Section 5003 of the Penal Code and the number of
2 persons in institutions subject to the jurisdiction of the Youth
3 Authority under Section 1000 of the Welfare and Institutions
4 Code.

5 *In any case in which the actual production of an industry*
6 *during any year is less than the maximum established for it,*
7 *the commission shall ascertain the amount of the difference*
8 *between the actual production and the maximum allowed for*
9 *such industry and shall, during the next fiscal year, augment*
10 *the maximum permitted production otherwise permitted for*
11 *another industry or other industries by the amount of such*
12 *difference.*

13 (c) Hold hearings pursuant to Section 5092, and make rules
14 for the conducting of such hearings. However, the commission
15 may, in its discretion, hold public hearings on any subject
16 within its jurisdiction.

17 SEC. 4. Section 5092 of said code is amended to read:

18 5092. No industrial enterprise which involves a gross an-
19 nual production of more than ~~twenty-five thousand dollars~~
20 ~~(\$25,000)~~ four hundred thousand dollars (\$400,000) value
21 shall be established unless and until a hearing concerning the
22 enterprise has been had before the Correctional Industries
23 Commission. Public notice of the hearing shall be given prior
24 to the hearing. *The commission may require notice and hearing*
25 *before establishing an industry with gross annual production*
26 *not exceeding four hundred thousand dollars (\$400,000) or*
27 *when increasing production of an industry to a sum not ex-*
28 *ceeding such amount.*

Committee Recommended Legislation—A.B. 1477**Purpose**

Provide on a statewide basis support for a vocational and remedial education program for county jail prisoners administered by a local school district.

Justification

In 1963 the superior courts of California imposed on felon defendants 6,469 sentences requiring the service of a sentence in jail as a condition of probation. These cases constituted 46 percent of the 13,890 placed under probationary custodial supervision. These defendants could all have been committed to a state prison and there would be entitled to engage in vocational and remedial educational classes. Such courses are conducted under the supervision of duly qualified state certificated instructors from a local contracting school district or civil service employees of the prison.

A basic problem of the county jail in the rehabilitation of marginal workers and youthful offenders, including many school dropouts, is providing suitable vocational or remedial training that both increases employability upon release and reduces the likelihood of return. The intra-state mobility of typical jail prisoners justifies a statewide supported program. The problems posed by this group require professional certificated teachers, which may best be secured through local school districts. The varying needs of the jail population also can be met by part-time, evening instructors, giving short courses similar to a community adult evening school program.

Selected Statements by Hearing Witnesses

SHERIFF CANLIS: Now, as the result of our experience I am prepared to recommend and urge that you restore the state participation in adult education for the untrained. This was removed a few years ago in the interest of economy, and I believe this to be a false economy, because these are training programs, I think, that are greatly needed to start some of these people back to being trained or retrained so that they can be employable and be productive and assume the position in the community that they can handle. (P. 180.)*

. . . For example, take the nurse's aid training program, which is done at the county hospital with female inmates taken from the jail every day. This is a six-week course, eight hours a day, with homework, and is exactly the same course, conducted in the same class given for the other employees of the hospital.

In all these things, gentlemen, I want you to understand that the board of supervisors of my county not only supports this but even encourages it. We have even a blanket resolution to develop programs as we go along. Some of the other things mentioned are tape recordings

* Hearing transcript, office of the chairman.

for the blind. We have well-educated inmates on occasion and can reproduce materials that are not otherwise available in Braille—technical papers, some for students. We even graduated out of the Department of Sociology at the university a blind, Negro, Methodist minister, a fifth-year sociology student, because we gave him a project to do in the jail. Christmas seal mailers, other community-type mailers, 97,000 at one time have been done. We did it the hard way with inmates, people we can't classify into minimum security. Garden projects from a community club, Easter seal mailers, jewelry projects, nursery rhymes, picture projects are all among our projects. The reason for this diversity is because there are a great number of people that are in jail that are just sitters. They are capable of very little, and still some productivity can be made from that. A lot of these people are people from the state hospitals and who are disoriented and who don't have very many skills at all. The manufacture of material for the mentally retarded and physically handicapped, the sewing of clothing and bedding, switchboard training are more projects. We have an old switchboard, reconditioned and installed in the women's jail with extension telephones on it, and we have a young woman who had this training and skill and she's retired because of raising a young family, but she is coming back to give us volunteer hours of teaching these people how to use the switchboard and how to type. We have speech therapy, reading education, office training, first aid classes, culinary training. This is an interesting thing, because I just heard Mrs. Lewis describe it. I'm negotiating now with the union to see if we can't introduce into the jail this training program. We have typing classes. You will see an illustration, there, in which these women are getting quite proficient. We have met some failures, and we have rejected them, and we are also beginning new projects, such as making inquiry as to whether or not we can be helpful in the repair and binding of books for the school departments in the various school districts.

We have seen as a result of all these projects some very encouraging signs such as the great reduction in the recidivism rate among those former inmates who are participating in outside group counselling, conducted by volunteers again, and that have gone through our regular training schedule, and this has prepared them for their job. For instance, my idea on this nurse's aid program was because I began to realize that there were a number of convalescent hospitals and rehabilitation hospitals being built throughout the State of California which I thought would give new employment opportunities, and some of our former inmates are now employed in these convalescent hospitals on a full-time basis. Also, some of these projects were developed because we are now getting the school dropouts. These are the untrained young people, and believe it or not, they still have a deep interest in training once it is put right there before them and they don't suffer the embarrassment of having to go back and compete with the younger age groups. I think this is going to be a clue as to how we can reach them. (Pp. 177, 178, 179.)*

* Hearing transcript, office of the chairman.

CHAIRMAN WINTON: The state has some responsibility for felons who are confined in county jails as a part of probation, because if they were not confined in the county jail, their crimes would call for state prison imprisonment. It has been suggested that perhaps this would be a basis of a state subvention to the counties. Have you any additional thoughts on this, either one of you?

MR. SILVER: I was the one who made this proposal in my statement, and our feeling is that our approach to this problem is more from the standpoint of a problem presented by the county jail than it was from the standpoint of the administration of probation as such. I should think that it might well have some bearing on the administration of probation. I would think it would hardly be a substitute for the type of subvention that Mr. Keldgord is talking about. (P. 148.)*

CHAIRMAN WINTON: Your idea would be that if the subvention were to be offered, there would be certain qualifying aspects that the county should meet and this would probably entail programs, vocational education or something in the jail to go with it. Is this your idea?

MR. SILVER: Right. There are many counties that are really unable to put in more effective and comprehensive programs in the jail because of lack of financial resources, and this would be one way in which they might receive funds for helping to pay for their rehabilitation programs, both during confinement and after.

State of California

MEMORANDUM

August 18, 1964

To: Mr. Walter Dunbar, Director
Department of Corrections
502 State Building No. 1

Subject: Sales Orders Received From California Counties

From: Department of Corrections, Sacramento 14

In accordance with your request of August 12, 1964, we have prepared the attached schedule showing the dollar amount of sales orders received from each of the 58 California counties during the period July 1, 1963, to June 30, 1964.

To the best of our knowledge, the City and County of San Francisco (one entity) is the only county that has a restriction against buying prison-made goods.

ROBERT H. LAWSON
General Manager
Correctional Industries

* Hearing transcript, office of the chairman.

Department of Corrections
CORRECTIONAL INDUSTRIES REVOLVING FUND SALES ORDERS
RECEIVED FROM COUNTIES FOR THE PERIOD
JULY 1, 1963-JUNE 30, 1964

Alameda	\$11,848.79	Placer	\$11,202.89
Alpine	-	Plumas	676.59
Amador	1,102.29	Riverside	17,758.91
Butte	6,501.40	Sacramento	⁴ 24,023.04
Calaveras	410.00	San Benito	-
Colusa	1,141.24	San Bernardino	5,754.90
Contra Costa	5,312.15	San Diego	24,659.95
Del Norte	¹ 18,155.86	San Francisco	-
El Dorado	749.40	San Joaquin	60.51
Fresno	-	San Luis Obispo	6,331.10
Glenn	531.00	San Mateo	16,469.78
Humboldt	2,159.07	Santa Barbara	1,846.26
Imperial	² 15,079.87	Santa Clara	⁵ 145,365.72
Inyo	1,490.15	Santa Cruz	4,733.31
Kern	4,259.30	Shasta	7,026.90
Kings	17,351.69	Sierra	28.44
Lake	974.40	Siskiyou	3,888.50
Lassen	2,504.93	Solano	5,305.69
Los Angeles	45,567.61	Sonoma	3,785.69
Madera	³ 12,951.55	Stanislaus	6,829.67
Marin	12,278.96	Sutter	27.50
Mariposa	-	Tehama	3,340.88
Mendocino	3,754.97	Trinity	451.67
Merced	4,192.26	Tulare	5,103.63
Modoc	279.17	Tuolumne	-
Mono	4,819.86	Ventura	14,917.66
Monterey	8,116.83	Yolo	5,651.94
Napa	310.50	Yuba	269.25
Nevada	3,413.64		
Orange	13,096.38		
		Total 1963-64 fiscal year	\$513,863.65

¹ Approximately \$8,000 of this amount was for jail and courthouse furnishings and equipment.

² \$11,822.65 was for jail beds and bedding.

³ Courthouse furnishings \$12,000.00.

⁴ \$13,797.00 was for jail equipment for the new branch county jail.

⁵ Custom furnishings for judges' chambers \$75,607.00. Clothing for branch jail \$10,945.60.

A.B. 1477

LEGISLATIVE COUNSEL'S DIGEST

County jail school support.

Amends Sec. 4018.5, Pen.C., adds Secs. 11151.5, 17952, Ed.C.

Affords specific authorization to sheriff, with approval of board of supervisors, to enter agreement with school districts for conduct of adult education classes in county jails, industrial farms, or county or joint county road camp.

Prescribes minimum school day and maximum weekly class hours to be utilized for average daily attendance computation purposes regarding such classes.

Provides for a State School Fund allowance to school district, per unit of A.D.A. in such classes, of \$125 as basic state aid plus the same amount in equalization aid as district receives for its regular (non-adult) pupils.

Operative July 1, 1965.

An act to amend Section 4018.5 of the Penal Code and to add Sections 11151.5 and 17952 to the Education Code, relating to adult education programs for county prisoners.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4018.5 of the Penal Code is amended
2 to read:

3 4018.5. The sheriff may, subject to the approval of the
4 board of supervisors, provide for the vocational training and
5 rehabilitation of prisoners confined in the county jail, or any
6 county industrial farm or county or joint county road camp.
7 He may, subject to such approval, enter into an agreement
8 with the governing board of any school district maintaining
9 secondary schools, for the maintenance, by the district, for
10 such prisoners, of adult education classes conducted pursuant
11 to Article 12 (commencing with Section 6351) of Chapter 6 of
12 Division 6 of the Education Code.

13 SEC. 2. Section 11151.5 is added to the Education Code, to
14 read:

15 11151.5. In classes for adults maintained for adults in any
16 county jail, or any county industrial farm or county or joint
17 county road camp, a day of attendance is 180 minutes of
18 attendance; but no pupil in such a class shall be credited with
19 more than one day of attendance in any calendar day, nor
20 with more than 15 clock hours of attendance during any one
21 school week.

22 SEC. 3. Section 17952 is added to said code, to read:

23 17952. The Superintendent of Public Instruction shall
24 allow to each district maintaining classes for adults in any
25 county jail or any county industrial farm or county or joint
26 county road camp, for each unit of average daily attendance
27 in such classes during the current fiscal year, one hundred
28 twenty-five dollars (\$125) as basic state aid and the same

1 amount as state equalization aid as is computed by dividing
2 the allowance computed for the district under Article 7 (com-
3 mencing with Section 17901) of this chapter by the average
4 daily attendance of the district during the fiscal year, exclusive
5 of the average daily attendance in all classes for adults main-
6 tained by the district.

7 SEC. 4. This act shall become operative on July 1, 1965.

Committee Recommended Legislation—A.B. 1478

Purpose

Provide supplemental correctional treatment for offenders in county jail facilities designated as "regional jails" and providing custodial care of state prisoners.

Justification

Each county now provides custodial care and maintenance of offenders whose state parole has been suspended. The suspension in some cases is based on conviction of a minor offense and commitment for service of a jail sentence. In other instances the parolees are being investigated for possible violation of a condition of parole. The provision of counseling and casework services by the state at this critical period may avoid return to the state prison for longer periods at much greater expense. Such services could be provided by contract by private agencies or regular state employees. The services of such employees should also be made available on the basis of individual need without cost to other misdemeanor offenders or felons serving jail as a condition of probation and committed to the custody of the sheriff.

The wide variation in capacity and resources for correctional treatment between counties, as well as the geographical distribution of the need for such facility by the state, would indicate the need for designation of jails eligible for service to be done on a regional basis.

Selected Statements by Hearing Witnesses

MR. TERZIAN: One alternative would be to have the state concentrate on providing institutional care for hard-core delinquents and criminals who are in need of an extended period of training and rehabilitation to emphasize demonstration projects such as half-way houses, group homes, intensive supervision and the like, and to do the practical research and experimentation. The county then would be charged with providing expanded probation services at the local level with the implementation of those state demonstrations which have proven successful along with financial assistance from the state. (P. 61.)*

MR. SILVER: We were organized in 1948 as a nonsectarian, nonprofit agency to provide professional counselling services to the county jail inmate. It was based on the premise that the rehabilitation of the so-called petty offender at the jail level would save the taxpayer money. The State of California has one of the most efficient prison systems in the country. The jails, on the other hand, both the local and the county jails, housing less serious offenders, have in most cases virtually no such programs as the state. This is due to the lack of resources and effective programs.

The Northern California Service League, therefore, employs a staff of qualified counsellors to visit the jail regularly to counsel inmates who request our help. They work with the inmates both in the jail and after release, during the very important period of readjustment to the community.

* Hearing transcript, office of the chairman.

In addition to working directly with offenders on a counseling basis, an effort is made to improve jail standards and administration by working with public officials and the community in general. And I might say that we also are very much concerned with the problem of the attitude of the community toward the offender, particularly the return of the offender, and spend a good deal of time working in this area. (Pp. 138, 139.)*

... Now, as to this same problem about which Mr. Keldgord spoke, that of the coordination between governmental agencies, both county and state, and voluntary or community agencies, it is our conviction that many public programs can be extended and increased in efficiency by wise and careful use of properly qualified voluntary community agencies. In some cases, these agencies are in a position to offer services to public agencies without additional cost. In other cases, because of the increasingly hard-pressed budgets of such agencies, some form of contracting for and paying for services rendered would be necessary. It is the judgment of the Northern California Service League that subvention, as such, is not desirable nor desired by voluntary agencies on the whole but that it is very feasible to work out a satisfactory arrangement with public agencies by contract for paying for services on some acceptable basis. Voluntary agencies are often, with their flexible structure, in a position to offer certain kinds of experimentation and evaluation of demonstration projects which may well be extremely useful to the correctional field on a permanent basis and by other public agencies. Such an arrangement of buying services by public agencies is very adaptable to this kind of experimentation and demonstration.

In summary, the Northern California Service League would make the following recommendations:

1. Purchase by the state of services from voluntary agencies for discharges from the state prisons.
2. Subvention by the state to counties for the care of felons serving jail sentences as a condition of probation, such subvention to be given upon condition of the local jail meeting certain prescribed standards and such subvention to be used for the care of these felons upon release and the authority to contract with private voluntary agencies to provide for this service. (Pp. 144, 145.)*

MR. DUNBAR: Take local correction programs. We have these primarily under the boards of supervisors and sheriffs. Now I know that the sheriffs are trying to do a good job, that the jails are clean. There isn't any brutality any more and there are, in 24 areas, good work camps for working men. But is there any education, academic or vocational? Is there any counsel for the short time offenders, 60 percent of whom are alcoholics? The answer is very, very little. They are sitting in idleness for the most part, and this isn't really control; it is a revolving door. So I would again propose that we do more than provide standards as we are doing now by the Board of Corrections and guidance as to planning jails and offering the program treatment. Why don't we subsidize a local correctional program and really see what we can do in one or two counties with the less serious offenses, and I think this would pay dividends. (Pp. 88, 89.)*

* Hearing transcript, office of the chairman.

SHERIFF CANLIS: Perhaps you could consider legislation that would permit that, at the first symptoms of failure, instead of returning parolees to the prisons—which seems rather harsh for some minor violation or some misconduct—they be committed for a term to the county jail—10, 15, 20, 30 days—which would permit their re-entry into the community at the level in which they are expected to be absorbed. (Pp. 180, 181.)*

* Hearing transcript, office of the chairman.

A.B. 1478

LEGISLATIVE COUNSEL'S DIGEST

Jails.

Adds Ch. 1.3 (commencing with Sec. 4040), to Title 4, Pt. 3, Pen.C.

Authorizes Director of Corrections and county board of supervisors to agree that county jail or industrial farm or road camp shall be designated "regional jail," that director shall assign thereto personnel to provide counseling and casework services, and that board shall provide necessary facilities. Such counseling and casework services shall be provided to following classes in order of priority listed, as practicable:

- (a) Persons on parole from state prisons who are confined in jail because of suspension or revocation of parole;
- (b) Persons serving a term of confinement in the jail as a condition of probation granted upon conviction of a felony;
- (c) Other persons confined in the jail.

An act to add Chapter 1.3 (commencing with Section 4040) to Title 4, Part 3 of the Penal Code, relating to jails.

The people of the State of California do enact as follows:

- 1 SECTION 1. Chapter 1.3 (commencing with Section 4040)
- 2 is added to Title 4, Part 3 of the Penal Code, to read:

3

4

CHAPTER 1.3. REGIONAL JAILS

5

- 6 4040. The Director of Corrections and the board of super-
- 7 visors of any county may enter into an agreement providing
- 8 that a county jail or industrial farm or road camp of the
- 9 county shall be designated a "regional jail," that services
- 10 authorized by this chapter shall be provided by the director at
- 11 such institution, and that the facilities necessary therefor shall
- 12 be provided by the board at such institution.

- 13 4041. The director shall assign personnel of the Depart-
- 14 ment of Corrections to a regional jail to provide counseling
- 15 and casework services to the following classes of persons, giv-
- 16 ing priority to such classes in the order listed, as practicable:

- 17 (a) Persons on parole from the state prison who are con-
- 18 fined in the jail because of a suspension or revocation of
- 19 parole;
- 20 (b) Persons serving a term of confinement in the jail as a
- 21 condition of probation granted upon conviction of a felony;
- 22 (c) Other persons confined in the jail.

Committee Recommended Legislation—A.B. 1479

Purpose

Provide a form of "service subsidy" by the state for the county superior courts by eliminating any state charges for diagnostic reports prepared at county request by the Department of Corrections.

Justification

Existing law permits the court to conditionally refer cases to a reception center of the Department of Corrections for a diagnostic report prior to the determination of the sentence. The measure originally adopted in 1959 was not utilized by many counties, because of the requirement of a fee and the existence of a contract. In 1961 a two-year moratorium on such charges was enacted by the Legislature with the following result:

The Department of Corrections processed 280 cases under this section between September 15, 1963, and June 30, 1964. It recommended 52 percent or 147 for probation, and in only 21 cases was probation not granted. The following table presents an analysis of the disposition of all cases processed by the department.

In view of the response by the counties in expanding their utilization of this service by the state, and the undeniable benefits to the state, elimination of such charges appears warranted.

Selected Statements by Hearing Witnesses:

MR. MULL: Section 1203.03 in the *Penal Code* which now authorizes a judge to send a person who has pleaded guilty for diagnostic study by an institution and for a report back to the court within a period of 90 days recommending what should be done. This has been used now a little more extensively because there is no more cost upon the county. The state pays for this study. (P. 27.)*

MR. DUNBAR: In presentence investigation, I would add to this a presentence diagnostic study. You passed a law in 1959, and we have some experience with it now, whereby the courts send to us cases in which they want more information on what he is and why he did it as a basis for determining disposition, probation or prison. We have done this and the results were reported to you last year and they indicate, in my opinion, a better disposition of the person as to control and correction.

From the state's point of view, this is a saving in tax dollars. From the patient's or criminal's point of view, it was better control or correction at the local level with his family at less cost. This last year you passed a moratorium on this program and so now we are proceeding to do this without cost to the county. I must admit, and I think this is quite revealing, of the need for this information by the court because we have literally been flooded with requests, and this last month I had to set a quota on the state basis to provide this information to the courts.

This is what we are doing. I would recommend that on the basis of our experience this year that we bring this to you for consideration of

* Hearing transcript, office of the chairman.

expanded presentence diagnostic study in selected cases so that we can provide better control and protection. (Pp. 87, 88.)*

State of California
DEPARTMENT OF CORRECTIONS
Sacramento 95814

November 5, 1964

Cases processed under the provision of Section 1203.03 of the Penal Code between September 15, 1963, and June 30, 1964:

Cases referred	280	100%
Cases rejected for cause	22	8%
Cases processed	258	92%
Recommended for probation	147	100%
Cases granted probation	125	85%
Probation not granted	21	15%
Probation not recommended	111	100%
Probation not granted	93	84%
Probation granted	18	16%
Of the 258 cases processed:		
Probation granted with various conditions	143	54%
Committed to institutions	114	46%
Prison	101	
State hospitals	6	
Youth Authority	5	
California Rehabilitation Center	2	
Number of counties participating	39	
Percentage of cases violating probation to date		7%
State average for probation violations		25%

* Hearing transcript, office of the chairman.

A.B. 1479

LEGISLATIVE COUNSEL'S DIGEST

Sentencing.**Amends Sec. 1203.03, Pen.C.**

Eliminates entirely the provisions, now suspended until September 15, 1965, requiring that, as prerequisite to presentence placement of defendant in diagnostic facility of Department of Corrections, pursuant to Sec. 1203.03, Pen.C., there must be in effect a contract between state and county pursuant to which county reimburses state for cost.

1 *An act to amend Section 1203.03 of the Penal Code, relating*
2 *to diagnostic facilities in the Department of Corrections.*

3
4 *The people of the State of California do enact as follows:*

5
6 SECTION 1. Section 1203.03 of the Penal Code is amended
7 to read:

8 1203.03. (a) In any case in which a defendant is convicted
9 of an offense punishable by imprisonment in the state prison,
10 the court, if it concludes that a just disposition of the case re-
11 quires such diagnosis and treatment services as can be provided
12 at a diagnostic facility of the Department of Corrections, may
13 order that defendant be placed temporarily in such facility for
14 a period not to exceed 90 days, with the further provision in
15 such order that the Director of the Department of Corrections
16 report to the court his diagnosis and recommendations concern-
17 ing the defendant within the 90-day period.

18 (b) The Director of the Department of Corrections shall,
19 within the 90 days, cause defendant to be observed and exam-
20 ined and shall forward to the court his diagnosis and recom-
21 mendation concerning the disposition of defendant's case.

22 (c) The Department of Corrections shall accept such person
23 if it has adequate staff and facilities to provide such services
24 ~~and if there is in effect a contract made, pursuant to subdivi-~~
25 ~~sion (f) of this section, with the county of the referring court.~~
26 No such person shall be transported to any facility under the
27 jurisdiction of the Department of Corrections until the director
28 has notified the referring court of the place to which said per-
29 son is to be transported and the time at which he can be re-
30 ceived.

31 (d) The sheriff of the county in which an order is made
32 placing a defendant in a diagnostic facility pursuant to this
33 section, or any other peace officer designated by the court, shall
34 execute the order placing such defendant in the center or re-
35 turning him therefrom to the court. The expense of such sheriff
36 or other peace officer incurred in executing such order is a
37 charge upon the county in which the court is situated.

38 (e) It is the intention of the Legislature that the diagnostic
39 facilities made available to the counties by this section shall

1 only be used for the purposes designated and not in lieu of
2 sentences to local facilities.

3 (f) The Director of Corrections may enter into contracts,
4 with the approval of the Director of Finance, with any county
5 of this state, upon request of the board of supervisors thereof,
6 wherein the Department of Corrections agrees to provide diag-
7 nostic and treatment services and temporary detention during
8 the period of study, to the county for selected cases of persons
9 eligible for commitment to the Department of Corrections. The
10 county shall reimburse the state for the cost of such services;
11 such cost to be determined by the Director of Finance or in
12 lieu of the Director of Finance by the Director of General
13 Services if such office is created at the 1963 Regular Session
14 of the Legislature. Each county auditor shall include in his
15 state settlement report rendered to the Controller in the
16 months of January and June, the amounts due under any
17 contract authorized by this section and the county treasurer,
18 at the time of settlement with the state in such months, shall
19 pay to the State Treasurer upon order of the Controller the
20 amounts found to be due.

21 (f) (g) In any case in which a defendant has been placed
22 in a diagnostic facility pursuant to this section and, in the
23 course of his confinement, he is determined to be suffering
24 from a remediable condition relevant to his criminal conduct,
25 the department may, with the permission of defendant, ad-
26 minister treatment for such condition. If such treatment will
27 require a longer period of confinement than the period for
28 which defendant was placed in the diagnostic facility, the
29 Director of Corrections may file with the court which placed
30 defendant in the facility a petition for extension of the period
31 of confinement, to which shall be attached a writing signed by
32 defendant giving his consent to the extension. If the court
33 finds the petition and consent in order, it may order the ex-
34 tension, and transmit a copy of the order to the Director of
35 Corrections.

36 (h) Any other provisions of this section notwithstanding,
37 until September 15, 1965 it shall not be a prerequisite to com-
38 mitment of a defendant or acceptance of the defendant by the
39 Department of Corrections, pursuant to this section, that there
40 be in effect a contract as described in subdivision (f), and
41 there shall be no charge to the county for services under this
42 section for a defendant accepted during such period.

Committee Recommended Legislation—A.B. 1480

Purpose

Continue the felony penalty for issuance of a check without sufficient funds only when the check, or checks, exceed a total of \$200. This is the same dollar value which determines an offense to be grand theft or petty theft. Also, this measure removes the mandatory requirement that all such persons with a prior felony and convicted of issuance of NSF checks receive a minimum prison sentence of two calendar years.

Justification

The report, *Crime in California, 1963*, presents in Table VI-21 data concerning commitments to prison for the various types of criminal offenses. It may be noted that the two groups, "forgery and fictitious checks" and "NSF checks" (not sufficient funds) together accounted for 1,182 commitments or 26.4 percent of the total intake. This number was exceeded only by the offense of burglary, which constituted 26.9 percent, or 13 more offenders. The cost to the state for these persons serving a median sentence of 18 months at a rate of \$1,800 per year will amount to \$3,190,400 and will occupy beds equivalent to one prison, which would cost, at \$10,000 per unit, \$11,820,000.

Of the total of 1,182 commitments for violation of the check laws, a total of 378 were committed for the offense of a violation of Penal Code Section 476a, or the issuance of a check without sufficient funds but with their correct name and address.

Prior legislative inquiries have revealed that the majority of check violations occur in groceries and other stores. Present law exempts such stores from licensing under the *Check Sellers and Cashers Law* (Fin.C. Sec. 12101).

In the event adoption of this recommended measure does not alert merchants to the need to tighten their check cashing procedures, serious consideration can well be given to amending the law to require state supervision of store check cashing procedures. All the taxpayers of the state share the cost of imprisonment of offenders able to take advantage of business practices of individual merchants.

Statement of Witnesses

MR. DAVIS: Most studies of recidivism have shown that a high proportion of forgery and check offenders fail on probation or parole. However, these offenders are not generally considered as threats to the community and therefore are seldom singled out for specialized treatment. This is an area that needs intensive study as to what better methods could be used in handling this type of offender short of state prison commitment. (P. 125.)*

MRS. E. LEWIS †: We have many of our women, for example, in the California Institution for Women who are in there on "NSF" check offenses, women who have no other pattern of criminality at all. They are not hard-core criminals. (P. 160.)*

* Hearing transcript, office of the chairman.

† Chairman, Board of Trustees of the California Institution for Women.

MR. DUNBAR: . . . Of concern to us is the problem of the matter of the length of terms. I think that they should be reexamined within the framework of the existing law. I think on the one hand we are harming rather than helping individuals if we are keeping them in too long when they are ready to go now—to satisfy justice or some guidelines that we may have set up arbitrarily because it makes our work easier. (P. 94.)*

MR. J. BREWER †: With respect to the laws governing California's handling of the adult offender, we first note that California's Indeterminate Sentence Law provides that "the court in imposing sentence shall not fix the term of duration of the period of imprisonment." The defendant is sentenced by the trial judge for the "term prescribed by law," with the duty of actually determining the term and considering the question of parole left to the Adult Authority. California's Indeterminate Sentence Law is a modified rather than a true Indeterminate Sentence Law, which would be zero years to life. Minimum and maximum terms for each offense category are fixed by the Legislature. Examples are 6 months to 5 years, 1 to 20 years, 5 years to life, 15 years to life, etc. (About 35 states have some form of indeterminate sentence.)

One may assume that any agency assuming a portion of the sentencing responsibilities once resting exclusively with the courts would be bound by the same basic principles which guide the courts in their deliberations. The right to a just, fair verdict, the equal application of justice under the law, the protection of society, the protection of the individual, these should be no less important to a paroling agency than to a judge. Since there is a large degree of freedom possible under the Indeterminate Sentence Law, the Legislature has, from time to time, placed certain restrictions on its application. One writer states, "The California system for sentencing persons convicted of crimes is the most elaborate and perhaps the most disorganized in any American jurisdiction." He further argues that the provisions of the *Penal Code*, Section 3024, providing for aggravated minimums, are inconsistent with the Indeterminate Sentence Law.

Your committee may wish to give some thought to the multiplicity of sentencing possibilities contained in the various sections of the *Penal Code* which have emerged at different times and out of varying circumstances some of which may have been more related to emotion than to a careful analysis of the objectives of modern penology. (Pp. 75, 76, 77.)*

CHAIRMAN WINTON: I have some questions for both of you. You talked about Mr. Brewer, the aggravated minimums on some crimes, some of the sections of the *Penal Code*. I assume there you mean those where there is a minimum term of a sentence, is that correct?

MR. BREWER: Yes, sir. I believe that the range is from 6 months to 15 years, except for those cases where the person is not admissible for parole consideration.

* Hearing transcript, office of the chairman.

† Chairman, California Adult Authority.

CHAIRMAN WINTON: I assume that it is your feeling that with some of the people that receive those sentences, society would benefit by the savings in dollars of taxes and the individual would benefit by an earlier release because he would be better able to adjust himself to the community at an earlier release, and you feel that we should not put this arbitrary road block in the way of your authority in judging whether he is ready to go back into society or not. Is that a fair statement?

.

Mr. Thelin dissents from this recommendation. He does not agree that the statutes on issuance of checks without sufficient funds should be liberalized, and he opposes the repeal of the mandatory two-year minimum sentence for a second conviction on the issuance of NSF checks with a prior felony. He feels that punishment should be more certain in these cases and that complaining witnesses should be required to follow through once a complaint has been filed.

Mr. Henson dissents from this recommendation.

A.B. 1480

LEGISLATIVE COUNSEL'S DIGEST

Bad checks.**Amends Secs. 476a, 3024, Pen.C.**

Provides that when total amount of checks, drafts, or orders defendant is charged with and convicted of making, drawing, or uttering does not exceed \$200, rather than \$100, the offense is (unless defendant has any of certain specified prior convictions) punishable only as a misdemeanor.

Makes Section 3024, relating to minimum terms for armed or prior offenders, inapplicable when the current offense is a violation of Section 476a.

An act to amend Sections 476a and 3024 of the Penal Code, relating to bad checks.

The people of the State of California do enact as follows:

1 SECTION 1. Section 476a of the Penal Code is amended to
2 read:

3 476a. (a) Any person who for himself or as the agent or
4 representative of another or as an officer of a corporation,
5 willfully, with intent to defraud, makes or draws or utters or
6 delivers any check, or draft or order upon any bank or de-
7 pository, or person, or firm, or corporation, for the payment of
8 money, knowing at the time of such making, drawing, uttering
9 or delivering that the maker or drawer or the corporation
10 has not sufficient funds in, or credit with said bank or de-
11 pository, or person, or firm, or corporation for the payment of
12 such check, draft or order and all other checks, drafts or
13 orders upon such funds then outstanding, in full upon its
14 presentation, although no express representation is made with
15 reference thereto, is punishable by imprisonment in the county
16 jail for not more than 1 year, or in the state prison for not
17 more than 14 years.

18 (b) However, if the total amount of all such checks, drafts,
19 or orders that the defendant is charged with and convicted of
20 making, drawing, or uttering does not exceed ~~one hundred~~
21 ~~dollars (\$100)~~ two hundred dollars (\$200), the offense is pun-
22 ishable only by imprisonment in the county jail for not more
23 than one year, except that this subdivision shall not be applic-
24 able if the defendant has previously been convicted of a viola-
25 tion of Section 470, 475, or 476 of this code, or of this section
26 of this code, or of the crime of petty theft in a case in which
27 defendant's offense was a violation also of Section 470, 475, or
28 476 of this code or of this section or if the defendant has
29 previously been convicted of any offense under the laws of any
30 other state or of the United States which, if committed in this
31 state, would have been punishable as a violation of Section
32 470, 475 or 476 of this code or of this section of this code or
33 if he has been so convicted of the crime of petty theft in a

1 case in which, if defendant's offense had been committed in
2 this state, it would have been a violation also of Section 470,
3 475 or 476 of this code, or of this section.

4 (c) Where such check, draft, or order is protested, on the
5 ground of insufficiency of funds or credit, the notice of pro-
6 test thereof shall be admissible as proof of presentation, non-
7 payment and protest and shall be presumptive evidence of
8 knowledge of insufficiency of funds or credit with such bank
9 or depositary, or person, or firm, or corporation.

10 (d) The word "credit" as used herein shall be construed
11 to mean an arrangement or understanding with the bank or
12 depositary or person or firm or corporation for the payment
13 of such check, draft or order.

14 (e) If any of the preceding paragraphs, or parts thereof,
15 shall be found unconstitutional or invalid, the remainder of
16 this section shall not thereby be invalidated, but shall remain
17 in full force and effect.

18 SEC. 2. Section 3024 is amended to read:

19 3024. The following shall be the minimum term of sentence
20 and imprisonment in certain cases, notwithstanding any other
21 provisions of this code, or any provision of law specifying a
22 lesser sentence:

23 (a) For a person not previously convicted of a felony, but
24 armed with a deadly weapon either at the time of his commis-
25 sion of the offense, or a concealed deadly weapon at the time
26 of this arrest, two years;

27 (b) For a person previously convicted of a felony either in
28 this state or elsewhere, and armed with a deadly weapon, either
29 at the time of his commission of the offense, or a concealed
30 deadly weapon at the time of his arrest, four years;

31 (c) For a person previously convicted of a felony either in
32 this state or elsewhere, but not armed with a deadly weapon at
33 the time of his commission of the offense, or a concealed
34 deadly weapon at the time of his arrest, two years;

35 (d) For a person convicted at one trial of more than one
36 felony, and upon whom are imposed cumulative or consecutive
37 sentences the aggregate of the minimum terms of which exceed
38 10 years, 10 years;

39 (e) Such minimum penalties shall only apply when such
40 possession of a deadly weapon or previous conviction of a
41 felony as above specified has been charged and admitted or
42 found to be true in the manner provided by law; ~~and~~ the
43 minimum terms specified in paragraphs (a) and (b) shall
44 not apply in those cases wherein the property stolen or sought
45 to be stolen is an animal or animals and the manner in which
46 such property is taken or attempted to be taken constitutes
47 the crime of theft and the weapon used during the commission
48 thereof is not used or intended to be used against a person or
49 to resist arrest; *and the provisions of this section shall not*
50 *in any case apply where the current offense is a violation of*
51 *Section 476a.*

1 (f) The words "deadly weapon" as used in this section
2 are hereby defined to include any instrument or weapon of
3 the kind commonly known as a blackjack, sling shot, billy,
4 sandclub, sandbag, metal knuckles, any dirk, dagger, pistol,
5 revolver, or any other firearm, any knife having a blade
6 longer than five inches, any razor with an unguarded blade
7 and any metal pipe or bar used or intended to be used as a
8 club.

9 (g) For the purpose of determining whether or not a con-
10 viction for a public offense in another jurisdiction is a pre-
11 vious felony conviction under this section, the word "felony"
12 is defined as a public offense which, if committed in this
13 state, could have been punished as a felony under the laws
14 of this state. Where such an offense is punishable in this state
15 either as a felony or as a misdemeanor, it may be deemed a
16 felony for the purposes of this section.

Committee Recommended Legislation—A.B. 1481**Purpose**

In counties having honor camps for jail prisoners operated under the provisions of the Industrial Road Camp Act rather than by the sheriff, authorization for the superintendent, in addition to his other duties, to be designated as work furlough administrator.

Justification

There are six counties, Fresno, Kern, San Diego, Stanislaus, Tulare and Riverside, in which the honor camps are not operated by the sheriff's department. In communications to the committee, an interest has been expressed extending the work furlough act to San Diego County, in which such eligible offenders would be housed in facilities of the county department of honor camps. In such a situation, it is deemed desirable that in addition to the presently authorized positions of probation officer and sheriff that the superintendent of such industrial road camp facilities also be authorized to be designated as administrator of the work furlough program for that county.

Statement of Witnesses

MR. HENSON: . . . On this work furlough program, how does this generally work? Does a person go out and work during the day and come back at night to the jail and spend the night and then go out and work again the next day?

MR. KELDGORD: Yes, exactly, Mr. Henson. This is a law which was conceived in the State of Wisconsin in 1913. We have had it in California since 1957, and it is presently used by six or seven counties in California. It was piloted in Santa Clara County. The situation is almost exactly as you have described it. A man arises in the morning, while in custody, and goes to his work, and when the workday is over he comes back to custody. He must be in one of three places. He must be going to work, at work, or coming back from work, and if he isn't in one of those three places he must be in custody. He pays the county at a rate of about \$3 per day, at the present rate, for his own care, and the rest of his money goes to the support of his family, or if he has no family, it is held in trust for him. Orange County has had this program for just a year. They have demonstrated savings of some \$26,000 the first year.*

The most interesting thing, I feel about their report, is that some 56 percent of the men in custody in the county jail under work furlough would have had families on welfare had it not been for work furlough.

CHAIRMAN WINTON: I understand one of the problems in working out the work furlough program is the fact that this takes additional jail personnel. Have you had experience with that?

MR. KELDGORD: Orange County, in their \$26,000 figure, had already allotted expenses for increased (probation) personnel. Santa Clara County has a staff of four rehabilitation officers who ad-

* See Appendix B for report on second year of operation with estimated savings of \$49,305.

minister the program, and I believe the program which they support is a savings of \$600,000 in five years, so you are quite correct, though, I think it is unwise for the county to try to implement the program without providing adequate personnel support for it.*

MR. HENSON: What other problems, what other objections have counties raised to going into the work furlough program other than lack of personnel, administration problems and so forth?

MR. KELDGORD: One of the most common problems that is recited to us, and I think this is a very genuine problem, is simply geography, and I would submit to you that Alameda County is a pretty fair example here in that the labor market is in Oakland and the county jail—the honor farm—is at Santa Rita which is some 30 miles away. On the other hand, Santa Clara County has found this to be no problem. The bus line goes right by their honor farm in Milpitas. In many instances, they let the inmate have his automobile, and he takes the car and drives to work. In some cases, we get into the intangible benefits, the number of marriages which have been saved, the number of homes that are preserved, etc., and in some cases the wives have come to the jail in the mornings to get their husbands, take them to work and then drop them back. Geography is a very definite problem, since many of our honor farms are out of the central labor market. There is also some hesitancy, some question on the part of sheriffs, on the question of contraband. Again, Santa Clara County indicates this is not a real problem. On the issuance of violations, there is every indication that the plan is about 90 percent successful. When I say 90 percent, I am taking a situation where they have a very strict standard of violation. For example, a man makes an unauthorized phone call or he stops off for a drink at the neighborhood bar before going back to jail. Then he has violated. He is taken off the program, and still they have about a 90 percent success factor. This comes to me from Marin County, where the program is administered by the probation officer. As you know, under the code it may be administered by the sheriff or the probation officer. If you have a restricted violation procedure, in other words, the only way the man has violated is if he takes off or he commits a new offense or a gross violation not because of telephone calls or such, they feel that the violation rate is less than 1 percent. In Wisconsin, I believe it runs about 13 percent on a strict violation basis.

MR. HENSON: What kind of work do these men usually do?

MR. KELDGORD: Some of them are professionals. They have had a dentist, for example, in one case. Many of them are in the so-called blue collar category. The cooperation by organized labor and the cooperation by employers has been outstanding. The employers particularly like it, because, first of all, they know the man is going to show up for work; secondly, they know he is going to be sober, and; thirdly, these fellows are anxious to participate in the program. I think a good example and answer to your question is the Santa Clara situation where the Ford Motor Company, which conveniently happens to

* See Appendix "B." p. 89 Program did not require additional jail personnel in Orange County.

be located just across the field from the county honor farm, has employed many of the fellows, so it runs the whole range in terms of occupations. (P. 148.)*

(See Appendix B page 93 for listing Orange County occupations.)

MR. MULL: There is another procedure which is available in California but is very slightly used—it is called the work-furlough concept. Under Section 1208 of the *Penal Code*, California courts are empowered to utilize work-furlough in connection with commitments to the county jail. We feel that this program has tremendous value and its use should be encouraged. Under the law, the program may be administered by either the sheriff or the probation officer. Despite the tax savings and human savings represented by the program, it is used in only a few California counties, principally Santa Clara, where it is administered by the sheriff, Marin, where it is administered by the probation officer, and Orange where it is also administered by the probation officer. Santa Clara County, which pioneered the program in California in 1957 (the concept originated in Wisconsin in 1913 and is presently used in 51 of Wisconsin's 71 counties) reports savings of some \$600,000 in five years. Orange County, which has used the program for only one year, reports savings of more than \$25,000. Orange County has also estimated that 56 percent of the inmates would have had families on welfare if it were not for the work-furlough program in that county.

There are many, many counties in the state that have studied this program but have not put it into effect, sometimes because of the active opposition of members of the sheriff's department or active opposition of the members of the boards of supervisors. Yet this program has one of the best potentials for saving human values of any program which, in the studies of the California Council on Crime and Delinquency, should be put into effect, and we feel that grand juries in several counties of our State should insist upon serious study being made of this work-furlough concept so that a serious report may be made to the public of the savings that could be instituted and whether the work-furlough concept should be put into effect.

* Hearing transcript, office of the chairman.

A.B. 1481

LEGISLATIVE COUNSEL'S DIGEST

Work Furlough Rehabilitation Program.**Amends Sec. 1208, Pen.C.**

Provides that superintendant of a county industrial farm or industrial road camp, as well as the sheriff or probation officer, may be designated by board of supervisors as work furlough administrator.

An act to amend Section 1208 of the Penal Code, relating to work furlough rehabilitation of prisoners.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1208 of the Penal Code is amended to
2 read:

3 1208. (a) The provisions of this section shall be operative
4 in any county in which the board of supervisors by ordinance
5 finds, on the basis of employment conditions, the state of the
6 county jail facilities, and other pertinent circumstances, that
7 the operation of this section in that county is feasible. In such
8 ordinance the board shall prescribe whether the sheriff ~~or~~, the
9 probation officer, *or the superintendent of a county industrial*
10 *farm or industrial road camp in the county* shall perform the
11 functions of the work furlough administrator.

12 (b) When a person is convicted of a misdemeanor and sen-
13 tenced to the county jail, or is imprisoned therein for nonpay-
14 ment of a fine, for contempt, or as a condition of probation
15 for any criminal offense, the court may direct that such person
16 be permitted to continue in his regular employment, if that is
17 compatible with the requirements of subdivision (d), or may
18 authorize the person to secure employment for himself in the
19 county.

20 (c) If the court so directs that the prisoner be permitted to
21 continue in his regular employment, the work furlough admin-
22 istrator shall arrange for a continuation of such employment
23 so far as possible without interruption. If the prisoner does
24 not have regular employment, and the court has authorized the
25 prisoner to secure employment for himself, the prisoner may
26 do so. Any employment so secured must be suitable for the
27 prisoner. Such employment must be at a wage at least as
28 high as the prevailing wage for similar work in the area where
29 the work is performed and in accordance with the prevailing
30 working conditions in such area. In no event may any such
31 employment be permitted where there is a labor dispute in
32 the establishment in which the prisoner is, or is to be, em-
33 ployed.

34 (d) Whenever the prisoner is not employed and between the
35 hours or periods of employment, he shall be confined in the jail
36 unless the court directs otherwise.

37 (e) The earnings of the prisoner shall be collected by the
38 work furlough administrator, and it shall be the duty of

1 the prisoner's employer to transmit such wages to the admin-
2 istrator at the latter's request. Earnings levied upon pur-
3 suant to writ of attachment or execution or in other lawful
4 manner shall not be transmitted to the administrator. If the
5 administrator has requested transmittal of earnings prior to
6 levy, such request shall have priority. In a case in which the
7 functions of the administrator are performed by a sheriff, and
8 such sheriff receives a writ of attachment or execution for the
9 earnings of a prisoner subject to this section but has not yet
10 requested transmittal of the prisoner's earnings pursuant to
11 this section, he shall first levy on the earnings pursuant to
12 the writ. When an employer transmits such earnings to the
13 administrator pursuant to this subdivision he shall have no
14 liability to the prisoner for such earnings. From such earnings
15 the administrator shall pay the prisoner's board and personal
16 expenses, both inside and outside the jail, and shall deduct
17 so much of the costs of administration of this section as is
18 allocable to such prisoner, and, to the extent directed by the
19 court, shall pay the support of the prisoner's dependents, if
20 any. If sufficient funds are available after making the forego-
21 ing payments, the administrator may, with the consent of the
22 prisoner, pay, in whole or in part, the preexisting debts of the
23 prisoner. Any balance shall be retained until the prisoner's
24 discharge and thereupon shall be paid to him.

25 (f) The prisoner shall be eligible for time credits pursuant
26 to Sections 4018, 4019, and 4019.2.

27 (g) In the event the prisoner violates the conditions laid
28 down for his conduct, custody, or employment, the work fur-
29 lough administrator shall report such fact to the court which
30 directed or authorized employment pursuant to this section,
31 and the court may then order such prisoner returned to it and,
32 if it finds that the violation has occurred, may order the bal-
33 ance of the prisoner's sentence to be spent in actual confine-
34 ment.

35 (h) Willful failure of the prisoner to return to the place of
36 confinement not later than the expiration of any period during
37 which he is authorized to be away from the place of confine-
38 ment pursuant to this section is punishable as provided in
39 Section 4532 of the Penal Code.

40 (i) This section shall be known and may be cited as the
41 "Work Furlough Rehabilitation Law."

Committee Recommended Legislation—A.B. 1482

Purpose

Establish as a requirement for parole supervision in excess of two years, following release from prison, that the authorities must make an affirmative finding of the need for the continuation of this state expense.

Justification

The committee heard considerable testimony concerning the importance of small caseloads for parole agents and of the constant increase in numbers of persons entering prison or being released on parole. Reports were submitted indicating the increase in number of hearings conducted by the paroling authorities with individuals *still in prison*. The only interviews held with parolees appear to be with those returned to prison for some violation of law or the conditions of their parole.

There has been no appreciable decrease in the median length of the parole supervision period over the past 15 years although caseloads have seen considerable reduction. It also appears that over 90 percent of California parolees who will violate will do so in less than two years and would not be affected by this legislation. The balance will presumably need and receive only minimal supervision but will still remain a number in the caseload until discharged. The discharge date which ends supervision is determined in the prison before actual release on parole and no existing procedures require review after release from prison. Good behavior in prison is a requirement for release on parole, and it would seem equally desirable that response to better supervision and good behavior in the community be recognized in establishing a date for discharge from custodial control. Such actions are now the exception rather than established procedure.

The adoption of this measure will simply emphasize the importance of a two-year postinstitutional evaluation and will not prevent, *on the basis of verified need*, continued supervision.

The adoption of this measure should result in more effective utilization of the services of parole agents. In order to achieve this result it will be necessary for the present Department of Finance formulae for determining the ratio of parole agents to parolees to be modified. The possible reduction of caseloads, following the two-year evaluation of parolee's adjustment, should *not* result in a proportionate reduction of parole agents since this would continue the high caseloads for the remaining officers. The parolees remaining on parole after this screening present an evaluated need for careful continued supervision.

The new formulae should include parolees under *suspension* since in fact they require parole agents attention for investigating the need for return to prison or alternatively restoration to parole. The present procedure excludes such cases from the caseload formulae.

A second weakness of the present procedure is that no time is authorized for locating parolees under suspension because their whereabouts are unknown. The relocation and return to controlled supervision of such parolees may well provide better protection for the community by preventing additional criminal activity.

A third time factor now excluded from the formulae but demanding a considerable allocation of parole agents time is the prerelease investigation concerning the suitability of the proposed parole plan for a prisoner about to be returned to the community under parole. It would certainly seem that this important function warrants inclusion as a workload factor in the formulae.

Statement of Witnesses

DEPARTMENT OF CORRECTIONS REPORT:* The time served on parole before discharge is about the same for male felons as it was in 1950: 24 months then, as opposed to 25 in 1962. It is considerably longer for women felons than it was in 1950: 21 months then, as opposed to 37 months in 1962.

MR. DUNBAR: Before the Legislature now is the proposal that we classify parolees. Some of them will require special supervision—the closest. Rather than two points of contact per month, we propose nine points of contact. Rather than 30 minutes a month, we propose three hours of contact with one kind of person, a person who has a background of instability which resulted in violence but appears to us now to be all right to be in the community. We find another person, a person who has been a narcotic addict but now is sufficiently recovered for trial in the community. But we know that we are not talking about cure, and we need careful control. And then we found through research that there is another kind of person, a person who will do well if he is given a lot of attention, and we propose to give these persons special supervision. On the other hand, there are those who will do all right with regular supervision. Here we propose five points of contact and $1\frac{3}{4}$ hours a month. *And those that will do well in spite of us or with little attention, we propose only to give them about three-quarters of an hour with a couple of points of contact.* (P. 97) †

DEAN LOHMAN: I served for a time as Chairman of the Illinois Parole and Pardon Board and as Chairman of the Division of Corrections, and I conducted at that time studies through the Division of Research. The findings in those studies are confirmed by studies in other parts of the country, then and since that time. Sixty-five percent—roughly two-thirds of parole violators—will violate within the first 18 months of their release from the penitentiaries, and another 20 percent will violate in the succeeding 18 months. By the end of three years, 85 percent of all those who will violate will have violated and from then on only a sporadic, occasional case occurs through the years. (P. 39) †

Mr. Henson dissents from this recommendation.

* On file, office of chairman.

† Hearing transcript office of the chairman.

A.B. 1482

LEGISLATIVE COUNSEL'S DIGEST

Terms of imprisonments.

Adds Sec. 2943, Pen.C.

Provides that notwithstanding any other provision of law, when any person (other than a person imprisoned under a life sentence) has been released on parole from the state prison, and has been on parole continuously for two years since release from confinement, the Adult Authority, in the case of a male prisoner, and the Board of Trustees of the California Institution for Women, in the case of a female prisoner, shall, within 30 days, determine whether or not, by the standard of his rehabilitation, such person's term of imprisonment shall terminate on the expiration of such 30-day period.

Provides that the authority or board shall make a written record of its determination and transmit a copy thereof to the parolee.

An act to add Section 2943 to the Penal Code, relating to terms of imprisonment.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2943 is added to the Penal Code, to
- 2 read:
- 3 2943. Notwithstanding any other provision of law, when
- 4 any person (other than a person imprisoned under a life sen-
- 5 tence) has been released on parole from the state prison, and
- 6 has been on parole continuously for two years since release
- 7 from confinement, the Adult Authority, in the case of a male
- 8 prisoner, and the Board of Trustees of the California Institu-
- 9 tion for Women, in the case of a female prisoner, shall, within
- 10 30 days, determine whether or not, by the standard of his re-
- 11 habilitation, such person's term of imprisonment shall termi-
- 12 nate on the expiration of such 30-day period. The authority
- 13 or board shall make a written record of its determination and
- 14 transmit a copy thereof to the parolee. If the authority or
- 15 board so determines that such person's term shall be termi-
- 16 nated, he shall be deemed completely discharged at the end of
- 17 such 30-day period.

DEPARTMENT OF CORRECTIONS
Sacramento, November 5, 1964

MR. A. LAMONT SMITH, *Consultant*
California Legislature
Assembly Committee on Criminal Procedure
State Capitol, Room 5159
Sacramento, California

Dear Mr. Smith:

On October 20, Mr. Dunbar discussed your memo of August 24 with you and me, and reviewed the purpose for your request of data on male felon parolees whose sentence had been suspended or cancelled by the Adult Authority.

We have studied the male felons released to parole during 1958 and 1959. Of the men paroled during:

Suspended or canceled	1958	1959
Number of men paroled.....	3,739	5,751
Number who were suspended or canceled from active parole by December 31:		
1962.....	1,863	
1963.....		3,034
Percent of suspended or canceled to total paroled.....	49.8	52.8

A study of the time from parole to suspension or cancellation indicates:

Of those paroled in 1958 who were suspended—

50 percent had been suspended by the 9th month after parole

90 percent had been suspended by the 24th month after parole

Of those paroled in 1959 who were suspended—

50 percent were suspended by the 11th month

90 percent were suspended by the 23rd month

Your telephone call on October 29 requested some information on the number and percent of men on active parole after a certain lapse of time.

Of the 1958 parolees:

3,119 men, or 83.4 percent, were on active parole as of 12-31-58

1,899 men, or 50.8 percent, were on active parole as of 12-31-59

Considering this line of thought, the following table indicates the number and percent on parole at the end of each calendar year after the year of parole.

Months after parole	Men				Women			
	1958 paroles		1959 paroles		1958 paroles		1959 paroles	
	Still on parole	Percent on parole	Still on parole	Percent on parole	Still on parole	Percent on parole	Still on parole	Percent on parole
Total paroled.....	3,379	-----	5,751	-----	320	-----	359	-----
0-12.....	3,119	83.4	4,626	80.4	265	82.8	280	78.0
12-24.....	1,899	50.8	2,987	51.9	176	55.0	186	51.8
24-36.....	745	19.9	1,099	19.1	125	30.1	132	36.8
36-48.....	188	5.0	270	4.7	68	21.3	79	22.0
48-60.....	99	2.6	109	1.9	29	9.1	38	10.6

If we can be of further service, please do not hesitate to call us.

WALTER DUNBAR
Director of Corrections

By: Marie Vida Ryan
Statistician

DEPARTMENT OF THE YOUTH AUTHORITY
Sacramento, November 13, 1964

HONORABLE GORDON H. WINTON, JR.
*Chairman, Assembly Interim Committee on
Criminal Procedure
Room 5159, State Capitol
Sacramento, California 95814*

Attention: Dr. A. LaMont Smith, Consultant

Dear Assemblyman Winton:

Dr. A. LaMont Smith, consultant to your committee, has asked the following questions:

1. What section of the Welfare and Institutions Code provides for a two-year examination of Youth Authority cases?
2. Why did the Youth Authority change its policy from a two-year review to an 18-month review?
3. How was this change implemented?

1. Section 1764 of the Welfare and Institutions Code provides, as follows:

“Failure of the Authority to examine a person committed to it, or to re-examine him within two years of a previous examination, shall not of itself entitle the person to discharge from the control of the Authority, but shall entitle him to petition the superior court of the county from which he was committed for an order of discharge, and the court shall discharge him unless the Authority satisfies the court of the need for further control.”

2. Early in 1960 in studying the parole figures prepared by our Division of Research and Statistics, we found that the median time for the discharge of nonviolators appeared to be about 27 months. This indicated to us that these cases might just as well have been discharged at the end of the required two-year period rather than after 27 months. These cases were of no further danger to the public and were the very best cases of youths committed to the Authority. We reasoned that if we could reduce the number of months on parole for these exceptional cases, we would be able to cut down on the number of parole agents needed to supervise our caseload that was increasing at that time, with no harmful results to anyone.

Since the time we adopted a new policy of an 18-month review instead of a 24-month review, we have reduced the median number of months that nonviolators were on parole from 27.5 months to 22.3 months, which is a little over 5 months. When we consider that in the calendar year 1963, 2,869 nonviolators were discharged, this means over 14,000 months of supervision of this type of case.

3. Section 60 of our Board Policy Manual provides, as follows:

"Length of Parole, 18-Month Summary. All releases on parole will automatically carry a continuance of 18 months from the date of release on parole for an 18-month summary, or to expiration of commitment unless the Board enters its order calling for a report on employment, foster home report, report on missing parolee, etc. at an earlier date. If the case is considered by the Board in the interim and there has been a suspension, revocation or restoration to parole or an order approving a change in parole plans, foster home report or missing parolee report, the next 18-month summary will not be due until 18 months from the date of the order."

If we can be of further assistance to your committee at any time, please let me know.

Sincerely,
HEMAN G. STARK, Director

Committee Recommended Legislation—A.B. 1483

Purpose

Require recording of the recommendation on the issue of parole as made by hearing representatives to permit evaluation of their utilization by the paroling authorities.

Justification

The concept of using case hearing representatives was advocated in the 1957 report of the Governor's Special Study Commission on Correctional Facilities and Services (p. 43). At that time the wisdom of continued expansion of the membership of the paroling authorities to meet the demands of increased workload by virtue of the increasing population of the state was questioned. The precedent in the operation of other administrative boards seemed to be in the direction of delegation, subject to review, of some of the workload to hearing representatives and retention of a smaller board for establishment of policies. The paroling authority for men has been increased from three part-time members to seven full-time members plus eight hearing representatives. The board for adult women remains at five part-time members but the number of days available for conducting hearings has been increased. The authority for youthful offenders has been increased from three to six members, plus five hearing representatives.

The actual functioning of the hearing representatives is something less than that of a full member with voting powers. The statutory authority (Section 5076.1 Penal Code and Section 1711.5 of the Welfare and Institutions Code) for making *recommendations* is apparently not as clear in intent as is Section 1203 of the Penal Code with respect to recommendations made by probation officers to the courts.

"... The probation officer . . . must make a written report to the court . . . and must accompany said report with his written recommendations, including his recommendations as to the granting or withholding of probation to the defendant and as to the conditions of probation if it shall be granted . . ."

The current administrative bulletin of the Department of Corrections, No. 64-92, in Attachment 1, Paragraph E, states "Recommendations made by representative panels will not be recorded as such in the minutes of the Adult Authority . . ." A review of the minute actions of the Adult Authority, therefore, would not reveal the extent to which *recommendations* of hearing representatives "for" or "against" parole are being accepted by the paroling authorities.

The former chairman of the Adult Authority, as noted in his statement which follows, requested guidance in this regard from the Legislature. The proposed legislation is based on long established practice with respect to recommendations of probation officers. The statute requires a "yes or no" recommendation regarding probation and the degree of acceptance or rejection by the courts is annually published in the report *Delinquency and Probation in California*, compiled by the Bureau of Criminal Statistics of the California Department of Justice. The proposed legislation does not expand the voting power of the hearing representatives. It only insures that there can be a legislative audit

of the value of their services as seen by the reaction of the paroling authorities. (See AB 1485, which provides for mandatory reports to the Bureau of Criminal Statistics by the paroling authorities for this purpose.)

Selected Statements by Hearing Witnesses

MR. BREWER: As to the question of the use of the Adult Authority representative, I might state that first, in an agency task force report which was published December 28, 1962, a recommendation was made that approximately 80 percent of the Adult Authority workload could be handled by case hearing representatives. Almost simultaneously, a report of an Assembly Committee on Institutional Costs, which, I believe, was chaired by Assemblyman Crown, with a subcommittee by Assemblyman Petris, questioned the extent and manner in which the Adult Authority was using representatives at that time. The procedure generally at that time was for one hearing representative to meet with one member of the Adult Authority as cases were considered, and thereafter a second member of the Adult Authority would review the action of the hearing representative and countersign it. I have already indicated that similar questions were raised when the Adult Authority requested budgeting for additional representative positions.

It is obvious that if we are to plan ahead, we must have clarification as to the intent of the Legislature in establishing the case hearing representative category. (P. 81.)*

* Hearing transcript, office of the chairman.

A.B. 1483

LEGISLATIVE COUNSEL'S DIGEST

Parole.

Amends Secs. 3325, 5076.1, Pen.C.

Specifies that recommendation by case hearing representative to the Adult Authority or Board of Trustees, California Institution for Women, that a prisoner be granted or be denied parole shall be in writing.

An act to amend Sections 3325 and 5076.1 of the Penal Code, relating to parole.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3325 of the Penal Code is amended to
2 read:

3 3325. The board shall have such powers, perform such
4 duties and exercise such functions, respecting such females
5 convicted of felonies as the Adult Authority exercises over
6 male prisoners, and the superintendent shall, subject to the
7 control of the director, have such powers, perform such duties
8 and exercise such functions, respecting such females convicted
9 of felonies, as the wardens now exercise over male prisoners.

10 The Board of Trustees of the California Institution for
11 Women may advise the Director of Corrections in the estab-
12 lishment of general policies for the operation and maintenance
13 of the California Institution for Women and for the establish-
14 ment of general policies for the care, custody, treatment, train-
15 ing, discipline and employment of those confined in the insti-
16 tution.

17 The director may advise the Board of Trustees of the Cali-
18 fornia Institution for Women in the establishment of general
19 policies relating to the functions and duties of the Board of
20 Trustees of the California Institution for Women.

21 The director shall attend at least once annually a regular
22 meeting of the board of trustees while the board is fixing
23 sentences and release dates.

24 The board may employ case hearing representatives who
25 shall participate with the board in the hearing of cases relat-
26 ing to term fixing and paroles. The case hearing representative
27 assigned to participate in the hearing of any such case shall
28 prepare a case study and evaluation which he shall submit to
29 the board. *A recommendation by a case hearing representative*
30 *that a prisoner be granted or be denied parole shall be in writ-*
31 *ing.*

32 SEC. 2. Section 5076.1 of said code is amended to read:

33 5076.1. The Adult Authority shall meet at each of the state
34 prisons at such times as may be necessary for a full and com-
35 plete study of the cases of all prisoners whose terms of im-
36 prisonment are to be determined by it or whose applications
37 for parole come before it. Other times and places of meeting
38 may also be fixed by the Adult Authority. Each member of the

1 Adult Authority shall receive his actual necessary traveling
2 expenses incurred in the performance of his official duties.

3 The Adult Authority may meet and transact business in
4 panels. Each Adult Authority panel shall consist of at least
5 two members of the authority. Two members of the Adult
6 Authority shall constitute a quorum for the transaction of
7 business. No action shall be valid unless concurred in by a
8 majority vote of the members present.

9 The Adult Authority may employ case-hearing representa-
10 tives to whom it may assign appropriate duties, including that
11 of hearing cases and making recommendations to the Adult
12 Authority. Such recommendations shall be made in accordance
13 with policies established by a majority of the total membership
14 of the Adult Authority. Such policies may provide that the
15 recommendations of a case-hearing representative or panel of
16 case-hearing representatives shall be either final or subject to
17 review by a panel of the members of the Adult Authority, ex-
18 cept that no recommendation of a case-hearing representative
19 or representatives for the granting or denial of a parole, can-
20 cellation or revocation of a parole, the determination or rede-
21 termination of a term of imprisonment, or the discharge from
22 a commitment, shall become final until approved by a panel of
23 members of the Adult Authority. *A recommendation by a case*
24 *hearing representative that a prisoner be granted or be denied*
25 *parole shall be in writing.*

Committee Recommended Legislation—A.B. 1484

Purpose

Provide the paroling authorities with a recommendation from the Director of Corrections through the institutional staff concerning their evaluation as to the readiness of a prisoner for release on parole.

Justification

The Youth Authority has for years requested and received evaluative reports on the issue of parole for wards in the Department of Corrections institutions. Historically, this procedure has not been viewed with favor by the Adult Authority with respect to their receiving similar reports. The parole field agents that investigate, evaluate and recommend approval of the proposed release plans for parolees were administratively placed by legislative action under the Director of Corrections in 1957. Such action was taken following study and recommendation by the Governor's special study commission on correctional facilities and services (p. 44). It appears equally desirable that institutional staff be similarly reporting their evaluation of an individual to the paroling authorities in advance of release. In order that such recommendations can be evaluated, the reaction of the paroling authorities should be recorded.

The Legislature should also receive from the Board of Corrections pursuant to their statutory responsibility recommendation concerning needed statutory revisions. Particular attention should be directed to the net effect of mandatory restrictions on the use of parole procedures as would be possible by the adoption of this measure.

Selected Statements by Hearing Witnesses

MR. BREWER: I feel that good communication is essential in this instance to the intelligent exercise of this judgment by the Adult Authority in all matters concerning parole, because if we don't have a good thorough understanding of what parole consists of in California, we cannot very intelligently make decision as to who should or should not be released to that kind of supervision. (p. 84.)*

MR. DUNBAR: Another area in which we should do more in terms of progress is knowing more about the plan of release. If the man is coming before the Parole Board, we should have a specific plan of where he is going, what work he will be doing, whom he will be associating with and the like. We are not doing this now except on a selected basis. Its value was already demonstrated to us in terms of result. We go out there and find out who he is going to be associating with in terms of family and relationships, what kind of a job he will have and what kind of a community he will be residing in, and this is the really important information for decision making as to release and under what kind of conditions as set by the Parole Board. Now you see, we recognize this as a problem. We have been doing something about it on a selected basis for addicts and it is paying off. I recommend that we extend this and provide more meaningful information to the Parole

* Hearing transcript, office of the chairman.

Board. More than this, when a man does come up, I think we should do something in addition, and this is the sixth point.

The people who know the inmates best through the years are the institutional staff under the warden's direction, and I think it is about time that we get our heads together and that we reach conclusions about this man and that we make the warden and his staff responsible for evaluating the man and making a recommendation to the Parole Board as to how he is now in attitude and behavior and whether he is ready for release or not. We are not doing this now, and I think we should.

(p. 92.)*

* Hearing transcript, office of the chairman.

A.B. 1484

LEGISLATIVE COUNSEL'S DIGEST

Parole of prisoners.

Amends Secs. 3042, 5077, Pen.C.

Requires Adult Authority to advise Director of Corrections of meeting to consider granting of parole to prisoner at least 30 days before meeting.

Provides that within the 30 days before a meeting of the Adult Authority to consider the granting of a parole to any prisoner, the director shall submit to the authority his written recommendation on such matter.

The director shall, twice each year, prepare and submit to the Board of Corrections a study indicating the number of prisoners confined in the state prisons who would be suitable subjects for parole but for a statute or statutes rendering them ineligible for parole and indicating the particular statutes having such effect and the number of such prisoners affected by each such statute.

An act to amend Sections 3042 and 5077 of the Penal Code, relating to parole of prisoners.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3042 of the Penal Code is amended
2 to read:

3 3042. At least 30 days before the Adult Authority shall
4 meet to consider the granting of a parole to any prisoner the
5 authority shall send written notice thereof to the Director of
6 Corrections and to each of the following persons who has made
7 request therefor: the judge of the superior court before whom
8 the prisoner was tried and convicted, the attorney for the
9 defendant and the district attorney and the sheriff of the
10 county from which the prisoner was sentenced.

11 SEC. 2. Section 5077 of said code is amended to read:

12 5077. The Director of Corrections shall cause each person
13 committed to a state prison to be examined and studied. This
14 includes the investigation of all pertinent circumstances of his
15 life and the antecedents of the violation of law because of
16 which he has been committed to prison. Any person may be
17 reexamined to determine whether existing orders and disposi-
18 tions should be modified or continued in force.

19 Upon the basis of the examination and study, the Director
20 of Corrections shall classify prisoners and determine the prison
21 in which the prisoners shall be confined.

22 The granting and revocation of parole and the fixing of sen-
23 tences shall be determined by the Adult Authority; provided,
24 that the Adult Authority or one member thereof shall inter-
25 view each prisoner at least once before the Adult Authority
26 determines his sentence.

27 *Within the 30 days before a meeting of the Adult Authority*
28 *to consider the granting of a parole to any prisoner, the di-*

1 rector shall submit to the authority his written recommenda-
2 tion on such matter.

3 The director shall, twice each year, prepare and submit to the
4 Board of Corrections a study indicating the number of prison-
5 ers confined in the state prisons who would be suitable subjects
6 for parole but for a statute or statutes rendering them ineli-
7 gible for parole and indicating the particular statutes having
8 such effect and the number of such prisoners affected by each
9 such statute.

Committee Recommended Legislation—A. B. 1485

Purpose

Insure availability of statistical data for evaluation of the utilization by paroling authorities of recommendations recorded by their hearing representatives and the staff of the Director of Corrections.

Justification

The Bureau of Criminal Statistics of the California Department of Justice, in their annual report, *Delinquency and Probation in California* publishes a statistical analysis of the extent to which the courts follow the recommendations made by county probation officers. Such reports must be made in writing and specifically state, in accordance with Section 1203 of the *Penal Code*, a recommendation concerning the granting or denial of probation.

In 1963 it was reported,

“Of the 22,624 total dispositions during 1962, 1,388 had no recommendation or the recommendation was not stated, thus leaving a total of 21,236 cases where there was a definite recommendation either for or against probation. Of this total, the probation officers recommended probation in 41.0 percent of the cases. Some counties tended to recommend more probation than others, and of the counties where there were 50 or more total recommendations, the highest percentage of favorable recommendations was in Merced County (55 percent) and the lowest percentage was in San Joaquin County (18 percent). *Of the total defendants recommended for probation, 96.5 percent were subsequently granted probation by the court.* This left only 3.5 percent of the defendants who were denied probation in face of a favorable recommendation. Of all defendants who were not recommended for probation, 82.6 percent were subsequently denied. Thus, 17.4 percent of the defendants were granted probation in face of a recommendation for denial. These figures continue to point out what has been shown in the past that the judges almost always concur with favorable recommendations for probation, however, in a substantial number of cases they grant probation in spite of a recommendation for denial.”

The last publication of the Department of Corrections concerning parole actions with respect to release of offenders is the report, *California Prisoners, 1960*. It does not contain this information with respect to recommendations of the hearing representatives of the parole authority. In order that the Legislature may have more readily available such data essential to evaluating the budgetary implications of the paroling authorities or department's procedures, this measure is considered desirable. It is limited to a two-year study and the extent to which the data is publicized or made available to the Legislature will depend upon the resources of the Bureau of Criminal Statistics. This measure simply mandates the department and paroling authorities to submit workload data to an agency whose primary function is concerned with regular issuance of statistical reports.

A.B. 1485**LEGISLATIVE COUNSEL'S DIGEST****Adult Authority.****Adds Sec. 5076.2, Pen.C.**

Provides that to assist the Bureau of Criminal Statistics in performance of its duties the Adult Authority shall, at least annually, report to the bureau, in such form as the bureau may prescribe, its actions in parole matters and the recommendations of case hearing representatives and of the Director of Corrections in such matters.

In effect until Jan. 1, 1968.

An act to add Section 5076.2 to the Penal Code, relating to the Adult Authority.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5076.2 is added to the Penal Code, to
- 2 read:
- 3 5076.2. To assist the Bureau of Criminal Statistics in the
- 4 performance of its duties under Section 13012, the Adult
- 5 Authority shall, at least annually, report to the bureau, in such
- 6 form as the bureau may prescribe, its actions in parole matters
- 7 and the recommendations of case hearing representatives and
- 8 of the Director of Corrections in such matters.
- 9 This section shall remain in effect until January 1, 1968,
- 10 and shall have no force or effect after that date.

Commentary: It is intended that pursuant to Section 3325 of the Penal Code this measure will equally apply to the Board of Trustees of the California Institution for Women.

Committee Recommended Legislation—A.B. 1486

Purpose

Authorize the Bureau of Criminal Statistics to collect data concerning the administration of county parole and the Work Furlough Law.

Justification

The Legislature in 1957 changed the composition of the County Board of Parole in the belief that this might result in expanding its proper use. No specific responsibility has been fixed upon any agency to accumulate data concerning county parole in the same manner as county probation. The Bureau of Criminal Statistics would be an appropriate agency to undertake this responsibility pursuant to Legislative direction. A similar problem is also present in evaluating the usefulness of the Work Furlough Rehabilitation Law and the extent of its utilization.

In 1961 administration of the Department of Youth Authority and Department of Corrections was placed in a new unit, the Youth and Adult Corrections Agency. It is therefore consistent to include the supervisory agency along with its subordinate units.

In the 1963 Regular Session Senate Bill 1394 was introduced to accomplish this purpose. After approval by the Senate and by this committee it was also approved by the Assembly Committee on Ways and Means being given a "do pass" recommendation. It was on the second reading file for passage when the Legislature adjourned.

Recommendation

There was no opposition to this measure and the need still exists for regular accumulation of the facts concerning these two important elements of the correctional system. The present bill is identical to the 1963 S.B. 1394 and is recommended for adoption.

A.B. 1486

LEGISLATIVE COUNSEL'S DIGEST

Recordkeeping of public officials.

Amends Sec. 13020, Pen.C.

Specifies that Youth and Adult Corrections Agency, county boards of parole commissioners, and work furlough administrators are among the public agencies and others required to maintain records needed for correct reporting of statistical data required by Bureau of Criminal Statistics, to report such data to bureau as prescribed by Attorney General, and to give Attorney General or agent access to such data for purposes of law relating to criminal statistics.

An act to amend Section 13020 of the Penal Code, relating to recordkeeping and reporting by public agencies and officials.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13020 of the Penal Code is amended to
2 read:

3 13020. It shall be the duty of every constable, city marshal,
4 chief of police, railroad and steamship police, sheriff, coroner,
5 district attorney, city attorney and city prosecutor having
6 criminal jurisdiction, probation officer, *county board of parole*
7 *commissioners, work furlough administrator*, the Department
8 of Justice, *Youth and Adult Corrections Agency*, Department
9 of Corrections, Adult Authority, Department of the Youth
10 Authority, and the Board of Trustees of the California Insti-
11 tution for Women, Department of Mental Hygiene, Depart-
12 ment of Public Health, Department of Social Welfare, State
13 Fire Marshal, Liquor Control Administrator, and every other
14 person or agency dealing with crimes or criminals or with de-
15 linquency or delinquents, when requested by the Attorney
16 General:

17 (a) To install and maintain records needed for the correct
18 reporting of statistical data required by the bureau;

19 (b) To report statistical data to the bureau at such times
20 and in such manner as the Attorney General prescribes;

21 (c) To give to the Attorney General, or his accredited agent,
22 access to statistical data for the purpose of carrying out the
23 provisions of this title.



CHAPTER III

TOPICAL COMMENTARIES



CHAPTER III

TOPICAL COMMENTARIES

The special consultant to the Committee on Parole and Probation has prepared a series of topical commentaries dealing with various problems in the field. These commentaries are analyses of various lengths and incorporate both testimony presented to the committee and additional information developed by Dr. Smith and the Committee staff. For the sake of economy and as in Chapter I of this report, these commentaries are not reprinted here. However, they are available through the office of the chairman of the committee.

The subjects of the commentaries are:

- A. Laws governing eligibility for parole.
- B. Laws governing sale of products of correctional industries.
- C. Contracts with private agencies for operation of "halfway houses" and to provide counseling services for discharged prisoners.
- D. State action to reinforce local probation services and programs.
- E. Employment for paroled prisoners—men and women.
- F. Camps and employment on public works for parolees.
- G. State-sponsored institute on sentencing practices and procedures.
- H. Recall of commitment pursuant to Penal Code, Section 1168.
- I. Restoration of civil rights for parolees.



APPENDICES



APPENDIX A

STATE OF CALIFORNIA, OFFICE OF LEGISLATIVE COUNSEL
Sacramento, August 24, 1964

HONORABLE GORDON H. WINTON, JR.
Shafter Building, Room 10
Merced, California

ELIGIBILITY FOR PROBATION AND FOR PAROLE—No. 6773

Dear Mr. Winton:

Pursuant to your request we have prepared the following list and discussions of statutes limiting eligibility for probation and for parole.

I. LIMITATIONS ON ELIGIBILITY FOR PROBATION

Although not strictly a matter of eligibility, we have included under "C" those provisions we are aware of that require that imprisonment be a condition of probation for certain offenses.

This compilation includes the basic restrictions on eligibility found in Section 1203 of the Penal Code, and we think that it includes any other important restriction on eligibility, such as the restrictions in the narcotics laws. We had to rely, for the most part, on indexes to lead us to lesser restrictions, and as indexes are not perfect, this compilation cannot be guaranteed to be complete.

A. *Absolute Prohibitions* (as provided by Section 1203 of the Penal Code, except as otherwise indicated)

- (1) Any person convicted of burglary with explosives, rape with force or violence, murder, assault with intent to commit murder, attempt to commit murder, train wrecking, kidnaping, escape from a state prison, conspiracy to commit any one or more of the aforementioned felonies, and who at the time of the perpetration of said crime or any of them or at the time of his arrest was himself armed with a deadly weapon (unless at the time he had a lawful right to carry the same).
- (2) A defendant who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he was convicted.
- (3) A defendant who, in the perpetration of the crime of which he was convicted, wilfully inflicted great bodily injury or torture.
- (4) A defendant twice previously convicted of a felony in this state or twice previously convicted in any other place or places of public offenses which would have been felonies if committed in this state.
- (5) A defendant convicted of the crime of burglary with explosives, rape with force or violence, murder, attempt to commit murder,

assault with intent to commit murder, train wrecking, extortion, kidnaping, escape from a state prison, violation of Sections 286 (sodomy), 288 (lewd act on child) or 288a (oral copulation) of the Penal Code, or conspiracy to commit any one or more of the aforesaid felonies, who has been previously convicted of a felony in this state or previously convicted in any other place of a public offense which would have been a felony if committed in this state.

- (6) A defendant previously convicted of a felony in this state or convicted in any other place of a public offense which would have been a felony if committed in this state if at the time of the perpetration of said previous offense or at the time of his arrest for said previous offense he was himself armed with a deadly weapon (unless at the time he had a lawful right to carry the same) or he personally used or attempted to use a deadly weapon upon a human being in connection with the perpetration of said previous offense or in the perpetration of said previous offense he wilfully inflicted great bodily injury or torture.
- (7) A public official or peace officer of the state, county, city, city and county, or other political subdivision who, in the discharge of the duties of his public office or employment, accepted or gave or offered to accept or give any bribe or embezzled public money or was guilty of extortion.
- (8) (Sec. 11715.6, H. & S.C.)
 - (a) Any person who was of the age of 21 years or over at the time of the commission of the offense, who is convicted for the first time of selling, furnishing, administering or giving a narcotic other than marijuana to a minor or inducing a minor to use such a narcotic in violation of law.
 - (b) If prior felony conviction under Div. 10, H. & S.C. (re narcotics) or conviction under laws of the United States or other state if punishable as felony under Division 10, no probation may be granted for violation of:
 - Sec. 11500, H. & S.C. Possession of narcotic other than marijuana.
 - Sec. 11500.5, H. & S.C. Possession for sale of narcotic other than marijuana.
 - Sec. 11501, H. & S.C. Sale, administering, importation, transportation, furnishing, giving away, etc., narcotic other than marijuana.
 - Sec. 11502, H. & S.C. Person 21 or over soliciting, encouraging, etc., a minor knowingly to violate certain more serious provisions of narcotics laws or provision re use; person 21 or over hiring, employing, or using minor knowingly and unlawfully to transport, carry, sell, give away, prepare for sale, or peddle narcotic other than marijuana; any person 21 or over selling, furnishing, administering, giving, or offering to sell,

furnish, administer, or give narcotic other than marijuana to a minor.

Sec. 11503, H. & S.C. Agreeing to sell, etc., narcotic and delivering something else.

Sec. 11530, H. & S.C. Growing, etc., possessing marijuana.

Sec. 11530.5, H. & S.C. Possession for sale of marijuana.

Sec. 11531, H. & S.C. Selling transporting, etc., marijuana.

Sec. 11532, H. & S.C. Person 21 or over hiring, employing, or using minor in unlawfully transporting, carrying, selling, giving away, preparing for, or peddling marijuana, or unlawfully selling, furnishing, administering, giving, offering to sell, furnish, administer, or give marijuana to a minor, or inducing minor to use marijuana in violation of law.

Sec. 11540, H. & S.C. Growing, harvesting, drying, processing peyote.

Sec. 11557, H. & S.C. Opening or maintaining a place for the purpose of unlawfully selling, giving away, or using a narcotic.

Sec. 11715, H. & S.C. Forging or altering prescription, or issuing or utilizing altered prescription, or issuing or utilizing prescription bearing a forged or fictitious prescription, or obtaining a narcotic by forged, fictitious, or altered prescription, or having possession of any narcotic so obtained.

(9) (Sec. 654.3, Pen.C.) Violation of Sec. 654.1, Pen.C., prohibiting sale, etc., of transportation by carrier not having certificate or permit from regulatory agency, if three prior convictions.

B. *Qualified Prohibitions* (Sec. 1203, Pen.C.)

(1) It is the policy of the state that, except in unusual cases where the interest of justice demands a departure from such policy, probation shall not be granted to any person who is convicted of robbery, burglary, or arson and who:

- (a) At the time of the perpetration of said crime or any of them or at the time of his arrest was himself armed with a deadly weapon (unless at the time he had a lawful right to carry same); or
- (b) Used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he was convicted; or
- (c) In the perpetration of the crime of which he was convicted willfully inflicted great bodily injury or torture; or
- (d) Has previously been convicted of a felony in this state or of an offense in another place which would be a felony in this state.

C. Jail Term as Condition of Probation

- (1) Sec. 11721, H. & S.C. It must be a condition of probation for the offense of being unlawfully under the influence of or unlawfully using narcotics that the offender be confined in the county jail for at least 90 days.
- (2) Sec. 14601, Veh.C. For second or subsequent conviction within seven years of offense of driving a motor vehicle knowing that license is suspended or revoked, it must be a condition of probation that defendant be confined in jail for at least five days.
- (3) Sec. 23102, Veh.C. For second or subsequent offense within seven years of misdemeanor drunk driving, it must be a condition of probation that defendant be confined in jail for five days to one year (and pay a fine as prescribed).

II. RESTRICTIONS ON PAROLE

NOTE: This discussion is limited to parole from state prisons. It does not deal with parole from the Youth Authority institutions or "parole" or its equivalent from institutions in which the person was confined under civil commitment. It does not deal with parole of misdemeanants from local facilities, which is largely a matter subject to local control (see Secs. 3075-3083, Pen.C.).

The basic rules provide for eligibility as follows:

- (1) Term of years with minimum not exceeding one year—eligibility after minimum served.
- (2) Term of years with minimum exceeding one year—eligibility after one-third of minimum served.
- (3) No prisoner serving two or more consecutive sentences may be paroled before two years (Sec. 3043, Pen.C.).
- (4) Life term—eligibility after seven years.

However, as indicated below, there are many qualifications.

A. Minimum term does not exceed one year.

Eligible for parole after minimum term served (Sec. 3049, Pen.C.). Note qualification in Sec. 3043, Penal Code, re two or more consecutive terms, previously referred to.

B. Minimum term of imprisonment is less than life and exceeds one year.

- (1) Generally, the prisoner is eligible for parole after serving one-third of the minimum (Sec. 3049, Pen.C.). (Note qualification in Sec. 3043, Pen.C., re prisoner serving consecutive terms, previously referred to.) However,
- (2) If the prisoner was serving a sentence on December 31, 1947, he became eligible for parole after one-half of the minimum term, "with benefit of credits," but in no case until he served one calendar year.
- (3) For numerous narcotics offenses, more than a third must be served before the prisoner is eligible for parole. These are:

- (a) Unlawful possession of narcotic other than marijuana. Eligible for parole after minimum served. (Sec. 11500, H. & S.C.) (Minimum is variously 2, 5 or 15 years.)
- (b) Possession for sale of narcotic other than marijuana (Sec. 11500.5, H. & S.C.)
 - (i) Where no prior felony narcotics conviction,* prisoner eligible for parole after $2\frac{1}{2}$ years, which is one-half of minimum.
 - (ii) Where one prior felony narcotics conviction, prisoner eligible for parole after six years, which is three-fifths of minimum.
 - (iii) Where two or more such priors, prisoner eligible for parole after minimum (15 years) is served.
- (c) Sale, other unlawful transfer, transportation, importation, of narcotic other than marijuana (Sec. 11501, H. & S.C.)
 - (i) Where no prior felony narcotics conviction, prisoner eligible for parole after three years, which is three-fifths of minimum.
 - (ii) Where one or more such priors, prisoner eligible for parole after serving minimum (variously 10 or 15 years).
- (d) Person 21 years or over in voluntary manner soliciting, inducing, encouraging, or intimidating minor with intent that minor shall knowingly violate, with respect to narcotics other than marijuana, any of certain narcotics statutes, sale to minor, use of minor, etc. (Sec. 11502, H. & S.C.)
 - (i) Where no prior felony narcotics conviction, prisoner is eligible for parole after five years, which is one-half of minimum.
 - (ii) Where one or more such priors, prisoner eligible for parole after minimum is served (variously 10 or 15 years).
- (e) Unlawful possession, planting, cultivating, harvesting, drying, processing, marijuana (Sec. 11530, H. & S.C.)
 - (i) Prisoner eligible for parole after minimum served (variously one, two, or five years).
- (f) Possession for sale of marijuana (Sec. 11530.5, H & S.C.)
 - (i) No prior felony narcotics convictions. Prisoner eligible for parole after minimum served (two years).
 - (ii) One such prior, prisoner eligible for parole after three years (three-fifths of minimum).
 - (iii) Two or more such priors, prisoner eligible for parole after six years (three-fifths of minimum).

* Under these narcotics laws, prior "felony" convictions are convictions for offenses which could have been punished as felonies though, in the particular instance, they were not so punished (Secs. 11504, 11533, H. & S.C.).

- (g) Selling, transporting, importing, etc., marijuana (Sec. 11531, H. & S.C.).
 - (i) No prior felony narcotics conviction. Prisoner eligible for parole after three years, which is three-fifths of minimum.
 - (ii) One or more such priors, prisoner eligible for parole after minimum served (variously 5 or 10 years).
- (h) Selling marijuana to minor, using minor in marijuana offense, etc. (Sec. 11532, H. & S.C.). (Offender 21 or over.)
 - (i) No prior felony narcotics convictions. Prisoner eligible for parole after five years, which is one-half of minimum.
 - (ii) One or more such priors. Prisoner eligible for parole after serving minimum (variously 10 or 15 years).
- (4) Escape by force or violence from state prison, prison camp, custody of officer while in transit to state prison (Secs. 3044, 4530, Pen.C.). Prisoner eligible for parole after serving two years from date of return to state prison following convictions. Minimum term for offense is one year, but does not commence until time when prisoner would otherwise have been discharged for previous offense.

C. Sentence of Life Imprisonment

- (1) Basic rule: Prisoner eligible for parole after seven years (Sec. 3046, Pen.C.).
- (2) Assault by life-term prisoner where victim does not die within year and a day (death penalty is alternative). Prisoner eligible for parole after nine years (Sec. 4500, Pen.C.).
- (3) Habitual criminals. Depending on whether prisoner has two or three priors, and whether received at a state prison before or after January 1, 1948, and whether under Section 644, Penal Code, as it read before or after 1945 amendment, no parole before 7, 9, 12, 15, or 20 years (Secs. 3047, 3047.5, 3048, 3048.5, 3050, 3051, Pen.C.).
- (4) Certain life terms are "without possibility of parole." They are:
 - (i) Kidnapping for ransom, robbery, or reward, with bodily harm (alternative is death penalty) (Sec. 209, Pen.C.).
 - (ii) Attempted train wrecking (Sec. 218, Pen.C.).
 - (iii) Train wrecking, where no bodily harm (alternative is death penalty) (Sec. 219, Pen.C.).

Very truly yours,

A. C. MORRISON
Legislative Counsel

By TERRY L. BAUM
Deputy Legislative Counsel

APPENDIX B

COUNTY OF ORANGE, PROBATION DEPARTMENT
Santa Ana, August 26, 1964

*Subject: Work Furlough Program Annual
Report July 1963 to June 30, 1964.*

THE HONORABLE BOARD OF SUPERVISORS
*Courthouse
Santa Ana, California*

Gentlemen:

The second annual report of the Work Furlough Administrator is submitted herewith.

While a two-year experience is not of sufficient length to make long-range predictions it appears that our comments in the first annual report regarding the effectiveness of Work Furlough may have some validity—particularly in the areas of tax savings where work furlough prisoners pay part of the cost of their maintenance; the social and economic advantages of keeping the families of these prisoners off the relief rolls of the county; and the continuity of employment which is achieved so that these men, when released from custody, will have gainful employment immediately available.

Many inquiries from other jurisdictions have been answered regarding the operation of work furlough in this county and your administrator has been privileged to speak before two statewide groups—the Municipal Court Judges Association and at the County Government Institute sponsored by the County Supervisors Association of California, discussing this county's experience with work furlough.

From an administrative standpoint, the success of this program is due to the fine relationship that exists between the three agencies involved—the courts, the sheriff's office and the probation department.

Respectfully submitted,

DAVID R. McMILLAN
*County Probation Officer and
Work Furlough Administrator*

To: David R. McMillan
Work Furlough Administrator
From: David DeYoung
Supervising Probation Officer
Date: August 17, 1964
Subject: Work Furlough Program
Second Annual Report
July 1, 1963, to June 30, 1964

This report is a summary of our second year's experience with work furlough. It also includes significant information on the full two years' experience with this program, which officially began operation on July 1, 1962. The legal basis for work furlough is Section 1208 of the Penal Code and Section 12.084 of the codified ordinances of the County of Orange.

During this second year, 208 defendants, all males, were granted work furlough sentences. The municipal courts sentenced 137, compared with 71 by the superior courts. Ninety-seven out of 208 served on work furlough as a condition of informal probation, 95 were on formal probation, 11 were placed for violation of probation and 5 were direct commitments. The commitments ranged from 15 days to one year, with an average of 94 days. The average monthly caseload was 38, with 41 active cases at the close of the year.

Investigations

The assigned officers, one full-time and one on a half-time basis, completed 141 Work Furlough Officer's Reports. Our adult investigation staff completed many other work furlough investigations as part of regular presentence reports.

Offenses

As noted in the attached table entitled "Type of Offense," a wide variety of misdemeanor and felony offenders were tried on work furlough, with the most frequent being driving with a suspended or revoked license (42) and drunk driving (34). Narcotics, escapes, and certain sex offenders continue to be exempt from placement at the branch jail and hence from work furlough.

Employment

It can be observed from the attached table, "Type of Employment," that the jobs of the prisoners cover an extensive range of job classifications—from laborers (the most frequent) to the professional categories.

Removed for Violation

The courts removed 11 inmates for violations—9 for using intoxicants, 1 for going to place of residence rather than work, and 1 for committing a new offense (misdemeanor drunk driving). This represented a failure rate of only 5 percent.

Wages and Disbursements

The 208 prisoners worked a combined 9,993 workdays at their places of employment outside of the jail. This was an increase of 140 percent

over the first year's total of 4,167. Their employers transmitted \$172,-565.85 in net wages to the work furlough administrator. The lowest weekly salary was \$25.71 (auto washer) and the highest was \$1,354.72 per month (carpet layer).

The families of the prisoners received \$115,241.25—the largest wage disbursement. The prisoners reimbursed the county in the sum of \$29,913 to pay in part for their own confinement costs. Other wages went to pay the prisoners' preexisting debts (union dues, income taxes, etc.), to pay for the personal expenses of the prisoners (gasoline, tools, work clothes), to pay court fines, to restitution victims, and to inmates upon release from custody.

Operating Costs vs. Financial Savings

In analyzing costs, we are advised by the sheriff's office that the work furlough program has not made it necessary to increase jail staff. There have been no additional jail costs, since the prisoners would have been in confinement anyway. All the costs may then be charged to assigned probation staff. It has been determined that it cost \$13,000 a year to sustain a deputy probation officer. This figure, which includes salary, clerical support, maintenance and operation, and capital outlay, would equal \$19,500 for the 1½ officers.

The financial savings would include \$29,913 for county charges plus \$1,288 for court fines, or a direct saving of \$31,201. It is estimated another \$37,604 was conserved in welfare moneys that would have been paid to 65 families had the prisoners been in straight confinement. The 65 families actually received \$49,746.02 from the prisoners' earnings. Financial savings, including county charges, fines, and what welfare would have expended, equaled \$68,805 as compared with \$19,500 in operating costs. The resultant savings of \$49,305 was a substantial benefit to the taxpayer.

Rehabilitative Advantages

Work furlough was a meaningful and productive experience for almost all of the prisoners—the exception being the 11 violators and a few who were laid off their jobs. Most were able to retain their jobs, their job skills, their work habits, and complete their sentences with gainful employment.

Conclusions

Many of the conclusions stated in our first annual report can be stated with equal or more emphasis today in the light of this additional year's experience.

First of all, work furlough continues to gain momentum as evidenced by the fact that 208 defendants were granted work furlough as compared with 117 the first year—an increase of 78 percent. The number of prisoner workdays was 140 percent higher than the previous year, with a corresponding increase in prisoner earnings. The two-year cumulative totals are set forth in the following table. For the second straight year the taxpayer has substantially benefited because of the work furlough program, with financial savings exceeding operational costs.

There is ample evidence here that partial confinement can be safely substituted for total confinement for a large number of selected criminal offenders and that both the offender and society benefit by this method of sentencing.

ORANGE COUNTY PROBATION DEPARTMENT

WORK FURLOUGH PROGRAM

	<i>Fiscal year 1962-1963</i>	<i>Fiscal year 1963-1964</i>	<i>Two-year Total</i>
Number of inmates committed to program -----	117	208	325
Removed from program for violations -----	8 (7%)	11 (5%)	19 (6%)
Number of workdays -----	4,167	9,993	14,160
Average number of workdays per inmate -----	36	48	44
Inmate earnings (net) -----	\$71,297.70	\$172,565.85	\$243,863.55
Average earnings (net) -----	609.38	829.64	750.35
Average daily earnings (net) -----	17.11	17.27	17.22

Disbursement of Earnings:

	<i>Fiscal year 1962-1963</i>	<i>Fiscal year 1963-1964</i>	<i>Two-year Total</i>	<i>Percent of Total</i>
County Charges (Reimbursement for confinement costs) -----	\$12,501.00	\$29,913.00	\$42,414.00	17.4
Family support -----	49,977.65	115,241.25	165,218.90	67.7
Inmates' personal expenses -----	2,783.27	7,108.01	9,891.28	4.1
Court fines -----	105.00	1,288.00	1,393.00	0.6
Restitution to victims -----	812.91	1,839.25	2,652.16	1.1
Other (debts, union dues, etc.) --	3,109.03	8,562.03	11,671.06	4.8
To inmate upon release -----	1,342.91	6,854.48	8,197.39	3.3
Held in trust -----	665.93	1,759.83	2,425.76	1.0
	<u>\$71,297.70</u>	<u>\$172,565.85</u>	<u>\$243,863.55</u>	<u>100.0</u>

ORANGE COUNTY PROBATION DEPARTMENT

WORK FURLOUGH PROGRAM

(Period from July 1, 1963, through June 30, 1964)

BASIS OF COMMITMENT

As condition of informal probation -----	97
As condition of formal probation -----	95
Modification of probation -----	11
Direct commitment -----	5
Total -----	<u>208</u>

LENGTH OF COMMITMENT

<i>Number of Days</i>	<i>Frequency</i>
0- 15 -----	6
16- 30 -----	46
31- 45 -----	15
46- 60 -----	41
61- 75 -----	2
76- 90 -----	39
91-105 -----	2
106-120 -----	6
121-135 -----	1
136-150 -----	10
151-165 -----	0
166-180 -----	27
181-270 -----	5
271-365 -----	8
Total -----	208
Average work furlough sentence: 94 days.	

COMMITTING COURT

Anaheim-Fullerton Municipal Court	
Judge Eliason -----	8
Judge Herlands -----	5
Judge Owens -----	33
Judge Vincent -----	5
Judge Judge -----	9
Judge Verry -----	1
Judge Hartley -----	1
Total -----	62
Huntington Beach Municipal Court	
Judge Baker -----	14
Judge Bauer -----	8
Total -----	22
Laguna Beach-San Clemente Municipal Court	
Judge Smith -----	1
Newport Beach Municipal Court	
Judge Christensen -----	6
Judge Clark -----	2
Judge Hamner -----	1
Judge Speirs -----	9
Total -----	18
Santa Ana-Orange Municipal Court	
Judge McMillan -----	2
Judge French -----	27
Judge Murray -----	3
Judge Steiner -----	1
Judge Thompson -----	1
Total -----	34

COMMITTING COURT—Continued

Superior Court	
Judge Cameron	1
Judge Gardner	29
Judge Kneeland	33
Judge Shea	1
Judge Crookshank	1
Judge Davis	1
Judge Herlands	1
Judge Lee	2
Judge Tamura	1
Judge Van Tatenhove	1
Total	71
Grand Total	280

ORANGE COUNTY PROBATION DEPARTMENT**TYPE OF OFFENSE**

(Work Furlough Inmates July 1, 1963, through June 30, 1964)

<i>Offense</i>	<i>Number</i>
Driving with suspended/revoked license	42
Drunk driving	34
Checks	17
Burglary	14
Battery	10
Petty theft	9
Failure to provide	8
Bookmaking	7
Hit and run	7
Grand theft	6
Reckless driving	5
Statutory rape	5
Assault and battery	4
Child molest	4
Manslaughter (vehicle)	4
Robbery	4
Assault with a deadly weapon	3
Forgery	3
Public intoxication	3
Act against public decency	2
Annoy child	2
Assault	2
Disturbing the peace	2
Unemployment Insurance Code (fraud)	2
Bribery	1
Child beating	1
Child neglect	1
Contributing to delinquency of minor	1
Displaying deadly weapon	1
Exhibit obscene literature	1
Manslaughter	1
Possession of alcohol by minor	1
Trespassing	1
Total	208

ORANGE COUNTY PROBATION DEPARTMENT

TYPE OF EMPLOYMENT

(Work Furlough Inmates July 1, 1963, through June 30, 1964)

<i>Job</i>	<i>Number</i>
Laborer	38
Manufacturing—assembly	28
Carpenter	16
Auto and boat maintenance	15
Building, grounds, pool—maintenance	9
Salesman	9
Gas station attendant	8
Cement mason	7
Warehouseman	7
Cook, baker	6
Roofer	6
Machinist	5
Plasterer	5
Office clerk	4
Painter	4
Printer	4
Route salesman	4
Dry wall taper	4
Carpet and linoleum layer	3
Machine operator	3
Plumber	3
Store clerk	3
Truck driver	3
Barber	2
Installer—glass	2
Self-employed	2
Waiter—bartender	2
Attorney-at-law	1
Chemist	1
Draftsman	1
Electrician	1
Engineer (bridge)	1
Tilesetter	1
Total	208

APPENDIX C

September 15, 1964

HONORABLE GORDON WINTON

Chairman

Assembly Committee on Criminal Procedures

State Capitol

Sacramento, California

Attention: Dr. A. LaMont Smith, Consultant

Dear Chairman Winton:

Since Chairman John W. Brewer's appearance before the Assembly Committee on Criminal Procedures, the Adult Authority has in fact revised its Resolution 184. Beginning September 1, 1964, all persons received by the Director of Corrections will come under the newly revised resolution. For your information, a copy of the resolution is attached. Also attached is a copy of Administrative Bulletin 64/92, dated August 25, 1964, which places into effect the procedures for the revised resolution.*

If we can be of additional assistance at any time, please do not hesitate to contact this office.

Yours very truly

FRED R. DICKSON

Chairman, Adult Authority

By JOSEPH A. SPANGLER

Administrative Officer

* Committee files, office of chairman.

RESOLUTION NO. 184

Revised and Reissued: September 1, 1964

RESOLUTION OF THE ADULT AUTHORITY

SUBJECT: *Calendar Appearances of Inmates*

WHEREAS, It is the policy of the Adult Authority to maintain a uniform procedure for initial calendar appearances of inmates, in conformity with statutory provisions;

Now, therefore, be it resolved, That it shall be the policy of the Adult Authority to order the initial calendar appearances of men in the state prisons according to the following procedure:

- | | |
|---|--|
| (1) Men with commitments of life without possibility of parole. | Review by representative panel every three years. Initial board hearing 10 calendar years from date of commitment. |
| (2) Men serving sentences as habitual criminals and men serving life sentences under Section 245b P.C. W/PFC, 4500 P.C., also 11502, 11500, 11501, 11530 and 11532 H&S Code (where minimum is more than 5 years). | Review by representative panel every three years. Initial parole consideration hearing one year prior to minimum eligibility for parole release. |
| (3) Men serving sentences for murder first degree, or mandatory life sentences with possibility of parole (except persons adjudged habitual criminals) and who may or may not also be serving indeterminate sentences. | Review by representative panel every three years. Initial parole consideration hearing seven calendar years from date of commitment. |
| (4) Men serving sentences for murder second degree. | Eighteen months from date of commitment. |
| (5) Men whose minimum term is 10 years or more. | Three calendar years from date of commitment. |
| (6) (a) Men serving consecutive sentences or (b) men whose minimum term is five years or more. | Eighteen months from date of commitment. |
| (7) Men whose minimum terms are less than five years. | One month prior to minimum eligibility for parole release. |
| (8) All men receiving additional concurrent commitments after having commenced their term of imprisonment, for crimes committed prior to their reception. | To appropriate calendar in conformity with the type of commitment. |
| (9) Imprisoned men receiving additional consecutive commitments for crimes committed prior to original commitment shall be placed on the appropriate calendar in conformity with the aggregate sentence resulting from the additional commitment. | |

(10) Imprisoned men receiving additional concurrent or consecutive commitments for crimes committed after reception at prison.

On the appropriate calendar in conformity with the type of commitment, such as murder first degree, habitual status, escape, etc.

(11) All cases not covered in items 1 to 10, inclusive.

One month prior to minimum eligibility for parole release.

Be it further resolved, That in cases where one of several crime partners is to appear on a calendar, and one or more of his crime partners will appear on a calendar within the next two months at the same institution, those who are to appear later shall be advanced on the earlier calendar with their crime partner;

Be it further resolved, That notwithstanding the provisions of this resolution, an earlier initial calendar appearance may be ordered for any inmate whenever the Adult Authority so decides;

Be it further resolved, That if any cases are worthy of consideration earlier than specified herein, a recommendation for such earlier appearance may be made to the Adult Authority by the institutional staff after consultation with their associate superintendent, taking into consideration the inmate's present emotional adjustment, outlook and attitude, as well as all other related factors;

Be it further resolved, That this resolution shall be effective immediately and shall apply to all prisoners received after September 1, 1964, in any state prison under the jurisdiction of the Director of Corrections and the Adult Authority;

Be it further resolved, That this resolution shall rescind Resolution No. 184, revised and reissued August 27, 1959, provided, however, that any calendar appearance date provided by said resolution shall remain in full force and effect and shall be considered as having been granted pursuant to this resolution.

Adopted by the affirmative votes of

FRED R. DICKSON, *Chairman*
JOHN G. BELL, *Member*
ABELICIO CHAVEZ, *Member*

DR. HARRY M. KAMP, *Vice Chairman*
JOHN W. BREWER, *Member*
WILLIAM H. MADDEN, *Member*
AUGUST G. KETTMANN, *Member*

Attest:

Date: August 18, 1964

JOSEPH A. SPANGLER
Administrative Officer

RICHARD E. MERZ
Supervising Clerk I

o

Volume 22

ASSEMBLY INTERIM COMMITTEE REPORTS

Number 8

1963-1965

REPORT OF THE
ASSEMBLY INTERIM COMMITTEE ON CRIMINAL PROCEDURE

ARREST RECORDS • HOME FURLONGHS FOR PRISONERS • NARCOTICS
AND DANGEROUS DRUGS • PROBLEMS OF THE CALIFORNIA GRAND JURY
SYSTEM • REPORTING OF CHILD ABUSE • TELEPHONE MONITORING
DEVICES • THERAPEUTIC ABORTION LEGISLATION • USE OF BAIL AND
CITATIONS IN THE ADMINISTRATION OF JUSTICE IN CALIFORNIA

MEMBERS OF THE COMMITTEE

GORDON H. WINTON, JR., *Chairman*

ANTHONY C. BEILENSON, *Vice Chairman*

ROBERT W. CROWN

JOHN T. KNOX

GEORGE DEUKMEJIAN

HOWARD J. THELIN

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BARRY D. KEENE, *Legislative Intern*

A. LAMONT SMITH, *Special Consultant on Arrest Records, Bail and Citations*

Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA

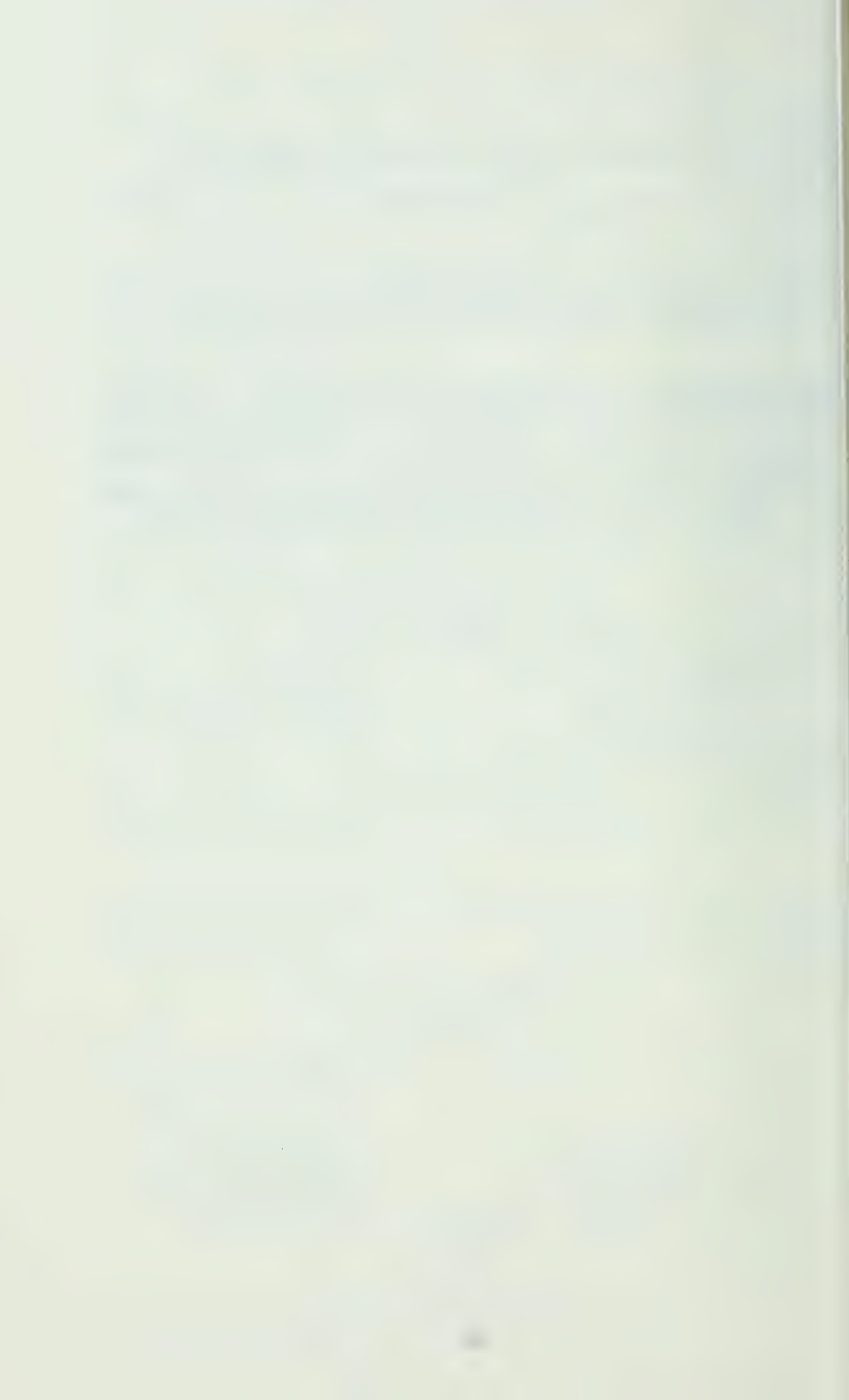
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Speaker

HON. CARLOS BEE
Speaker pro Tempore

HON. JEROME R. WALDIE
Majority Floor Leader

HON. ROBERT MONAGAN
Minority Floor Leader

JAMES DRISCOLL
Chief Clerk



LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE
ON CRIMINAL PROCEDURE

Sacramento, January 1, 1965

HON. JESSE M. UNRUH, *Speaker of the Assembly*,
and Members of the Assembly,
Assembly Chamber, Sacramento, California

Gentlemen :

In accordance with the rules of the Assembly, the Interim Committee on Criminal Procedure herewith submits a report on a number of subjects assigned to it for interim study. This volume and its eight reports constitutes, along with three reports submitted in separated volumes, the final report of the committee for the 1963-65 interim period.

One of the reports in this volume (The Use of Bail and Citations in the Administration of Justice in California) is informational in nature. The committee believes it will be of interest to the Legislature and of use to many individuals and groups who are vitally concerned with these two tools for the administration of justice in our state. The other seven reports in this volume contain a number of recommendations for legislative action in the 1965 session of the California Legislature. We commend them to you for your consideration in the coming months.

Respectfully submitted,

GORDON H. WINTON, JR., *Chairman*

ANTHONY C. BEILENSON, *Vice Chairman*

ROBERT W. CROWN

JOHN T. KNOX

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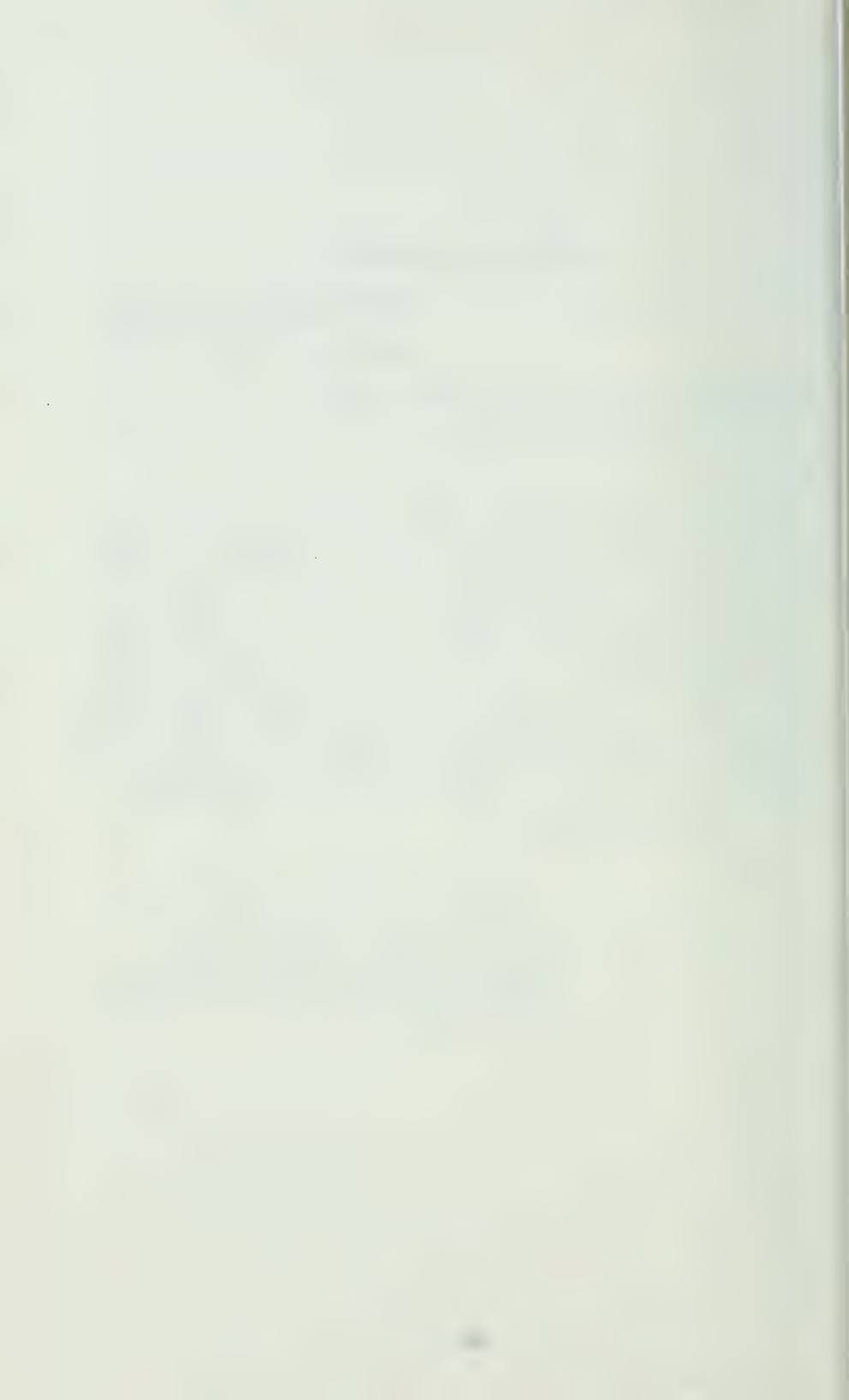


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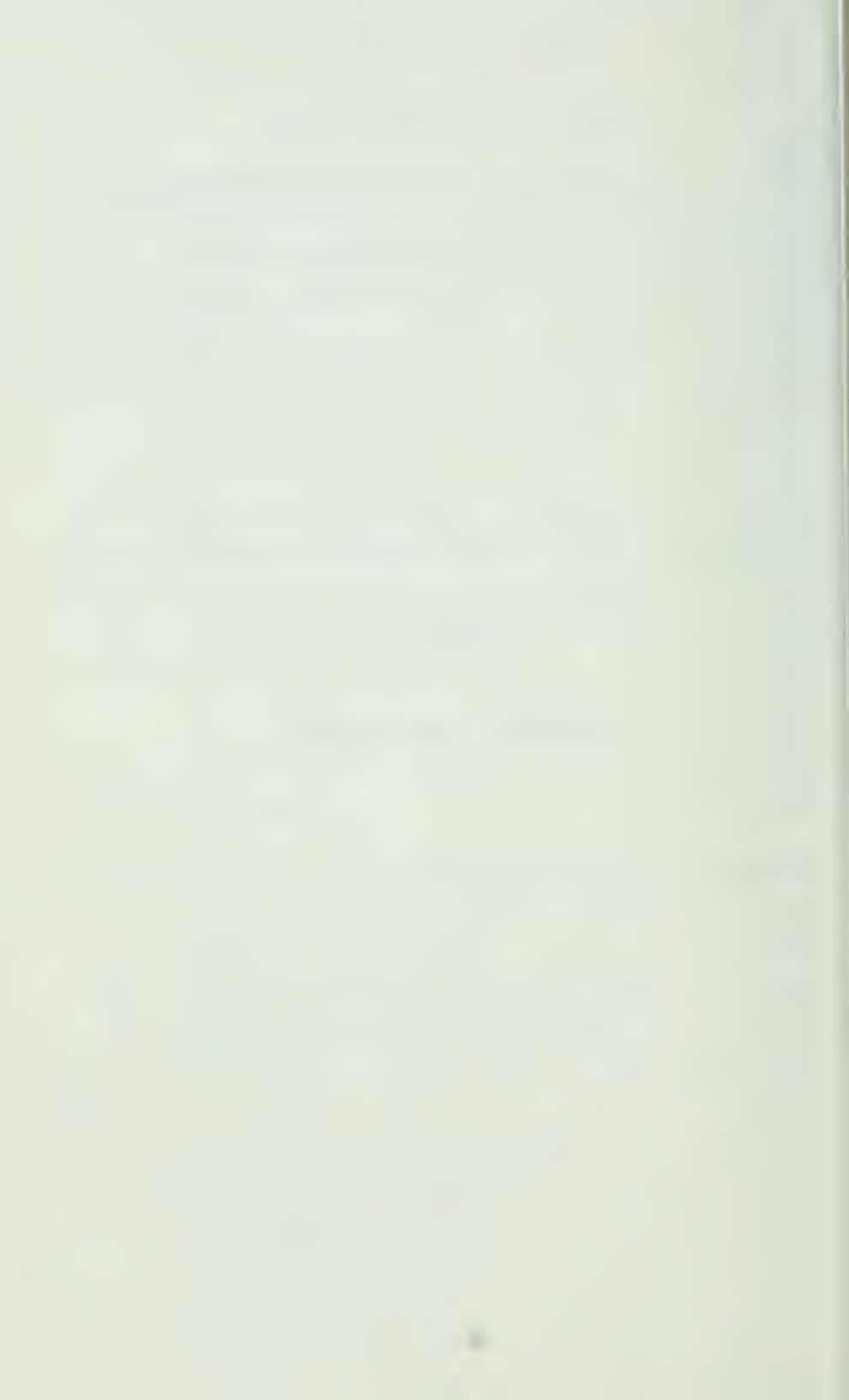
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PART 1

ARREST RECORDS



Report and Recommendations
on
ERASURE OF ARREST RECORDS
by the

ASSEMBLY INTERIM COMMITTEE ON CRIMINAL PROCEDURE

I—A. COMMITTEE RECOMMENDED LEGISLATION A.B. 976

Purpose: Authorize the Attorney General to restrict the release of data by the Bureau of Criminal Identification and Investigation to bona fide law enforcement needs. Regular salaried peace officers of a city or county sheriff's department will continue to receive, upon their request, such information but any disclosure of it for other than bona fide law enforcement data will be a misdemeanor.

Justification: The consensus of witnesses indicated that under the present procedures of accumulation of data concerning arrests and their disposition, complete eradication of all such records would be impossible. The basic problem appeared to be related to the distribution of such data and that more control should be exercised by the responsible agencies to ensure its legitimate use in the work of law enforcement.

STATEMENT OF WITNESSES

MR. O'CONNELL:¹ . . . it is presently a misdemeanor for information about the arrest record of any individual to be furnished to other than law enforcement people by C.I.I. I think that's a good law, and we shouldn't disturb it. I think, however, that it ought to be extended to the local law enforcement agencies who are presently under no such disability. There is no stigma or no crime involved when the local police agency tells John Doe, the baker down the street, or just anybody, all he wants to know that may be in the knowledge of that local police agency. I don't suggest either that local agencies are trying to harass anybody. I think they're trying to be helpful to employers who want to know something about some guy that is looking for a job, so they call the sergeant who happens to be a friend, and he tells him. I don't think this information ought to be published, particularly where no conviction ever resulted from the arrest. I think that the approach in a couple of these bills of sealing records may be a much more practical approach than requiring the erasure of a record or the expunging of the record. The sealing of the record, the holding of the information from people who are not authorized law enforcement people, I think, would go a long way to accomplish the same result, and I think that anyone in good conscience would have to admit that the only fair thing to do in a case of the arrested person who

¹ Member, California Industrial Accident Commission and former chairman, Assembly Committee on Criminal Procedure.

is innocent of the offense for which he was arrested is to restore him to his former status as nearly as we possibly can.*

ASSEMBLYMAN DONOVAN: You heard Mr. O'Connell then in his dissertation before the committee relative to the disabilities that are imposed on some persons as a result of some of these arrest records. Do you feel that we could possibly achieve the objective of protecting these individuals without disrupting the recordkeeping situation, such as by possibly a statute which prevented the dispersal of such information to persons outside of law enforcement agencies?

MR. COMBER:² I believe that if there were some statutory definition of the confidentiality—the confidential nature of police records as such, something spelled out rather clearly, defining the proper use of such information and disposition of it, it could help law enforcement tremendously.

VICE CHAIRMAN BEILENSEN: In other words, then, you feel we would be more on the right track if we try to remove the disabilities without destroying the records?

MR. COMBER: That is correct. That would be my feeling, sir. I think for the best interests of society as a whole, this would work to the advantage of all.

MR. COLEMAN BLEASE:³ I don't think we have to face any problem with respect to the destruction of anything so far as we can devise a system which indicates in some way that the information contained in the records is not to be used for certain purposes, and I would agree with Mr. Comber that really the task before the committee is to deal in some detail with the precise question of circumstances in which it is desirable to disclose at all. More specifically, we would like you to include the eliminating of the question to be asked by public agencies, and, secondarily, restrict the examination of arrest records by nongovernmental agencies. Those two recommendations, I think, could be pursued at this point without concerning one with the record-keeping problem at all.

ASSEMBLYMAN DONOVAN: I just want to say that it appears from your testimony that you agree with what I was discussing with the previous witness that what we are seeking is the protection of the individual without disruption of the existing service.

MR. BLEASE: Yes, I think that is the central problem. Really the question comes down to under what circumstances do we think disclosure is desirable.

MR. DON DAVISON:⁴ I would like to state that if there is abuse or misuse of criminal records, let's take steps to correct it. However, let's not throw out one of the finest tools of the peace officers and the investigators.

ASSEMBLYMAN DONOVAN: Mr. Davison, how do you feel about the idea that we discussed previously that perhaps we could formulate a statute which would protect the innocent individual and more or less make these records confidential so they couldn't be disclosed to outside agencies? Do you feel that this would be a step in the right direction?

* Hearing transcript, office of the chairman.

² Director of Criminal Information, San Francisco Police Department.

³ Legislative Representative, American Civil Liberties Union of Southern California.

⁴ Representative, Fresno County Police Officers Association.

MR. DAVISON: I certainly do.

MR. DERALD GRANDBERG:⁵ The Legislature might take steps to limit the accessibility of information concerning arrests that is in the possession of law enforcement agencies, and this, of course, would take a form similar to that which is now existent with regard to the Bureau of Criminal Identification and Investigation. At this time, there is no real limitation on the local law enforcement agencies—the sheriff's office, the police departments—with regard to their divulging such information. Certainly under the existing law, it is not viewed as a public record and a person cannot make demands for it. There is nothing to eliminate the divulging of such information. This might afford something that is as effective as sealing.

ASSEMBLY BILL 976

Legislative Counsel's Digest

Criminal records.

Amends Sec. 11105, Pen.C.

Requires Attorney General to furnish upon request criminal records to regular salaried peace officers of city police departments and sheriff's offices in this state, and permits him to furnish such information to other classes of peace officers and other persons listed in section if he is satisfied that bona fide law enforcement duties would be served, whereas section now makes no distinction among such persons, each of whom can receive such information upon written application to Attorney General.

Makes it a misdemeanor for one who receives such information to use or disclose it for other than bona fide law enforcement duties.

An act to amend Section 11105 of the Penal Code, relating to criminal records.

The people of the State of California do enact as follows:

SECTION 1. Section 11105 of the Penal Code is amended to read:

11105. *The Upon request of a regular salaried peace officer of a city police department or county sheriff's office in this state, the Attorney General shall furnish; upon application, all information pertaining to the identification of any person, a plate, photograph, outline picture, description, measurement, or any data of which person there is a record in the office of the bureau.*

The information shall be furnished to all peace officers of the State, If it appears to his satisfaction that a bona fide law enforcement need would be served, the Attorney General may furnish such information to United States officers or officers of other states, territories, or possessions of the United States, or peace officers of other countries duly authorized to receive the same, and to any public defender or attorney representing such person in proceedings upon a petition for certificate of rehabilitation and pardon pursuant to Section 4852.08, upon application in writing accompanied by a certificate signed by the officer, public defender, or attorney, stating that the information applied for is necessary in the interest of the due administration of the laws, and not for the purpose of assisting a private citizen in carrying on his

⁵ Deputy Attorney General of California.

personal interests or in maliciously or uselessly harassing, degrading or humiliating any person.

Any person who receives such information and uses or discloses it for other than bona fide law enforcement duties is guilty of a misdemeanor.

I—B. COMMITTEE RECOMMENDED LEGISLATION A.B. 977

Purpose: Clearly distinguish the disposition following the filing of fingerprints by (1) reporting the known action filed in accordance with law or by (2) the notation "identification only" if the disposition has not been filed by the submitting law enforcement agency.

Justification: A master copy of fingerprints received on any person is filed by the C.I.I. in a central index. Additional prints may be filed in a "dossier" or individual folder. In the central files the indexing is by the classification coding of the fingerprints and there is no separation on the basis of whether the source of the print was a law enforcement or civilian agency. Many fingerprints are received in connection with applications for various licenses or credentials. The committee was informed that if a fingerprint card was on file with a notation of an outstanding warrant and fingerprints for this person were received for civil or noncriminal clearance, the law enforcement agency with the warrant would be notified.

Since enactment of the law ⁶ requiring dispositions in the case of all persons whose fingerprints are filed with the C.I.I. the agency is currently still not receiving such reports on 15 percent of the filings. If such agencies do not file the required information then it would appear reasonable to simply report to any inquiry that the person's prints had been filed for "identification only" by the submitting agency. If additional information is required it can be secured directly from the agency filing the original prints.

STATEMENT OF WITNESSES

A. L. SMITH: ⁷ Are fingerprints taken in connection with employment by the state filed separately from those submitted by local authorities on criminal offenders? (p. 103) *

A. L. COFFEY: ⁸ At this time they are not, sir.

We have a single fingerprint file down there, with the exception of the fact that during the early war years there were two files set up. We did have, at that time and for some period of time at least, a civilian file and a criminal file.

MR. SMITH: What procedures are followed if an applicant for state employment is wanted by authorities on a criminal charge?

MR. COFFEY: The wanting agency is notified.

MR. SMITH: Then, in your opinion, would it be possible to treat fingerprints of arrested persons in the same manner as civilian identification prints until such time as the notice of conviction was received?

MR. COFFEY: I am not sure that I know what you mean.

* Hearing transcript, office of chairman.

⁶ See Appendix A for text of statutes.

⁷ Special Consultant, Committee on Criminal Procedure.

⁸ Chief, California Bureau of Criminal Identification and Investigation.

MR. SMITH: Well, if you treat them as "identification prints only," or "detention only," until . . . the reports that you get of dispositions are actually received . . .

MR. COFFEY: It would be extremely costly. What you would necessarily do would be to process the prints first, as you indicate, as a civilian . . .

MR. SMITH: I mean do they go in the same file? They are handled as you would applicants for state employment. They go in the same files, don't they?

MR. COFFEY: That's right.

MR. SMITH: And if a warrant is outstanding, the agency is notified?

MR. COFFEY: If we come across . . . (a warrant—yes).

MR. SMITH: Well, then, if an "arrest" or a "detention only" print is received, wouldn't that have the same treatment? Wouldn't the agency still be notified of any warrants outstanding and anything of this sort?

MR. COFFEY: We notify in the event of any fingerprints . . .

MR. SMITH: Well, then, there would be no change in your existing procedure? You would just treat them as a noncriminal print? They would be treated for "identification only" purposes?

MR. COFFEY: Except that it costs us as much or more to get a civilian print into the files as it does a criminal print because of the higher number of nonmakes on a name check.

ASSEMBLYMAN DONOVAN: These are arrested prints that you are receiving now, and you are filing them in the same file with the noncriminals? I see.

MR. COFFEY: That's right, but the thing you are not taking into account is the fact that as soon as we did get the disposition and then got the additional information, it was necessary to go out and strip the files, bring them back and do the whole job over again to get the criminal information on the print.

MR. SMITH: In other words, it would be a duplication of the record.

MR. COFFEY: That's right. We would have to go back and pull them out.

MR. SMITH: How do you handle the print procedure in applications for gun licenses, or carrying concealed weapons? You get two prints on gun license applications, don't you?

MR. COFFEY: Normally, yes.

MR. SMITH: One goes to you and one to the FBI?

MR. COFFEY: Yes.

MR. SMITH: Do you treat those as non-criminal prints, as you would state employment I mean?

MR. COFFEY: Well, they are treated as civilian prints, but we have two categories, criminal and noncriminal.

MR. SMITH: If a person applied for a gun application and was wanted elsewhere, would the local agency be notified of the same?

MR. COFFEY: If we found a record and identified it as a person who is wanted for homicide and he came in for an application for a gun license, we would notify the wanting agency.

ASSEMBLY BILL 977
Legislative Counsel's Digest

Arrest records.

Amends Sec. 11105, Pen.C.

Provides that in any case in which the Bureau of Criminal Identification and Investigation has record of an arrest made in this State on or after September 15, 1961, but, with respect to such arrest, no report of release without filing of a complaint or accusation has been filed pursuant to Sec. 11115, Pen.C., and no report of disposition has been filed pursuant to Sec. 11116, Pen.C., any information furnished pursuant to Sec. 11105, Pen.C., on or after 90 days following the arrest, may not refer to such arrest, although it may indicate, as of the date of the arrest, an inquiry "for identification only" by the agency that made the arrest.

An act to amend Section 11105 of the Penal Code, relating to arrest records.

The people of the State of California do enact as follows:

SECTION 1. Section 11105 of the Penal Code is amended to read:

11105. The Attorney General shall furnish, upon application, all information pertaining to the identification of any person, a plate, photographer, outline picture, description, measurement, or any data of which person there is a record in the office of the bureau.

The information shall be furnished to all peace officers of the state, to United States officers or officers of other states, territories, or possessions of the United States, or peace officers of other countries duly authorized to receive the same, and to any public defender or attorney representing such person in proceedings upon a petition for certificate of rehabilitation and pardon pursuant to Section 4852.08, upon application in writing accompanied by a certificate signed by the officer, public defender, or attorney, stating that the information applied for is necessary in the interest of the due administration of the laws, and not for the purpose of assisting a private citizen in carrying on his personal interests or in maliciously or uselessly harassing, degrading or humiliating any person.

In any case in which the bureau has record of an arrest made in this state on or after September 15, 1961, but, with respect to such arrest, no report of release without filing of a complaint or accusation has been filed pursuant to Section 11115 and no report of disposition has been filed pursuant to Section 11116, any information furnished pursuant to this section on or after 90 days following the arrest, may not refer to such arrest, although it may indicate, as of the date of the arrest, an inquiry "for identification only" by the agency that made the arrest.

II. WITNESSES PROPOSAL FOR LEGISLATION, ASSEMBLY BILL 978

Purpose: Prohibit an employer, public or private, from asking a prospective employee whether he has ever been arrested, detained or held by the police or other law enforcement agency, but which specifies that the employer is not prohibited from asking the prospective employee about convictions he has suffered.

MR. J. O'CONNELL:⁹ I might say that I first became interested in the general problem when in 1956 I was the Democratic county chairman in San Francisco and I received a call one day from the Postmaster of San Francisco who asked me if I would be interested in sending to him to work during the Christmas rush some deserving young man. He said, however, "please don't send me anyone who is under the age of 18 or anybody who has ever been arrested." Well, I thought the Postmaster was making a small error, and I said, "You mean who has ever been *convicted*, don't you," and he said, "No, I mean what I said. Don't send me anybody who has ever been arrested . . ." I said, "Well, why is that," and he said, "Well, this is the Christmas rush, and we hire lots of extra people, and we don't have time to check everybody and so we just don't want to be bothered with anybody who has ever had any record of an arrest." (P. 4.)* . . . Essentially, they (legislative measures) all try to accomplish the same thing, and that is to restore the innocent person who is unfortunate enough to get arrested and should not have been arrested in the first place or who later, it develops, was innocent of the offense, to restore him to his former status. I think that the chief handicap that this person has is that for the rest of his life, when he seeks employment, he will have, in many cases, in perhaps most cases, to admit to the prospective employer that yes, indeed, he was at one time arrested, and he will, perhaps, try to explain the circumstances. Perhaps the employer will be satisfied with the explanation, but many times, I think, you will find that the employer doesn't want to be bothered, just as the Postmaster of San Francisco didn't want to be bothered. Many employers, particularly in the situation where the labor market was very loose, where there are two or three people around for every job that is available—and I think it's just human nature, I'm not criticizing the employer at all—if he has two or three men for a job and their qualifications are otherwise equal, I think it is human nature on his part to hire the guy whose record is perfectly clean. (P. 5.)*

Incomplete Arrest Data

The judge who looks at this "rap" sheet may see half a dozen different arrests for various offenses. As one of the judges who is now on the district court of appeals told me one time, a judge is human also and when he sees a "rap" sheet, it's human nature for him to think that there is something wrong with this man. Some of the arrests may have taken place in Kansas City or Portland or somewhere else, and it's difficult for the judge or for the probation department really to make an adequate check to find out whether these were arrests of an innocent man, as the guy is no doubt claiming, or whether this guy is kind of a professional lawbreaker. And so the man with the prior record, even if it's only one arrest, is at a disadvantage when it comes to the determination of whether he is a good candidate for probation. (P. 6, 7.)*

I think in the nature of things, however, that it's unlikely that we've had anything like full compliance with the statute . . . the point is

* Hearing transcript, office of the chairman.

⁹ Member, California Industrial Accident Commission, and former chairman, Assembly Committee on Criminal Procedure.

that the onus is on the local agency to comply, to provide C.I.I. with the disposition whenever they've sent the record of arrest. I think that, as a practical matter, not everybody who is *supposed* to do this *does* it. I'm not suggesting that there is any malice or anything like that. I do suggest, however, that it's an extra responsibility that I'm sure a good many people just don't want to be bothered with or they overlook it, and I understand that you will hear later today from C.I.I. so they can tell you what's happened under this new law. (See Appendix A, Penal Code Section 11115.) (P. 7.*)

Employment Application Forms

Another thing that we tried to do . . . was to outlaw the use of the question by an employer, "Have you ever been arrested," and limit the employer to the question, "Have you ever been *convicted* of any crime other than a traffic offense?" There was opposition to this, and I can understand why there is opposition. In the first place, the employer jealously guards his prerogatives. He thinks that he has a right to know as much as he can possibly know about the man he is thinking about hiring, and he thinks he has a right to the security that comes with a thorough investigation into the man's background, and any law which says that he can't ask this certain question tends to limit that prerogative. It takes something away from him. However, I think in view of the larger social purpose that's involved here, we may have to come to this. I wasn't even able to persuade the Personnel Board of the State of California that it should take the lead in this kind of approach, but it's a suggestion which I don't think should be scrapped or overlooked. (P. 8.)*

R. PRESTON:¹⁰ One of the purposes behind sealing of records has been already identified, and many persons arrested for crimes find that their arrest records have been damaging to them, more damaging than is warranted. The illustrations that have been used include examples wherein employers have refused to hire persons with criminal records of arrest or conviction. Since almost every employment application form contains the question "Have you ever been arrested or convicted?" the employer actually gains knowledge of the individual's previous arrest or conviction and refuses to hire him. Another illustration that has already been alluded to is that this has done harm to people who are in debt or who are signing up in the armed forces, and it is probably true, as the first speaker pointed out, that there are employers today who, without further questions, upon receiving a response that a person has been arrested, simply refuse to employ the applicant. It is likewise true that there are individuals with criminal backgrounds who are not hired in one place or another because of a wide variety of other reasons, that they are quick and eager to use this rationalization of their supposed criminal histories as a reason for their **not being employed**. This rationale I have personally heard employed many times or extended, rather, into the justification for continued or increased criminal conduct.

In Oakland we conducted a brief pilot study among private industry and organizations, and we found that none of the organizations have

* Hearing transcript, office of the chairman.
¹⁰ Deputy Chief of Police, City of Oakland.

a set policy concerning the hiring of persons with criminal records. I can't name for you the specific organizations, but these were all large employers. Each case is, as a matter of fact, decided upon its own individual merits. The decision to hire is based on a number of factors pertinent to the exact nature of the position involved, and it would be an important consideration as to whether the police record should be considered. Candidly all employers stated that in most jobs, their firms counted the criminal history as playing an insignificant role or a secondary role or relegated further to the rear than that. The major concern is the previous work history of the individual, how he performed in other jobs, other things that relate to personal integrity, truthfulness, et cetera.

I submit to the committee also that in the statutes that exist, there is no complete expungement having been demonstrated, I believe, as being totally efficient. So this kind of legislation creates a situation where the fact of arrest is ultimately revealed, and the person conducting the background investigation is then in a position of having to depend on the type of information that they gather from the neighbor who, in many instances, is either misinformed, prejudiced, or any number of things and has discriminatory feelings toward this applicant for employment. Sealing records places this background investigator, speaking or acting in behalf of the employer, in a position of having to depend on rumors and gossip in order to make this decision.

ASSEMBLY BILL 978

Legislative Counsel's Digest

Employment practices.

Adds Ch. 9 (commencing with Sec. 1150), Pt. 3, Div. 3, Lab.C.

Provides that every person who, in any employment questionnaire that an applicant for employment is required to execute, or in any other written or oral inquiry directed to such applicant, asks whether such applicant has ever been arrested or has been detained or held by the police or other law enforcement agency, is guilty of a misdemeanor.

Specifies that section does not prohibit inquiries relating to convictions. Specifies that section applies to both public and private employers.

An act to add Chapter 9 (commencing with Section 1150) to Part 3 of Division 3 of the Labor Code, relating to hiring of employees.

The people of the State of California do enact as follows:

SECTION 1. Chapter 9 (commencing with Section 1150) is added to Part 3, Division 3 of the Labor Code, to read:

CHAPTER 9. INQUIRIES RELATING TO ARREST

1150. Every person who, in any employment questionnaire that an applicant for employment is required to execute, or in any other written or oral inquiry directed to such applicant, asks whether such applicant has ever been arrested or has been detained or held by the police or other law enforcement agency, is guilty of a misdemeanor.

This section does not prohibit a person from inquiring whether an applicant for employment has ever pleaded guilty to a crime or been otherwise convicted of a crime, or, if the applicant answers in the affirmative, from inquiring further about the particulars of such convictions.

This section applies to both public and private employers.

* * * * *

Mr. Henson does not approve of this legislation.

III. ERASURE OF ARREST RECORDS

A. Collection of Data by Bureau of Criminal Identification and Investigation

1. Classification of Information

MR. ROMNEY P. NARLOCH:¹¹ Basically, we receive two types of information from various agencies in the state who are involved in processing arrests and felony filings on defendants. At the basic level and the broadest level, the information that we receive is that information received from the law enforcement agencies. This is received in two categories: (1) a report on adult felony arrests, which is the top form that I had passed out, and (2) a report on misdemeanor arrests. A third category is juvenile arrests, juveniles being youths under 18 years of age. All of this information is presented to us, directed to us, in summarized form. Such details as name, identification number, race, sex, and other factors of individuals who might have been involved in these arrests are not sent to us. They are represented by numbers and summarized totals. Along with a report of the arrest, we receive also the police disposition of this arrest, and only four categories of this. These are whether the individual arrested was released, whether he was turned over to another jurisdiction, whether a misdemeanor complaint was filed, or whether a felony complaint was filed. We receive these reports each month, and quarterly we summarize them on IBM machines, and at the end of the year, we compile them and distribute them in our publication. That's the law enforcement level.

In addition to the summarized statistical law enforcement report, we also receive, in a specialized study undertaken under the direction and sponsorship of the Legislature, a study of narcotic arrests in California. This information is received in a different form than that describing felony arrests and juvenile arrests. In this process, the information is received on several cards, and the individual or the subject of the arrest is identified by number, by name, by age, by sex, and various other descriptive factors. These are represented in the cards that represent narcotic arrests that have been passed out to you.

We also receive through C.I.I. a special arrest form covering narcotics. It's a detailed technical report descriptive only of those individuals who are subject to narcotic arrests. In addition, we also may receive from C.I.I. arrest reports in which a narcotic offense may have been supplementary to the central arrest and involves some other type of offense. Whenever narcotics are also involved, we will get that report. We will process it, obtain the information from it that we need, and then it will be submitted back to C.I.I. for their files. We do not retain these reports.

¹¹ California Bureau of Criminal Statistics.

The third class of information we receive is that information covering felony filings and adult probation in the superior court and a limited category of lower court probation cases.

In the area of prosecution, we receive identification by name, number, type of offense, charge filed, and various other legal information describing the legal processes in regard to each individual who is filed on at this level in California. We also receive a report covering the outcome of this filing—whether it was dismissed, whether the person appeared in superior court, the type of sentence, and the disposition. In addition to this, we receive information on whether the individual was granted probation. If the individual was granted probation, we receive further identifying information on this. We retain this information in our files until probation is terminated, and, two years after termination, we destroy the file. None of this information is reported or published in any other form but the summarized statistical form.

And the last category of information we receive is that information covering juvenile probation, and it's the same type of information that we receive covering adult probation. We receive a name, we receive identification, we receive the date that the wardship occurred, the date that the referral occurred, the disposition, if any, and also the outcome of probation. When the case is terminated and the ward is discharged from probation, the information that we have on him is destroyed immediately. That covers the range of information which we get and publish.

(Pp. 11-13.*)

2. Workloads

MR. A. L. COFFEY:¹² Mr. Chairman, I'm Al Coffey, Chief of the Bureau of Criminal Identification and Investigation. Because of the manner in which the agenda has been arranged here today, it has been suggested that initially I present to the committee only the factual information and the C.I.I. Bureau procedures which might be of interest to the committee at this time.

I received a copy of the published agenda on the erasure of records, and in response to that agenda, as nearly as possible, I have information which I think will provide the information which the committee desires.

Under filing categories for fingerprints and reports received, we can consider criminal files, and I suppose that the volume would be the first thing that the committee would be interested in hearing. For our own activity report, the period of January 1 through December 31, 1963, the bureau received from contributing agencies throughout the state a total of 756,905 criminal fingerprints. That's a combination of felony and misdemeanor prints. Noncriminal prints received were a total of 273,813, and of these noncriminal prints, the great majority of them, as you gentlemen well know, are derived from certificated and noncertificated personnel, all of the rest of the people who are licensed by the state where fingerprinting is a necessary prerequisite to issuance of a license. This is responsive to legislation which

* Hearing transcript, office of chairman.

¹² Chief, California Bureau of Criminal Identification and Investigation.

has been passed and enacted into the law at the present time. Additionally we receive, responsive to recent legislation, the fingerprints of 9,177 unidentified dead persons submitted to us by local agencies, coroners, and so forth, for a grand total throughout the state of 1,039,895 total fingerprints received.

The committee might be interested in knowing that of this 1,000,000 figure, a total of 727,920 of those people were already in the file. The breakdown on the criminal fingerprints is of the 756,000 we received, we identified 633,000 of those people as having prior records in our files for a percentage total of 83.7 percent. On the noncriminal fingerprints, we received 233,000 and in round figures, we identified 89,000 for a percentage of 32.7 percent. On the unknown dead persons, we received 9,000. We identified 3,900, almost 4,000 for a percentage figure of 42.9 percent. So, as I say, we received over 1,000,000. We identified 727,000, with an identification factor of 69.9 percent of people already in the file. (Pp. 13, 14.*)

MR. COFFEY: We have no single modus operandi (MO) file in the Bureau of C.I.I. down there. Actually, the working of the special services section which handles MO is in some fashion comparable to the makeup of the municipal agency or a county department where they have burglary details, robbery details, sex details, homicide, fraud, and the rest of them. We have the same thing in the Bureau of C.I.I. and each of the sub-units there handle their specialized type of offense and maintain their own MO files for that particular offense for offenders within the State of California who specialize in that type of crime.

Let me give you a rundown on this file just in the Special Services Section. . . . First of all, recognize, gentlemen, that because of the nature of the work we do, we must maintain our records in many cases for as long as the life of the individual who has committed the offense or, in the case of an unknown murderer, for instance, we keep them much longer. In other types of offenses, we maintain our files for 30 years, 20 years, depending on what we anticipate that we might be called upon to provide. I have a copy here of all of the files, different types of files, sizes of files and so on. I say, it's purely statistical in nature. I can provide it to the committee subsequently without going over three pages of our various types of files. The point that I make is that there is no single MO file as such, but every file within the bureau contributes to a modus operandi search and, if possible, a tentative identification of persons who might have been responsible for a given offense. (P. 15.*)

MR. COFFEY: . . . we have a total fingerprint file of about six and a half million individuals, because we leave only one master print in the fingerprint file, and the rest of the fingerprint cards are placed in the individual folders for lack of a better term, the dossier on the individual whose record we have. So we may have one fingerprint card in the file and, in extreme cases, ten or twelve fingerprint cards in this folder. We have, as I indicated, about six and a half million fingerprints in the file and about two and a half million folders on individuals who have more than a single arrest, in other words, who have a criminal history. (P. 19.*)

* Hearing transcript, office of chairman.

3. *State cost for filing fingerprint records*

MR. COFFEY: We receive approximately 756,000 criminal fingerprints per year, or we did in 1963. Based on time and motion studies confirmed by the breakdown of the bureau's overall budget and the division of budgetary funds, it costs us in the neighborhood of approximately two dollars per fingerprint to process it into the files. By the time we get the fingerprint classified, researched in the fingerprint file, the necessary additions to the records made, all the clerical processing which is entailed here, our cost will average out at not less than \$2 per print.

So far as reversing these things out, reversing the process and expunging the print or destroying it, it is a more costly process because we are reversing a procedure which is standard, and it's the same problem setting up a production line in an automobile factory and reversing it and taking the car apart. We'd have a somewhat comparable situation. As nearly as we've been able to establish a cost figure on the reversal of the process and the expungement or the destruction of the records involved, we hit a minimum figure of \$2.50 per print per individual to expunge a record, to pull the index cards, to pull the master record, and delete the entry . . . (P. 16.*)

B. *Expungement of Arrest Data*

1. *Problems of Definition*

R. PRESTON: . . . the existing sections that relate to sealing and expunging, Welfare and Institutions Code Section 781,¹³ for example, are indexed in one way or another, and in some code books it is "expungement of records." In the language of the section itself, however, they never use the term "expungement." The only words that are used are "seal," "sealing of the records," and similar terms. *Penal Code*, Section 1203.45,¹³ the other existing section, makes no remark about expungement at all and only uses the word "sealing."

The conclusion to be drawn from the existing statutes is that arrest records should not be expunged or erased in the sense of being physically erased or obliterated or destroyed, but rather that they should be sealed and that this accomplishes "expungement of the record."

Unfortunately, there is no agreement or possible total understanding as to what the sealing of the record entails—I mean the enormity of it and the magnitude. Commonly, the practice of pulling the various documents from existing files, placing them into an envelope, sealing the envelope and refiling it, either in the same file, or perhaps in another file, supposedly accomplishes the sealing of a record. (Pp. 22, 23 *)

2. *Bureau of Criminal Identification and Investigation Procedural Problems*

MR. COFFEY: When we reverse this process and get a court order which orders us to expunge a record, we have a name only, and if we get a name like David L. Brown or John L. Thompson, or Jose Fernandez, we have an index of about 9,000,000 names which we must search through, and in this index we probably would have anything

* Hearing transcript, office of the chairman.

¹³ See Appendix B for text of statutes.

from 15 to 30 to 50 of the common names, and from these 50 names or 30 names or 15 names, we would have to establish which one is the man we are talking about or which one is the person to whom this court order applies, and on the basis of the present law, the sealing orders that we have had, we have sometimes entered into long and extensive correspondence in an effort to positively identify the person who is named so that we are not in danger of sealing the wrong record and letting a record stand which should be sealed. We have even, on occasion, encountered this kind of a situation where a court order will be issued requiring the sealing of the record—in the particular case that I have in mind the Los Angeles Police Department received the sealing order before we did. When we got the sealing order, we contacted them for a verification of identification, and they tell us that they can't mention it to us, they can't tell us anything about it because their record has been sealed before ours, so we are sitting here with a court order requiring us to do something, and we are not able to positively do it because we are not positively able to establish the identity of the person whose record should be sealed.

3. *State Cost*

A. SMITH:¹⁴ The comment that I wanted to add, Mr. Beilenson, is that . . . we mentioned the minimum \$2.50 figures to reverse our process and to expunge from our files once we get something into it to expunge a record completely. Statistically, I think that the Bureau of Criminal Statistics will bear me out on the overall number of arrests.

We have probably something in the neighborhood of a 40 percent conviction in court, either by plea or by trial. The other 60 percent of the total arrest figure is either dismissed without action or they are cases where a complaint is filed and the individual is tried and found not guilty or there is a hung jury and a decision is made not to retry, or something of that sort. So this points up to us something in the neighborhood of 375,000 or 400,000 fingerprints or records which we would need to expunge or destroy annually, on the basis of overall receipts. So we would be confronted with the necessity of expending that much money, that much manpower to pull from our files the information which has been entered there on the basis of yearly arrests. So we would have, we estimate, something in the neighborhood of a minimum of a one and a half million dollar additional requirement to do this job. (Pp. 19, 20 *)

4. *Location of Data Beyond Jurisdictional Control of Local Police Agencies.*

R. PRESTON:¹⁵ . . . I would like to show charts which depict the complex nature and the size of the total procedure that is police recordkeeping, and this applies to any one single individual who is actually taken into custody. The charts portray three main categories. *The Most Common Documents on Which a Defendant's Name Will Appear From Perpetration to Disposition.*

* Hearing transcript, office of the chairman.

¹⁴ Arlo Smith, Chief Assistant Attorney General of California.

¹⁵ Deputy Chief of Police of the City of Oakland.

On the left side of Chart No. 1, "Crime, the initial report . . . This is when a criminal act of one kind or another occurs. There are a number of reports that develop and flow from this initial action. These are both reports used within the police department itself that are involved, and, on the left side of the center line in each case, is a brief indication of the number of other agencies that are to receive reports from the police department. (P. 26.*)"

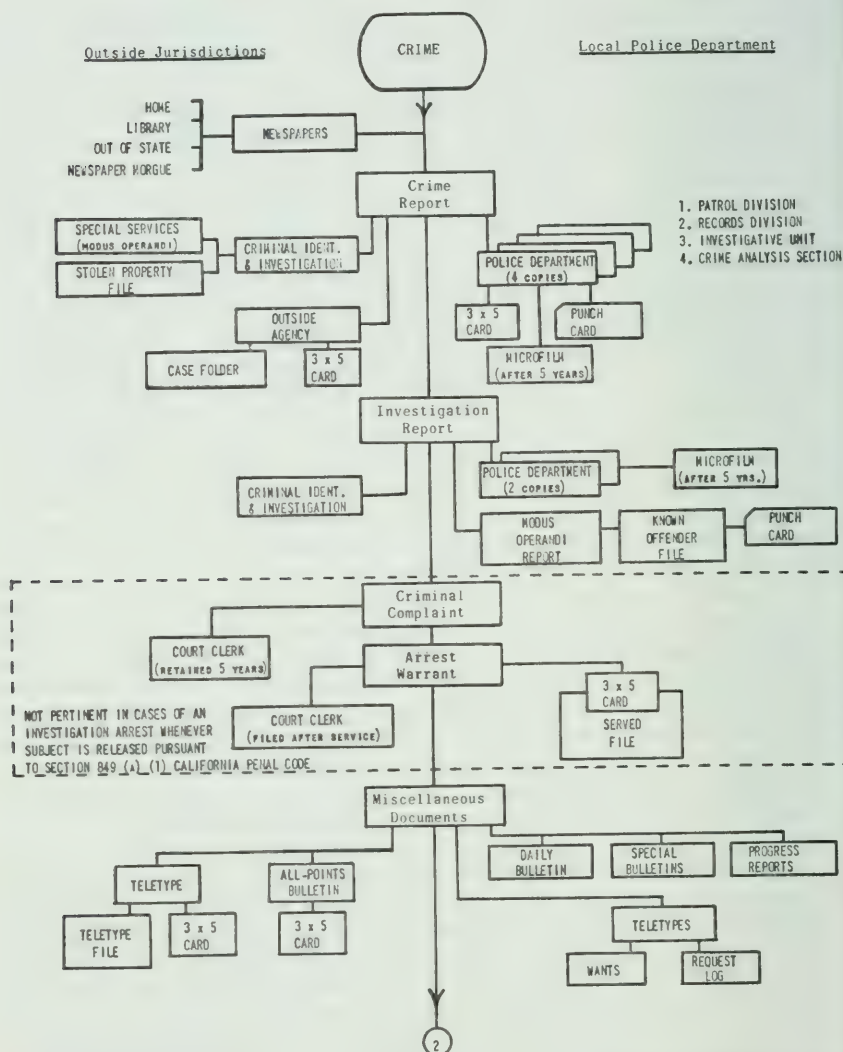
Continuing on the left side of the report we see the reports that go to the *Bureau of Criminal Identification and Investigation* in *Sacramento* and become or assist in the development of their MO files under the special services section and have to do with the development and maintenance of their stolen property files also. Each of these reports would either initially or later have the record of the fact that this person had been arrested. The white copy of the report would go to an *outside agency* in this particular case because it is of such a nature that other municipal jurisdictions are interested and concerned even though the initial arrest of the moment and the ultimate prosecution is within the city of arrest. A filecard, of course, of some sort would be maintained in that outside agency also. Over on the right-hand side of the report are reports that would normally remain in a local police department. You will notice that there are a total of four copies of this report, including one that is in our department and our department is not basically different than the general run-of-the-mill department throughout the state. Most of the departments would operate the same way. One copy of the report would go to Crime Analysis, the second to the Investigative Detail involved in developing the case and the prosecution in the courts. A copy would go to the Records Division for filing in the records, and a copy of the report would go to the Patrol Division for the current information of the man operating on the street. At the same time, additional reports, if you will, in the form of 3 x 5 filecards are developed to provide the means of getting at the basic files that are ultimately created out of all of these reports . . .

An IBM card becomes more and more a part of every police operation and certain of this information is recorded on an IBM card and is located in our statistical section. The crime having occurred goes to an investigative detail. The investigation report, a copy of it goes to *Sacramento* to acquaint C.I.I. with the status of developments in the investigations. The copies of these reports are retained in our own files, other files relating to *modus operandi*, the patterns of operation of the criminal, are developed. Other IBM cards are developed. Known offender filecards are developed. All of these reflect the fact that this man has at one time been arrested. If the case be handled in this particular way, it would make very little difference, but the next procedure involved is the acquisition of the criminal complaint. Presuming that the prosecuting attorney and the investigating officer agree that evidence is there to warrant prosecution, a criminal complaint is issued. A record of the existence of this form is in the *district attorney's* office, and an arrest warrant results from this. This naturally has the arrested person's name on it. A record of the fact that the warrant is served when it is served, a record of the fact that a subpoena is served with, again, the name of the people of the State of California versus

* Hearing transcript, office of the chairman.

MOST COMMON DOCUMENTS ON WHICH A DEFENDANT'S NAME WILL APPEAR FROM PERPETRATION TO DISPOSITION

CHART NO. 1



whoever the individual is . . . if the case is of some newsworthiness, certainly the newspaper is going to record this fact and locate it in all of the number of possible places that have already been mentioned. Arrest reports are prepared naming the individual arrested. Copies of these go to the appropriate *outside agencies*, the *prosecuting attorney* and to the *court*. All three of these receive copies of the fact of arrest. Within the police department itself, a copy goes to our crime analysis section, our identification section, to the fugitive detail, to the refer-

ence division, filecards and so forth. Other logs maintained in the jail division reflect the fact that this man has been arrested and is in custody. These are not all the possible logs. Almost every time he moves from one particular dormitory, perhaps in a jail, whenever he requests to see a doctor, when it is necessary to transport him to a hospital because of illness, all of these things are recorded on some kind of report and reflect the fact that he has, in fact, been arrested.

This information, I might point out, is presented in the vein that it is presumed that people who are not totally and completely and frequently connected with police operations themselves might not have total knowledge of the wide variety of papers and activities involved.

Having been arrested, and this is before prosecution, mind you, fingerprint cards are made. Copies of the fingerprint cards go, as has already been mentioned, to the *C.I.I.* in *Sacramento*, go to the *F.B.I.* and go into our own files. At the same time that the fingerprint card is prepared, a personal appearance card is prepared, a report, rather, is prepared. This is a personal thing in our own department designed to aid us investigatively. Again, all of these documents contain his name and the charge. The same thing is true with the property forms that are given to him indicating that we have taken his properties from him. We file copies of them and he has copies of them.

In this particular situation, he has gone this far and the investigation has revealed that he should not be prosecuted in the courts. All of these things have come into being, however, that we have previously discussed. At the time that he is released, this information must be recorded on the back of the reference division's copy and the Identification Bureau's copy of the arrest report. A duplicate report is prepared indicating the disposition of the case, and this has already been referred too. A copy of the disposition report goes both to Sacramento and to the FBI and identifies the most important thing of all about the sealing of records. The most important thing is the disposition of the case, and we submit that it is not the existence of a record per se that may have caused any discrimination in employment in the past, but rather the interpretation of it, or absence of interpretation. If the man is eligible for bail, he must submit a request for bail in the jail. A report of the fact that he is in custody and arrested comes into being. Case reports are prepared by the investigator. These are the documents on which the prosecutor in court bases his actual prosecution of the defendant. These, of course, identify clearly that he has been arrested.

In Chart No. 2, under the heading of "Arrests," is the situation in which, either at the same time of the creation of the initial report or later on as a result of investigation, the arrest actually occurs. Each of these several branches and leaves on the tree are representative of additional places where pieces of paper, if you will, or recordings of one kind or another of the fact that this person has been taken into custody exist. Again, on the right side are the local jurisdictions and on the left side are the outside agencies including *C.I.I.*, *FBI* and any other local municipal agencies that might be involved.

Finally, Chart No. 3 . . . in the area of "Trial and Disposition," these again are the agencies, presuming that the case goes beyond the point of dismissal under the provision of Section 849, or dismissal at

CHART NO. 2

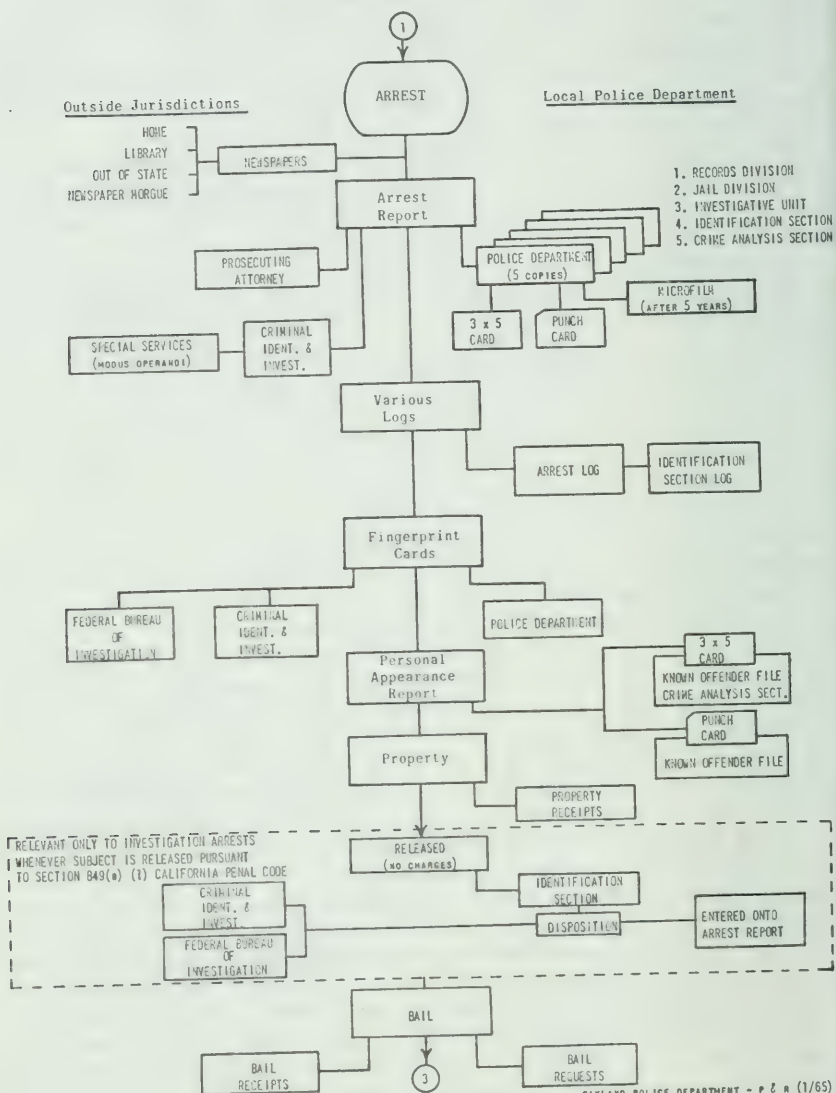


CHART NO. 3

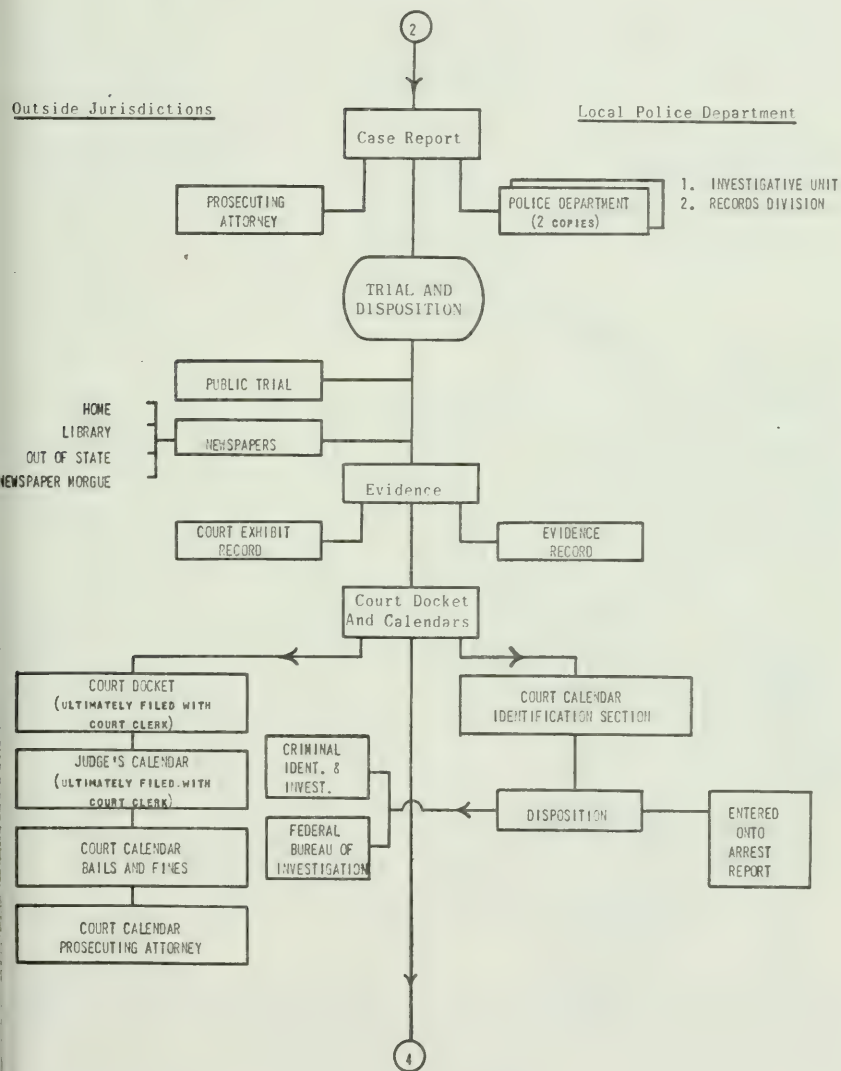
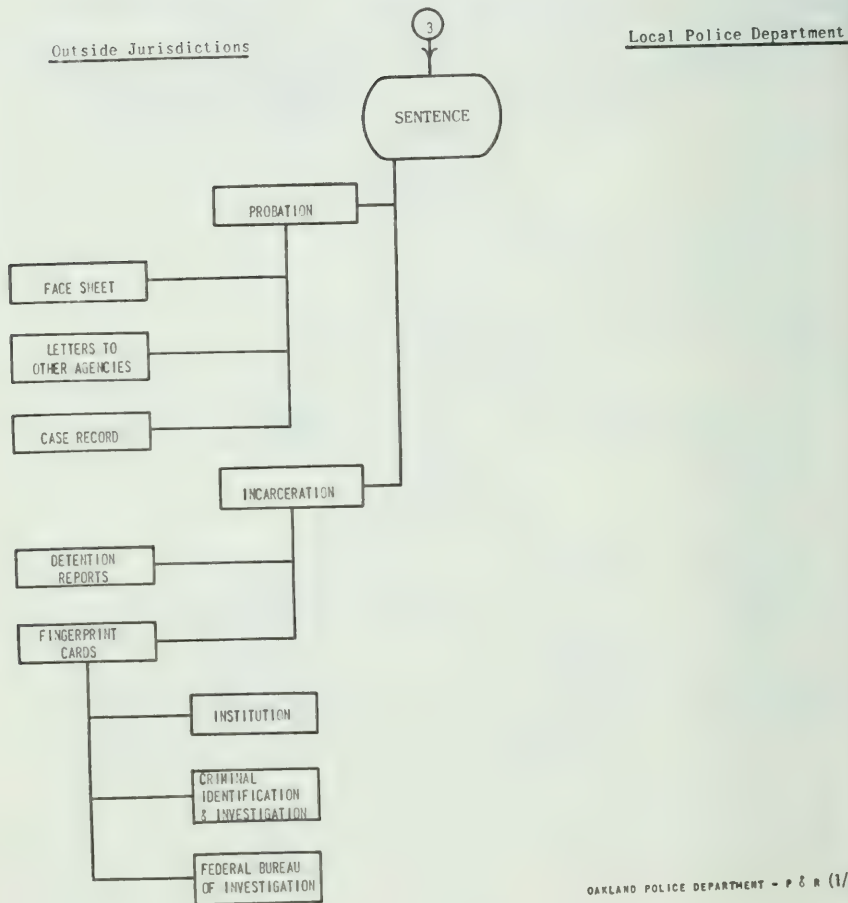


CHART NO. 4



some time prior to actual trial, and a trial is actually held as shown in Chart No. 4, "Sentence." These again are the various reports and records, if you will, of the fact that this man has been arrested. The actual trial occurs and again, if it is newsworthy, it will be recorded one way or another in the newspapers. At this point, and prior to this point, of course, a number of other reports are prepared that are evidence in the case. These identify the defendant and the charges against him and so forth. Other documents are prepared in court or in the county jurisdiction identifying this evidence also and identifying this defendant and identifying the charge. He goes into court. As you can see on Chart No. 3, some five or six calendars are prepared, filed in a number of different places, several of them winding up ultimately in the court clerk's office. At this same time, regardless of whatever the disposition may be, a disposition sheet is prepared which finds its way to the Identification Bureau and, again, this information is noted on the back of the arrest report. The two reports are prepared and sent to *Sacramento* to the *C.I.I.* and finally to the *FBI*.

I believe that when we view the charts, we perhaps get our first indication of that which is known to many of us, that total expungement in all cases is nearly impossible, probably. We did not touch on the individual areas involved. You will note, . . . that some of the first places where a record of the events exist are newspapers. Newspapers keep files also. They have a newspaper morgue. If a story is large enough, it goes out on some kind of wire service. Libraries file copies of this case. Whether the crime as it has occurred appears in a newspaper story or not is certainly going to vary from city to city, and we are all aware of this, but nevertheless, this record comes into being. The first thing the police department does is prepare a crime report. Having prepared the initial crime report, either initially or in a supplementary document, we will, in fact, identify this arrestee by name. All of these pieces of paper, if you will, that are implied or held here are pieces of paper that amount to records of the fact that this individual is arrested.

The volume of the total picture that is police recordkeeping in a local or municipal police department is of such enormity that I think that the message comes into being that there is not room for total efficiency in expunging records. I submit to the committee also that in the statutes that exist, there is no complete expungement having been demonstrated, I believe, as being totally efficient. (P. 28.)*

5. Newspapers

B. MARTIN:¹⁶ Newspapers . . . have printed . . . stories at the original time of the arrest or the trial. It would be in their morgues and, as the previous gentleman said, in a lot of other morgues. The libraries keep certain records. Not only would it be in our morgues, but in the case, say, of the Los Angeles Times, a million people would have read that story and many of those might have kept a clipping or record for some purpose. (P. 39.)*

* Hearing transcript, office of the chairman.

¹⁶ California Newspaper Publishers Association.

6. *Court Records*

ASSEMBLYMAN DONOVAN: As a matter of practical effect, the court records are never destroyed even where there is an order of expungement. It is a record entry that is made, but the permanent journals that we call dockets of court activities cannot be destroyed by law. It is a felony for anybody to destroy them. These things are bound permanently, and while subsequent entries can be made, they cannot be destroyed. They always remain the court records. So expungement, . . . is merely an entry into the record. It is not, in effect, tearing a sheet out of a book because this cannot be done. Therefore you would always have the court record.

MR. MARTIN: The previous speaker brought up the fact that there is some controversy over semantics in this area.¹⁷

ASSEMBLYMAN DONOVAN: There is, and there's a general misunderstanding throughout the state by various agencies as to exactly what expungement means and what acts are required, but the overlying provisions of the Penal Code absolutely forbid the court clerk to destroy any permanent record of the court. (P. 40.*)

7. *FBI*

VICE CHAIRMAN BEILENSEN: The next people whom we have scheduled here to testify were representatives of the Federal Bureau of Investigation. However, that is not to be. I would like to read into the record a letter from J. Edgar Hoover in response to a letter from the chairman of this committee, Mr. Winton, dated June 5. (P. 41.*)

"DEAR MR. WINTON:

"I have received your letter of June 3rd, with enclosures, requesting a representative of the bureau to appear before your committee.

"Although I would like to be of service, it has been my longstanding policy to refrain from injecting this bureau into legislative matters.

"For your information, however, the Identification Division operates by specific congressional enactment and is a repository for identification data transmitted to it by law enforcement agencies. The FBI serves merely as a custodian of such data, and the records contained therein are considered to be the property of the agency which transmits the information. If requests are received from the contributing agency, fingerprint cards are returned or changes made thereon.

"I regret we are unable to help you but trust you will understand our position.

Sincerely yours,

/s/ J. EDGAR HOOVER"

* Hearing transcript, office of the chairman.

¹⁷ See Appendix C for letter extending statement of witness.

APPENDIX A

California Penal Code

§ 11115. [Report or arrested person's transfer or release, or of disposition of case.] In any case in which a sheriff, police department or other law enforcement agency makes an arrest and transmits a report of the arrest to the Bureau of Criminal Identification and Investigation or to the Federal Bureau of Investigation, it shall be the duty of such law enforcement agency to furnish a report to such bureaus whenever the arrested person is transferred to the custody of another agency or is released without having a complaint or accusation filed with a court.

When a complaint or accusation has been filed with a court against such an arrested person, the law enforcement agency having primary jurisdiction to investigate the offense alleged therein shall receive the disposition of that case from the appropriate court and shall transmit a report of such disposition to the same bureaus to which arrest data has been furnished. [Added by Stats. 1961, ch. 1025, § 1.]

§ 11116. [Same: Report by clerk or judge of disposition of case: Report to law enforcement agency: "Disposition": Report to Bureau of dismissal under § 1203.4.] Whenever a criminal complaint or accusation is filed in any superior, municipal or justice court, the clerk, or, if there be no clerk, the judge of that court shall furnish a report of the disposition of such case to the sheriff, police department or other law enforcement agency primarily responsible for the investigation of the crime alleged, in a form and manner prescribed or approved by the Bureau of Criminal Identification and Investigation.

"Disposition," as used herein, includes any discharge or commitment of the defendant in a preliminary hearing and any judgment after conviction, judgment of acquittal, order of dismissal or other order or judgment which terminates a criminal case.

Whenever a court shall dismiss the accusation or information against a defendant under the provisions of Section 1203.4 of this code, the clerk, or, if there be no clerk, the judge of that court shall furnish a report of such proceedings to the Bureau of Criminal Identification and Investigation and shall include therein such information as may be required by said bureau. [Added by Stats. 1961, ch. 1025, § 1.]

§ 11117. [Same: Bureau's prescribing and furnishing procedures and forms: Record of disposition: Time for forwarding reports.] The Bureau of Criminal Identification and Investigation shall prescribe and furnish the procedures and forms to be used for the reports required in this article and shall establish uniform classifications of dispositions, which shall include the reason for such disposition in those cases where an arrested person is released without having been brought to trial or without having entered a plea of guilty. The bureau shall record the disposition on the criminal record of such arrested persons.

The reports required in this article shall be forwarded to the Bureau of Criminal Identification and Investigation and the Federal Bureau of Investigation within 30 days after the release of the arrested person or the termination of court proceedings. [Added by Stats. 1961, ch. 1025, § 1.]

APPENDIX B

Penal Code Section 1203.45

§ 1203.45. [Petition for order sealing record of conviction and other official records in the case: Effect of issuance or order: Application of section.] In any case in which a person was under the age of 21 years at the time of commission of a misdemeanor, and such person is eligible for, or has previously received, the relief provided by Section 1203.4, such person, in a proceeding under Section 1203.4, or a separate proceeding, may petition the court for an order sealing the record of conviction and other official records in the case, including records of arrests resulting in the criminal proceeding, and including records relating to other offenses charged in the accusatory pleading, whether defendant was acquitted or charges were dismissed. If the court finds that such person was under the age of 21 at the time of conviction, and is eligible for relief under Section 1203.4 or has previously received such relief, it may issue its order granting the relief prayed for. Thereafter such conviction, arrest, or other preceeding shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrence.

This section applies to convictions which occurred before, as well as those which occur after, the effective date of this section. This section shall not apply to offenses for which registration is required under Section 290 of this code or to violations of Division 10 (commencing with Section 11000) of the Health and Safety Code, nor does it apply to a person convicted of more than one offense. [Added by Stats. 1961, ch. 2054, § 1.]

Welfare and Institutions Code Section 781

§ 781. Petition for expungement of records in custody of juvenile court and probation officer, etc.: Effect of order to expunge records.

In any case in which a [1] *petition has been filed with a juvenile court to commence proceedings to adjudge such person a dependent child or ward of the court*, such person, or the county probation officer, may, five years or more after the jurisdiction of the juvenile court has terminated as to such person, petition the court for sealing of the records, including records of arrest, relating to such person's case, in the custody of the juvenile court and probation officer and such other agencies, including law enforcement agencies, and public officials, as petitioner alleges, in his petition, to have custody of such records. The court shall notify the district attorney of the county and the county probation officer, if he is not the petitioner of the petition, and such district attorney or probation officer or any of their deputies or any other person having relevant evidence may testify at the hearing on the petition. If, after hearing, the court finds that since such termination of jurisdiction he has not been convicted of a felony or any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order sealed all records, papers, and exhibits in such person's case in the custody of the juvenile court, including the juvenile court record, minute book entries, and entries on dockets, and other records relating to the case in the custody

of such other agencies and officials as are named in the order. Thereafter the proceedings in such case shall be deemed never to have occurred, and such former ward may properly reply accordingly to any inquiry about the events, records of which are ordered sealed. The court shall send a copy of the order to each agency and official named therein, and each such agency and official shall seal records in its custody as directed by the order, shall advise the court of its compliance, and thereupon shall seal the copy of the court's order for sealing of records that it or he received. The person who is the subject of records sealed pursuant to this section may petition the superior court to permit inspection of the records by persons named in the petition, and the superior court may so order. Otherwise such records shall not be open to inspection. [Amended by Stats 1963 ch 1761 § 8.]

1. Deleted: "person became a ward of the juvenile court for the reasons described in Section 601 or Section 602,"

COLLATERAL REFERENCES

Attorney General's Opinions:

40 Ops Atty Gen 50 (filing, etc. of sealed records of juveniles).

APPENDIX C

CALIFORNIA NEWSPAPER PUBLISHERS ASSOCIATION, INC.

LOS ANGELES: 615 So. Flower St. (90017) 213 MADison 3-1184

SACRAMENTO: 1127 11th St. (95814) 916 HICKory 7-1877

BEN D. MARTIN, General Manager
SACRAMENTO

HARVEY WALTERS, Business Manager
LOS ANGELES

July 8, 1964

HON. GORDON H. WINTON, JR., *Chairman*
Assembly Committee on Criminal Procedure
State Capitol—Room 5159
Sacramento, California

Dear Gordon:

We appreciate the opportunity to supplement my brief statement before your committee on the question of erasure of arrest records, and to answer the specific questions you've asked.

Please accept my answers in good faith, as I give them. Some will argue that some of my points are specious, that I imagine problems which would never exist, or that proposed legislation could easily be amended to solve the problems that concern us.

I would strongly disagree with them.

To save you or others the task of reading the lengthy details which follow, I'll summarize at the beginning.

We feel that newspapers, in California in particular, are careful about the use of stories relating to arrest, detention and trial. Many cases are such that the public should know of them, and our responsibility is to provide this knowledge. We do not feel we abuse the "right" or the responsibility to publish certain crime news, nor do we abuse the personal rights of individuals merely because they have a police record of arrest and trial.

We oppose erasure legislation as it has been presented to date on the simple, basic grounds that it is impossible to "unprint" a news story which has been printed; that it creates insurmountable problems and libelous dangers to attempt to change history and declare officially that an event which once happened legally did not happen. We are concerned over lawsuits, or even criminal charges against us because we once printed an item—then quite true—which later is legally declared never to have happened.

It's unfortunate that we must become so deeply involved in this long controversy. As I understand the aim of the erasure legislation, it is to protect the innocent from having to live with a police record when in fact he was never convicted of a crime. Testimony usually focuses on employment—applicants having to report they have been arrested or investigations showing a record of arrests.

We are not concerned as employers. We commend for use by our publishers a two-page employment application form prepared by the Newspaper Personnel Relations Association. It asks no question about an applicant's police record.

As a service to publishers and job seekers, we maintain a free employment referral service in our three offices. We never inquire of an applicant if he has a "record."

As a matter of fact, tomorrow I'm having lunch with our association president and the Director of the Department of Corrections. Part of our discussion will be on our long-standing participation in a program to help inmates learn the printing trade and parolees find employment.

But, we get caught in the middle on expungement legislation, between law enforcement agencies and those who express concern over the rights of an innocent person.

Erasure of arrest, detention and trial records create what we feel are insurmountable problems in our day-to-day operations.

The major point of my verbal testimony was our concern over possibility of libel suits, after expungement, because of stories we printed which were true at the time. If, in the routine day-to-day business of publishing a newspaper, a story appears that a certain "John Doe" has been arrested and charged with a crime, and subsequently he is acquitted and his arrest, detention and trial records are officially erased, the newspaper publishing the original story would have no legal defense in proving the truth of its story—which you well know is the basic defense in libel.

What an embarrassing, as well as expensive, situation for a newspaper—Mr. Doe sues, he has a copy of the *Podunk Press* stating that he was tried for murder, but official records and the newspaper's own records (if the mechanical problems are overcome) do not show that he was ever tried for murder. We'd have to plead *nolo contendere* to every such case, or hope a judge would accept hearsay evidence that such a trial actually had happened, even though there were no official records to prove it.

It might be possible to amend other laws to relieve newspapers and other media from liability of libel in such cases. If this is possible, then we get to the specific question you've raised—the "practical problems" of expunging newspaper files.

Here are some of the problems. Others could be presented.

(1) The law enforcement agency requesting a particular record be expunged would have no way of knowing which of some 800 California newspapers might have carried some part of the story at some stage in its proceedings—some might have reported the arrest, those and/or others might have reported the arraignment, the jury selection, an argument over change of venue, the actual trial, verdict, etc. Nor would the agency know on what dates such stories appeared.

For the Sacramento Sheriff's office, for example, to request newspapers to expunge the record of Mr. Doe on his arrest, trial and acquittal on the murder charge, they would have to send the request in some official notification to every newspaper in the state. Each newspaper, to comply, would have to know the dates of the various stages which might have created some newsworthy event.

The Sacramento *Bee*, for example, which runs from 60 to more than 100 pages daily, seven days a week, would have to check each page of each of three daily editions (which vary as to news content) from the initial arrest through the trial in order to make certain each reference to the trial was "expunged" from its records.

Multiply this by some 125 daily newspapers in California which carry stories by Associated Press and United Press International and compound it by considering that many metropolitan papers have five or six editions daily and you have a cumbersome mechanical problem even to locate the record to be expunged—and then you've found it only in that newspaper's own official file.

Physically "erasing" a story out of a printed page poses some slight problem, especially for the many larger newspapers which convert their official files onto microfilm.

According to testimony from the CII before your committee, there are 400,000 arrests each year which do not result in conviction. Certainly, not all of these make the news columns, but, in order to properly enforce expungement law, each of these would require notification and search of newspaper files.

(2) Supposing this mechanical problem of finding and erasing the newspapers' own records were solved, let's consider some other places where more than 10 million copies of California's daily newspapers go.

Libraries, for example. The California State Library in Sacramento subscribes to 178 newspapers, 150 of them California newspapers. The California newspapers they keep, because of their proven importance and value to historians and public officials, and the public.

To completely expunge Mr. Doe's arrest, detention and trial records, the library would have to institute the same page-by-page, edition-by-edition search as did the individual newspapers—only they would do it in 150 newspapers. Many of these, too, are on microfilm.

The Sacramento City Library subscribes to some 70 newspapers and keeps them all for two to four months. They maintain permanent files, some on microfilm, of the Sacramento *Bee*, the Sacramento *Union* and the *Wall Street Journal*.

Every city and county library receives certain newspapers and I'm sure you'd find that every library keeps permanent files of its local newspapers.

(3) Clipping services—this is big business. Thousands of people, firms, organizations and associations subscribe, seeking copies of newspaper articles on countless subjects.

We get clippings about newspaperboys getting beaten and robbed, newsracks being stolen or broken into, or, on occasion, newspaper personnel getting into trouble with the law.

How can agencies or courts know who has clippings about any given arrest, detention or trial?

Gordon, it seems to me that the whole aim of this controversial legislation is to allow jobseekers to avoid the stigma of reporting they've been arrested on a charge for which they were never found guilty. Is this really a problem? Do many application forms ask if a person has ever been "arrested," or do those which have any reference at all to the subject actually ask about "convictions"?

BEN D. MARTIN

PART 2

HOME FURLOUGHS FOR PRISONERS

I. BASIS OF REPORT

A. Resolution

The following House Resolution Number 284 was introduced by Assemblyman Tom Carrell in May, 1963:

House Resolution No. 284

Relative to a study relating to prisoners.

WHEREAS, The maintenance of family stability is important to rehabilitation of persons convicted of criminal offenses, and effective rehabilitation of such persons is vital to the long-range protection of society; and

WHEREAS, Distinguished penologists recognize that sexual tensions create a major disciplinary problem in penal institutions and that the separation of families by commitment to prison creates a problem in the family adjustment to both the individuals concerned and to society in general; and

WHEREAS; Certain foreign nations and the State of Mississippi have established policies which permit conjugal visits under certain conditions; and

WHEREAS, Programs of work and home furlough and halfway houses are receiving increased attention; now, therefore, be it

Resolved by the Assembly of the State of California, That the Assembly Committee on Rules is directed to refer for study to an appropriate interim committee the subject of establishment of a system of conjugal visits to prisoners, or a system of work or home furloughs and halfway houses, or other means of alleviating the sexual and other problems incident to separation of a criminal offender from his family; and that such interim committee shall report its findings and recommendations to the Assembly no later than the fifty legislative day of the 1965 Regular Session of the Legislature.

Resolution read, and referred by the Speaker pro Tempore to the Committee on Rules.

B. References

1. BALOGH: "Conjugal Visitations in Prisons: A Sociological Perspective," *Federal Probation*, page 52 (September 1964).

2. CAVAN and ZEMANS: "Marital Relationships of Prisoners Twenty-eight Countries," 49 *Journal of Criminal Law, Criminology and Police Science* 133 (1958-9).

3. DUFFY: "Prison Problem Nobody Talks About," *This Week Magazine*, October 21, 1962.

4. HOPPER: "The Conjugal Visit at Mississippi State Penitentiary," 53 *Journal of Criminal Law, Criminology, and Police Science* (1962).

5. JOHNSON: "Conjugal Visits of the Prisons in Brazil," Unpublished (1963).

6. RUBIN *et al.*: *The Law of Criminal Correction* (West, 1963).

7. ZEMANS and CAVAN: "Marital Relationships of Prisoners," 49 *Journal of Criminal Law, Criminology and Police Science* 50 (1958-59).

8. "Correction in the Community: Alternatives to Incarceration," *California Board of Corrections Monograph No. 4* (June 1964).

9. Informal interviews with staff of the Department of Corrections, with the prison committee of the American Friends Society, and with Professor of Criminology A. LaMont Smith.

C. Objectives

At the outset, three primary objectives were envisioned:

1. Preservation of the family unit in the interests of the family of the incarcerated individual, and of society which would otherwise be required to "pick up the pieces" in the form of welfare and second generation delinquency.
2. Preservation of the family unit as a base for rehabilitation efforts in contemplation of returning offenders to the community with the least possible friction.
3. Alleviation of sexual tensions said to be responsible for major disciplinary problems in penal institutions.¹

D. Modalities

To attain the enumerated objectives, investigation of three concepts was undertaken:

1. Conjugal visitation in or near prisons.
2. Home furlough for purposes preparatory to parole.
3. Halfway houses.

II. IMPRACTICABILITY OF CONJUGAL VISITS IN PRISON

A. Background

In South America, particularly Argentina, Brazil, and Mexico, conjugal visits are the rule rather than the exception.² In Europe, Sweden seems to be the only country in which conjugal visits as such take place.

The social climate of those countries differs considerably, in many respects, from that to be found here. Dr. Norman S. Hayner, of the University of Washington Department of Sociology, who visited Mexico for a period of 18 months, points this out:

[The practice of conjugal visits] in Mexican prisons is a realistic method of meeting the sex problem. Not only does it combat homosexuality; it often changes the entire behavior of a convict. It should be remembered that Mexico has a very strong family tradition. Even more than in the United States the family is regarded as a fundamental institution. Anything that tends to destroy the family meets with opposition; anything that strengthens it is supported. It is believed that conjugal visits keep couples together.³

Where conjugal visits have been tried in this country, most extensively in Mississippi, there has been less than enthusiasm about their success in "meeting the sex problem." The feeling of Columbus Hopper, writing about conjugal visits in Mississippi, is that they tend to increase sexual difficulties among prisoners, especially those not married at time of incarceration.⁴ He also states that it has not been proved that conjugal visits reduce the problem of homosexuality. His conclusion is that more experimentation has to be done in the area of home furloughs, as well as with conjugal visitation, in order to really uncover advantages and disadvantages.

¹ See reference source No. 3.

² See reference sources Nos. 2 and 5.

³ Reference source No. 2 at 137.

⁴ See reference source No. 4.

B. *Rejection of Concept*

Evidence to date suggests strongly that a system of furlough visits be developed in preference to conjugal visiting on institution grounds. The reasoning for this is as follows:

1. Sex is only part of the healthy marital relationship. Our aim in this proposal should be to promote all the constructive elements of a reasonable stable family life. This can best be done by permitting the inmate some time in his own home with all members of his family wherein he cannot only benefit from a sexual relationship with his wife, but also reaffirm his relationship with other family members.

2. This approach would also permit reactivation of other constructive family and social relationships the inmate may have had in his home situation. Renewal of contacts with previous employers and prospective employers would be a valuable adjunct here.

3. Some inmates, equally deserving of this type of opportunity to reaffirm their family/social/economic ties, but who are not now married, will be excluded from any scheme based solely on conjugal visiting basis.

4. Our American mores would find more acceptable the generalized concept of home leaves, rather than the limited sex relief purpose of conjugal visits.

5. The cost of providing suitable facilities in the diverse penal institutions of the state could be prohibitive.

It should be pointed out that the concept of conjugal visits need not be entirely abandoned. Although home furloughs or visits, as a part of gradual reintroduction to normal living, are preferable, there may be prisoners working in forestry camps and road camps, far removed from their families, for whom conjugal visits could be arranged. Week-end visiting, for example, could take place in accommodations constructed by the men themselves.⁵

III. CANDIDATES FOR HOME FURLOUGH

A. *Limitations on the Program*

It may be anticipated that home furloughs will generate problems. There will certainly be a need for strengthening both community and institutional family counseling programs. These would be functioning prior to release and after. Involvement of the Parole and Community Services Division of the Department of Corrections would appear both necessary and desirable.

Initially, eligibility for home leave should be restricted to inmates:

1. Who have an established parole date.
2. Whose past history and institutional conduct clearly indicate that benefits would accrue from a visit home.
3. Where there is indisputable evidence of a valid marriage prior to imprisonment with probability of its continuance after release from prison.
4. With family structures which would benefit from such visits.
5. Who have no histories of violence in their background.

⁵ See "Tulare Jurist Inaugurates Sex Leaves For Prisoners," *The Sacramento Bee*, September 6, 1964.

B. *Additional Guidelines*

The following considerations would seem applicable where other circumstances suggest home furlough would serve a useful purpose:

1. Investigation of family composition and domestic environment by a field parole agent should receive priority.
2. The home visits should be of specified duration in the interest of injecting maximum stability into the otherwise experimental situation.
3. Initially the program should be structured so that the entire cost of the home visit would be borne by the inmate and/or his family. Very early, though, there should be provision for the state to participate financially in deserving cases.

IV. ROLE OF THE HALFWAY HOUSE

A. *Auxiliary Function*

Returning the prisoner to the community has often been compared to pushing a man into cold water. Even temporary leaves might require an adjustment on the part of the prisoner and his family too great to make without substantial supervision. The advantages inherent in these dormitorylike facilities is obvious. Basic needs of food and shelter could be met while more significant adjustment was taking place. In addition, many deserving prisoners with unstable or non-existent family situations would, nevertheless, benefit substantially through gradual exposure to the outside community.

Thus, where either the prisoner or his family were not on the firmest of ground, the halfway house could prove a middle step of the highest utility.

B. *Experience*

Experimentation has already begun in this area. In "The Community-centered Correctional Residence,"⁶ Professor Gilbert Geis relates experiences had by the East Los Angeles Halfway House, a facility for former narcotics addicts operated by the Department of Corrections.

One of the initial difficulties was, as might be suspected, selecting an appropriate location. Located in Boyle Heights, "an area having an extremely high rate of narcotics addiction," Dr. Geis reports that "community opposition to the house was virtually nonexistent. Located amongst institutional buildings, and not far from a downtown business section, the house blended with relative inconspicuousness."⁷ Whether the environment was of a sort most conducive to rehabilitation is not certain. In this case, failure to locate in an area having a lower crime rate sacrificed one value in the interest of building upon a common background between the addict and the community. This also exposed the addict to temptations such as he would likely encounter upon release, and relapse into narcotics usage was fairly easy to detect.

⁶ Reference source No. 8.

⁷ *Id.* at 22-3.

Another halfway house project is underway, described in an editor's note:

The Department of Corrections is currently preparing to open a "Community Correctional Center" in Oakland. As at the East Los Angeles Halfway House, it will provide a residence for parolees and an office for parole agents. The center concept goes further, however, and proposes to ultimately include a sheltered workshop, special presentence diagnostic services which would be made available to local courts, outpatient psychiatric services for those parolees in the area as well as in the center, placement services, and a community correctional information service. It is seen as a "halfway back" house as well as a "halfway out" house. A parolee faltering in the community could be ordered into the more controlled environment of the center to forestall a return to crime. Thus, it would provide an intermediate alternative to return to prison.⁸

C. *Conclusions Indefinite*

Evaluation of the program has thus far been hampered by (a) shortness of experience, and (b) the large number of variables present in so experimental a program. Dr. Geis, however, apparently feels that continued experimentation is justified:

There are immediate risks to the community in correctional endeavors located within it, but it does not seem unreasonable to expect that in the long run community-based residential programs will produce correctional results of a magnitude adequate to prove the initial calculated risk to have been a sound social investment.⁹

V. GENERAL CONCLUSIONS AND SPECIFIC RECOMMENDATIONS

A. *Toward Future Prospects*

It is difficult to evaluate the advantages and disabilities of programs that have never been tried under circumstances peculiar to, and on the scale of, California's penal system. For this reason, the following recommendations are for possible *future* comprehensive legislation, on the assumption that a system of halfway houses and home furloughs is workable, but on the further assumption that it would be best to move slowly at this time:

1. A fundamental purpose of this program would be to promote all the constructive elements of family life. In this connection it would be recommended that family counseling programs be strengthened in every institution, to plan, coordinate and promote programs, as the best method of preparing inmates and their families for reunion. In addition, this recommendation would minimize the misuse and abuse of the furlough privilege.

2. It would be recommended that legislation eventually be introduced designating halfway houses established by the Department of Corrections as branches of California penal institutions. This would permit the Director of Corrections to transfer deserving inmates within a speci-

⁸ *Id.*, at 28.

⁹ *Ibid.*

fied time of a scheduled release date to a halfway house situation for optimum planning of furloughs home and/or sound release preparation.

3. That financial provision be made to:

- a. Permit Parole Division participation in the prior investigation and supervision of furloughs home.
- b. Provide for the added workload institutions will have in terms of preparing and processing selected inmates for furloughs home.
- c. Permit the state to participate financially in deserving cases where the inmate or his family lack resources to finance a furlough home.

4. There should be provision for the inmate to check in with parole authorities upon arrival home and prior to departure back to the institution.

5. The operational plan should contain provisions for the inmate to meet with family members at some midpoint or in the community near the prison in cases where the distance from the prison is substantial, and where it is easier for the family to come halfway.

B. *Committee Recommended Legislation*

As indicated, whether the total program envisioned will be beneficial cannot be accurately predicted at this time. It is nevertheless strongly urged initial experimentation be undertaken. It is therefore recommended that a system of home or work furloughs, similar to the work furloughs in use in the various counties, be instituted. This could be accomplished by amending Section 2690 of the *Penal Code* to include the "removal for purposes preparatory to parole" concept. Passage of the following bill amending said section is recommended by this committee:

(Mr. Henson does not approve this recommendation.)

ASSEMBLY BILL 872

*An act to amend Section 2690 of the Penal Code,
relating to state prisoners.*

The people of the State of California do enact as follows:

SECTION 1. Section 2690 of the Penal Code is amended to read:

2690. The Director of Corrections may authorize the temporary removal under custody from prison or any other institution for the detention of adults under the jurisdiction of the Department of Corrections of any inmate, for the purpose of employing said person in any work directly connected with the administration, management, or maintenance of the prison or institution in which he is confined, ~~or of furnishing to the person medical treatment not available at the prison or institution,~~ or for purposes of cooperating voluntarily in medical research which cannot be performed at the prison or institution, ~~or for the purpose of arranging parole placement programs at any time within 90 days of scheduled parole release at the request of the Adult Authority governing male prisoners and at the request of the Board of Trustees, California Institution for Women, governing female prisoners.~~

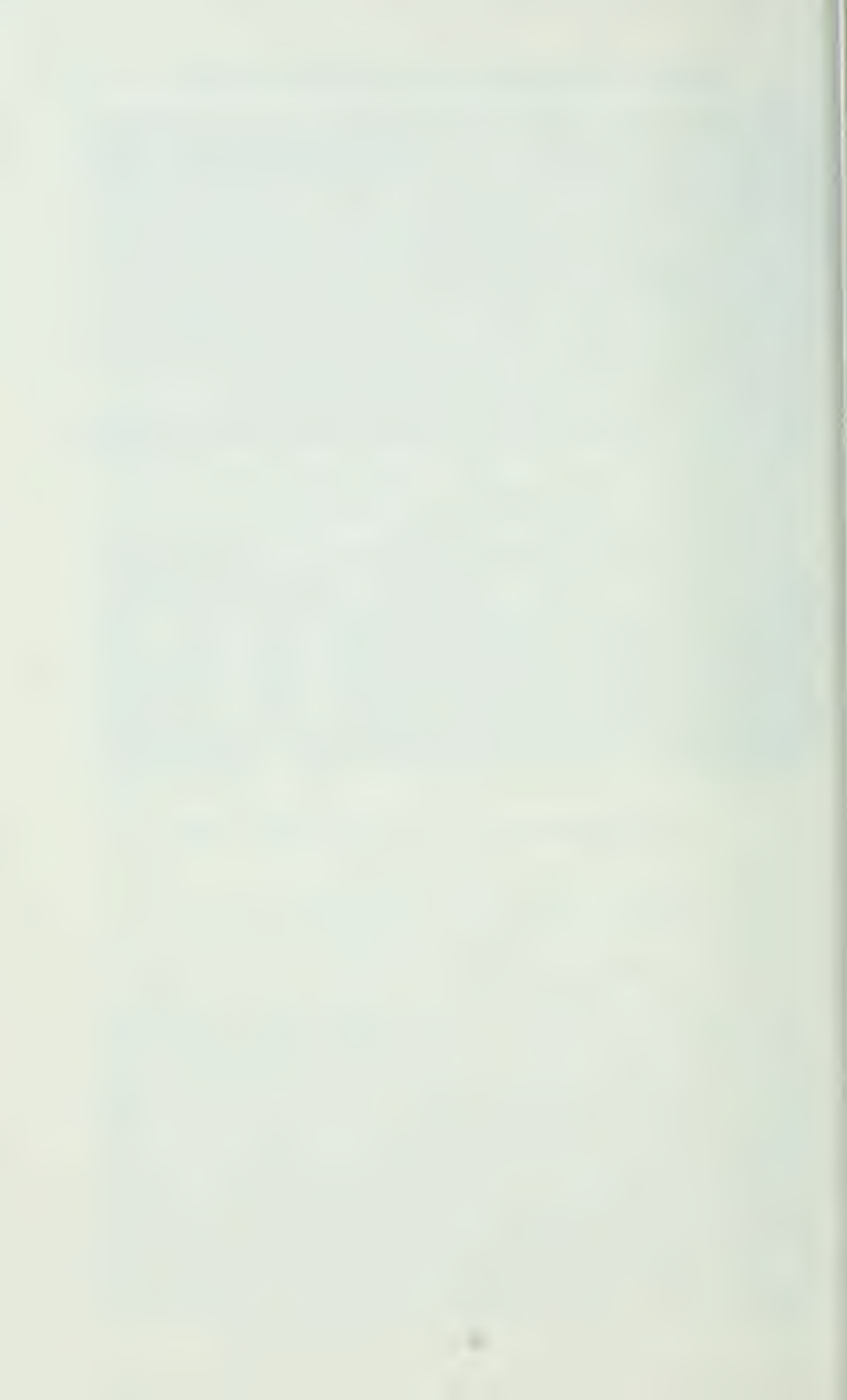
The director may also authorize temporary removal or temporary release of any inmate under custody or under such other conditions as he prescribes, for the purpose of furnishing to the inmate medical treatment not available at the prison or institution or for purposes preparatory to a scheduled parole. Removal or release for purposes preparatory to a scheduled parole shall not be effected earlier than 90 days before the parole release date unless such removal or release is requested by the Adult Authority, in the case of a male inmate, or by the Board of Trustees, California Institution for Women, in the case of a female inmate. When an inmate is temporarily removed or temporarily released for a purpose preparatory to parole, the director may require the inmate to reimburse the state, in whole or part, for expenses incurred by the state in connection therewith.

Except in the case of removal for medical treatment or for a purpose preparatory to release on parole, such removal shall not be for a period longer than one day.

Legislative Counsel's Digest

Amends Sec. 2690 Pen.C.

Authorizes temporary release of state prisoners for purpose preparatory to parole, rather than purpose of "arranging parole placement program." Specifies that such release may be effected on director's own initiative as well as on request of parole agency and may be under conditions prescribed by director as alternative to being under custody. Excepts such release from general one-day limit on temporary removals. Authorizes director to require reimbursement, in whole or part, to state of expenses incurred in connection with such a release or removal. Permits temporary release for medical treatment also to be under conditions prescribed by director as alternative to being under custody.



PART 3

NARCOTICS AND DANGEROUS DRUGS



I. WITNESSES BEFORE THE COMMITTEE ON CRIMINAL PROCEDURE
AT ITS HEARINGS ON NARCOTICS AND DANGEROUS DRUGS
LEGISLATION CONDUCTED NOVEMBER 15, 16 AND 17
IN SAN DIEGO, CALIFORNIA

The following witnesses appeared before the Criminal Procedure Committee in San Diego to discuss problems relating to narcotics and dangerous drugs in California. (Witnesses are listed in order of appearance.)

Honorable William Munnell	Dr. Frank McCarthy
Walter Barkdull	Dr. William McGee
Claude B. Brown	Dr. H. P. Groesbeck
O. J. Roed	Dr. I. Myron Vigran
John Storer	Arlo E. Smith
Arthur K. Beckley	Edward K. Distler
Arnold Lohman	Charles Savage
Thorvald T. Brown	Donald Abbott
Honorable Louis Drucker	Albert E. Hederman
William Peeples	William T. Low
Walter Dunbar	Robert L. Dodge
Arthur Holzman	Joseph H. House
William Quinn	William Robbins
David L. Klein	Barry Bunshoft
Dr. Robert J. McKenna	Charles Bridges
Dr. Leopold Tuchman	

Copies of the transcript with appendices of the November 15-17 hearings are available through the office of the Chairman of the Committee on Criminal Procedure.

II. COMMITTEE RECOMMENDATIONS AND
RECOMMENDED LEGISLATION

The committee was authorized during the 1963-65 interim period to study a broad range of problems in the area of narcotics and dangerous drugs. Pursuant to this authority, the committee conducted three days of public hearings in San Diego in late 1963. The transcript of this hearing with appropriate appendices has been prepared and reviewed by the committee.

It is the feeling of the members of the committee that, having prepared themselves through these hearings to respond to legislative proposals that will be presented to them in the 1965 session and in view of the great volume of legislative reference materials already published in this area, the most useful thing that the committee can do at this time is to enunciate their recommendations on the specific bills presented to them for interim study. Those recommendations follow.

BILLS STUDIED BY THE COMMITTEE

A.B. 242 (1963)	A.B. 2553 (1963)
A.B. 537 (1963)	A.B. 2710 (1963)
A.B. 2004 (1963)	A.B. 2884 (1963)

Recommendations

I.

ASSEMBLY BILL 242 (Gonsalves)

Bill Provides: Defines dangerous drug addict and provides that such addicts be committed to the Department of Corrections for detention, treatment, and rehabilitation.

Committee Finding: There is a legitimate and pressing need for additional consideration by agencies of the State of California of the illegitimate use of so-called dangerous drugs. However, Assembly Bill 242 approaches the problem in a way that creates problems within the Department of Corrections that it is not, at this time, prepared to meet. It is, further, seriously questioned whether or not so-called dangerous drug addicts should be treated in the same manner and in the same place as narcotics addicts.

Recommendation: That this or similar legislation should *not* be passed by the 1965 Regular Session of the California Legislature pending an in depth study by appropriate medical and correctional groups to determine the most effective approaches to the treatment of dangerous drug addicts.

II.

ASSEMBLY BILL 537 (Gonsalves)

Bill Provides: For allocation of certain fines to a dangerous drug addict rehabilitation account.

Committee Finding: This is a sister bill of A.B. 242 to provide funds for partial payment of the expense of that program.

Recommendation: That this bill should *not* be passed by the 1965 Session of the California Legislature.

III.

ASSEMBLY BILL 2004 (Ferrell)

Bill Provides: For control of L.S.D. by withdrawal of tax exempt status from nonprofit corporations using the drug but failing to comply with federal and state regulations. It also authorizes the California Board of Medical Examiners to adopt rules governing the authorization to use L.S.D. in the treatment of human beings.

Committee Finding: As far as testimony before the committee developed, there is only one corporation within the State of California that would be substantially affected by this bill. No clear necessity for this legislation as it pertains to that corporation was established.

Furthermore, there is serious doubt that the means of eliminating drug abuse is through the device of a withdrawal of tax exempt status.

Recommendation: That this bill or any of substantially the same nature should *not* be passed by the 1965 Session of the California Legislature.

IV.

ASSEMBLY BILL 2553 (Donovan)

Bill Provides: For nondisclosure of identity of informants in narcotics cases, when the informants are not material witnesses, for the purpose of showing reasonable cause for making an arrest or search.

Committee Finding: The committee recognizes a legitimate concern among law enforcement officials for protection of their informants. Furthermore, since the use of informants is especially valuable in narcotics prosecutions, there is a special need to shield those informants from disclosure to as great a degree possible compatible with the constitutional rights of the defendant.

The committee is anxious, however, that the evidence presented to justify the reliability of the informant be substantial evidence presented in open court and not in closed proceedings, and it has added language to the bill to that effect.

Recommendation: That the following amendment be made to Section 1881 of the *Code of Civil Procedure*:

ASSEMBLY BILL 979

*An act to amend Section 1881 of the Code of Civil Procedure,
relating to privileged communications.*

The people of the State of California do enact as follows:

SECTION 1. Section 1881 of the Code of Civil Procedure is amended to read:

1881. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. A husband cannot be examined for or against his wife without her consent; nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, or for a crime committed against another person by a husband or wife while engaged in committing and connected with the commission of a crime by one against the other; or in an action for damages against another person for adultery committed by either husband or wife; or in a hearing held to determine the mental incompetency or condition of either husband or wife.

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment; nor can an attorney's secretary, stenographer or clerk be examined, without the consent of his employer, concerning any fact the knowledge of which has been acquired in such capacity.

3. A clergyman, priest or religious practitioner of an established church cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional

character in the course of discipline enjoined by the church to which he belongs.

4. A licensed physician or surgeon cannot, without the consent of his patient, be examined in a civil action, as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient; provided, however, that either before or after probate, upon the contest of any will executed, or claimed to have been executed, by such patient, or after the death of such patient, in any action involving the validity of any instrument executed, or claimed to have been executed, by him, conveying or transferring any real or personal property, such physician or surgeon may testify to the mental condition of said patient and in so testifying may disclose information acquired by him concerning said deceased which was necessary to enable him to prescribe or act for such deceased; provided further, that after the death of the patient, the executor of his will, or the administrator of his estate, or the surviving spouse of the deceased, or if there be no surviving spouse, the children of the deceased personally, or, if minors, by their guardian, may give such consent, in any action or proceeding brought to recover damages on account of the death of the patient; provided further, that where any person brings an action to recover damages for personal injuries, such action shall be deemed to constitute a consent by the person bringing such action that any physician who has prescribed for or treated said person and whose testimony is material in said action shall testify; and provided further, that the bringing of an action, to recover for the death of a patient, by the executor of his will, or by the administrator of his estate, or by the surviving spouse of the deceased, or if there be no surviving spouse, by the children personally, or if minors, by their guardian, shall constitute a consent by such executor, administrator, surviving spouse, or children or guardian, to the testimony of any physician who attended said deceased.

5. A public officer cannot be examined as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

6. *In any preliminary hearing, criminal trial or other criminal proceeding for violation of any provision of Division 10 (commencing with Section 11000) of the Health and Safety Code, evidence of information communicated to a peace officer by a confidential informant, who is not a material witness to the guilt or innocence of the accused of the offense charged, shall be admissible on the issue of reasonable cause to make an arrest or search without requiring that the name or identity of the informant be disclosed if the judge or magistrate is satisfied, based upon evidence produced in open court, out of the presence of the jury, that such information was received from a reliable informant and in his discretion does not require such disclosure.*

7. A publisher, editor, reporter, or other person connected with or employed upon a newspaper, or by a press association or wire service, cannot be adjudged in contempt by a court, the Legislature, or any administrative body, for refusing to disclose the source of any information procured for publication and published in a newspaper.

Nor can a radio or television news reporter or other person connected with or employed by a radio or television station be so adjudged in

contempt for refusing to disclose the source of *any information procured for and used for news or news commentary* purposes on radio or television.

Mr. Beilenson, Mr. Crown, and Mr. Knox dissent from this recommendation.

V.

ASSEMBLY BILL 2710 (Ashcraft)

Bill Provides: For detention of a person who police officer has reasonable cause to believe is addicted to narcotics or is in imminent danger of such addiction for 24 hours pending the filing of a petition for involuntary commitment. Provides further for jurisdiction over a person not present in the county when a petition for involuntary commitment is filed.

Committee Finding: This bill provides a tool by which law enforcement agencies can retain for a short time persons who are suspected of being narcotics addicts and hold them pending the filing of a petition for involuntary civil commitment. The committee feels that such a provision is useful in helping to make more effective the present involuntary commitment procedures. It further feels that the inclusion of a reasonable cause requirement offers protection to the person being held under the provisions of the bill.

Recommendation: That Sections 6500.5 and 6500.7 be added to the *Penal Code* as provided in the following bill, provided that the committee reserves the right to review its recommendation at the regular hearing on the bill as far as it provides for specific time periods for detention and for filing of petitions.

ASSEMBLY BILL 975

*An act to add Sections 6500.5 and 6500.7 to the Penal Code,
relating to narcotic addiction.*

The people of the State of California do enact as follows:

SECTION 1. Section 6500.5 is added to the Penal Code, to read:

6500.5. Any peace officer who has reasonable cause to believe that a person is addicted to narcotics or in imminent danger of addiction to narcotics may take such person into custody and cause him to be held in custody for 24 hours pending the filing of a petition pursuant to this article in the superior court of the county in which such person is held.

SEC. 2. Section 6500.7 is added to the Penal Code, to read:

6500.7. In any case in which a petition is filed pursuant to this article within 48 hours after the person sought to be committed was present in the county, the court shall have jurisdiction to order commitment though the person was not present in the county when the petition was filed.

VI.

ASSEMBLY BILL 2884 (Gonsalves)

Bill Provides: For an increase in penalties for the unlawful possession of certain drugs.

Committee Finding: The committee has serious doubts that increasing penalties as provided in this proposed legislation will be of any substantial assistance in dealing with the problem of the unlawful use or possession of dangerous drugs. The committee is willing to consider additional legislative proposals for attacking the problem of dangerous drug use and recognizes this as an area for serious legislative inquiry during the next session. However, the committee is not convinced of the usefulness of the particular proposal of A.B. 2884 at this time.

Recommendation: That this or similar legislation should not be passed by the 1965 Regular Session of the California Legislature.

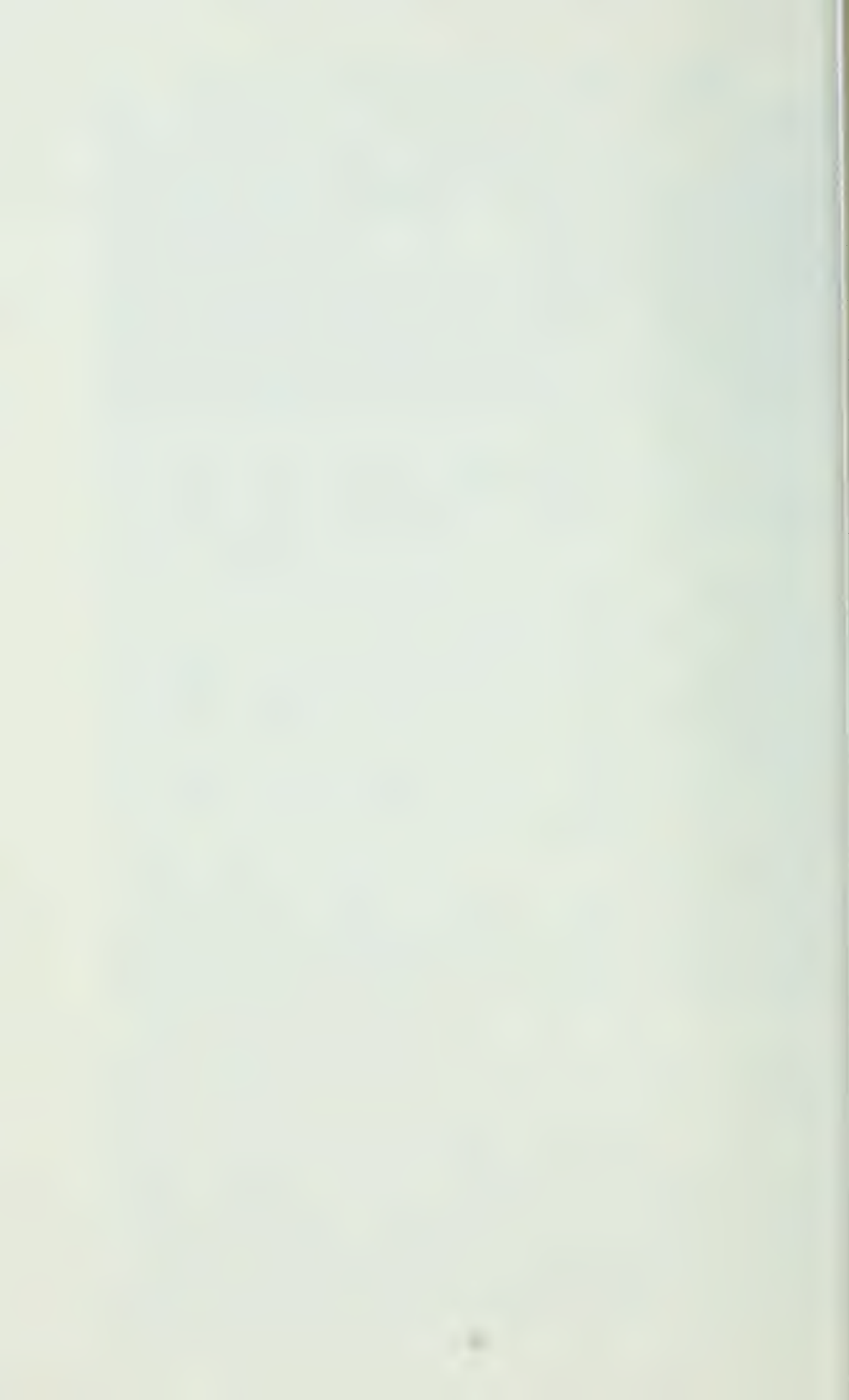
(Mr. Thelin does not agree with the committee finding or recommendation on this legislation.)

III. BIBLIOGRAPHY OF LEGISLATIVE PUBLICATIONS ON NARCOTICS AND DANGEROUS DRUGS PUBLISHED SINCE 1952

The following list represents publications by the California Legislature since 1952 concerning narcotics and dangerous drugs. It is reproduced in this report both as an aid to researchers in the field and also as a suggestion that perhaps the future course of legislative action might be directed less at studying and investigating the problem and more toward the translation of already available information into new programs to meet growing legal, social and individual needs and problems in this area.

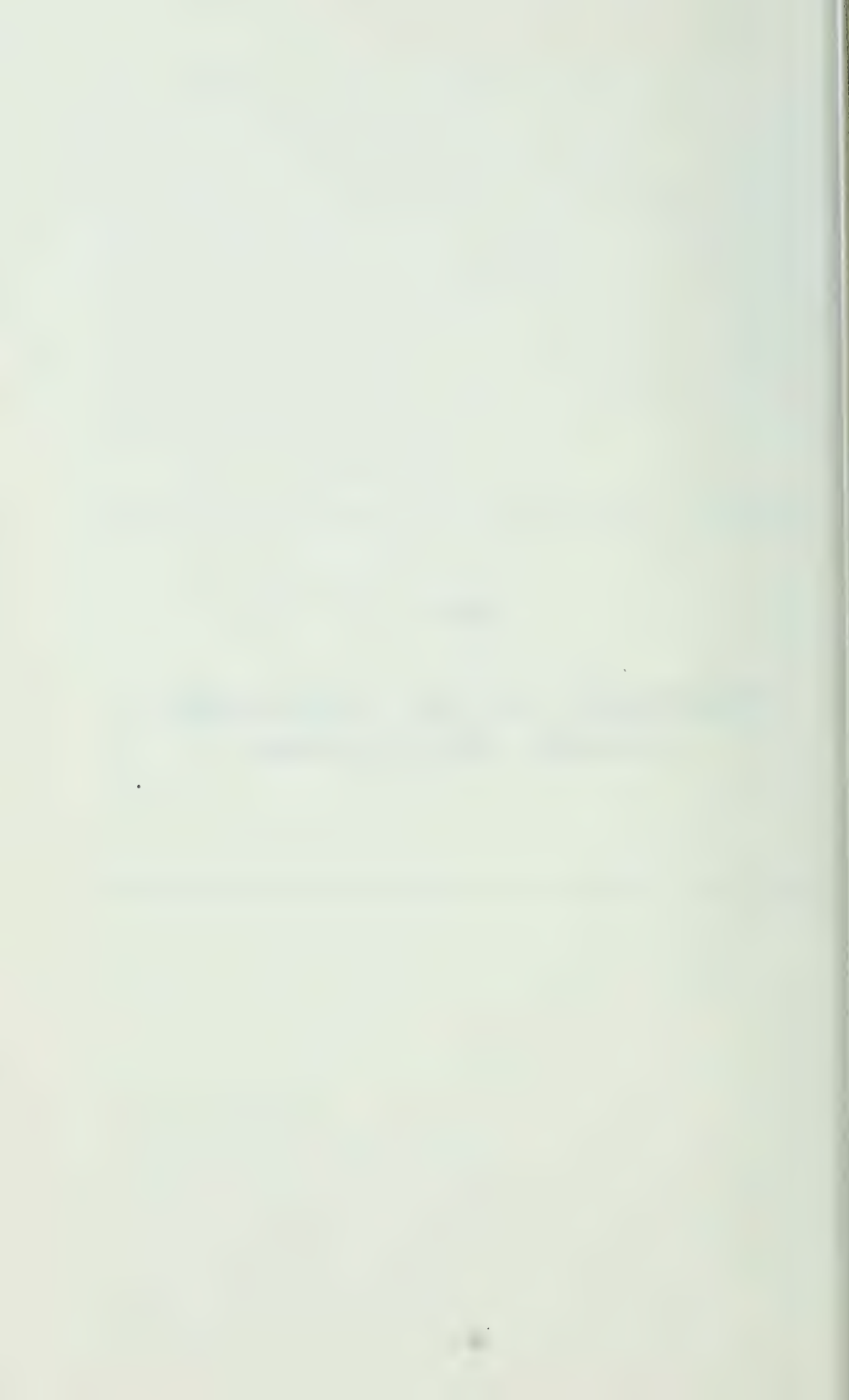
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- California. Legislature. Assembly. Interim Committee on Judiciary. Subcommittee on Narcotics. Transcript of proceedings. Los Angeles, October 14-15, 1954. 97, 133 pp. Govt. Pubs. Section L500 I6 Folio 9 No. 6.
- California. Legislature. Assembly. Interim Committee on Judiciary and the Interim Committee on Public Health. Preliminary report of the Subcommittee on Narcotics. 1952, 45 pp. Govt. Pubs. Section L500 I6 1952 No. 17.
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- California. Legislature. Assembly. Interim Committee on Public Health. Final Report. March 20, 1957. (Assembly Interim Committee reports, 1955-57, v. 9 No. 12). 68 pp. Report of Subcommittee on Narcotics and Dangerous Drugs, pp. 43-48.
- California. Legislature. Assembly. Interim Committee on Public Health. Hearing of subcommittee on Narcotics and Mentally Ill: rehabilitation of narcotic addicts. Transcript of proceedings . . . San Francisco, Oct. 24, 1962. Govt. Pubs. Section L500 P81 1962, No. 1.
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- California. Senate. Factfinding Committee on Judiciary. Report and recommendations on postconviction procedures. January 1963. Govt. Pubs. Section L500 I6 1963 J81 No. 1.
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PART 4

**PROBLEMS OF THE CALIFORNIA
GRAND JURY SYSTEM**



PROBLEMS OF THE CALIFORNIA GRAND JURY SYSTEM

I. BACKGROUND TO THE RECOMMENDATIONS

The Committee on Criminal Procedure was assigned the following bills and resolutions for study during the 1963-65 interim period.

A.B. 102 (Dannemeyer and Belotti)

A.B. 1236 (Henson)

H.R. 193 (Waldie)

H.R. 266 (Dymally and Quimby)

The subject matter of the two resolutions assigned to the Committee was broad in scope, referring to it "the subject of grand juries, with particular reference to the matters of size, tenure, staff assistance and compensation, and including all laws relating thereto" (H.R. 193) and "the question whether present methods of selection result in impanelment of grand juries reflecting a cross-section of the community or whether new laws should be enacted or new procedures adopted . . . to achieve such an end" (H.R. 266).

Faced with the practical necessity of limiting the scope of their inquiry and in the hope of coming to some conclusions that were both useful and realistic, the committee scheduled a hearing on the subject of the California grand jury system for September 30, 1964, in Santa Monica, to be held in conjunction with the annual convention of the California Bar Association. The two bills assigned to the committee for study (A.B. 102 and A.B. 1236) each were representative of types of legislation presented to attempt to give specific answers to the general questions raised by House Resolutions 193 and 266. The hearing was, therefore, structured around the two bills, and testimony and comment was solicited on those two specific pieces of legislation in the hope that this would tend to generate more concise and pertinent information in less time than would have been required for a more comprehensive and less directed approach.

II. COMPOSITION OF THE HEARING

The following witnesses appeared before the committee and presented testimony on the grand jury legislation before it. (Witnesses listed in order of appearance.)

Fred Henderson

Deputy District Attorney of Los Angeles County and Legal Advisor to the Los Angeles Grand Jury

William Ritzi

Deputy District Attorney of Los Angeles County and Chief, Santa Monica Office

Arlo E. Smith

Chief Assistant Attorney General of the State of California

Thomas G. Neusome

Counsel, National Association for the Advancement of Colored People of Los Angeles and Chairman, Law Enforcement Committee of the United Civil Rights Committee

Jack Brown

Representing the Mayor of the City of Los Angeles

Honorable Joseph A. Wapner

Judge of the Superior Court of California, Los Angeles County, and Presiding Judge of the Criminal Department

Howard Brace

Past President, Past Grand Juror's Association of Los Angeles

Jack Cooper

Foreman, San Bernardino County Grand Jury

Richard Levi

Representing Warren B. Jones, Foreman, San Diego County Grand Jury

J. Leslie Steffensen

Foreman, Orange County Grand Jury

Gregory Stout

Member of the San Francisco Bar

Herb Ellingwood

Representing J. Frank Coakley, Chairman, Law and Legislative Committee of the District Attorneys and Peace Officers Association

Copies of the complete transcript of the hearings are available through the office of the chairman.

III. COMMITTEE RECOMMENDATIONS

The following recommendations pertaining to changes within the California grand jury system have been adopted by the committee on the basis of their consideration of the legislation presented to them for interim study.

THE CALIFORNIA GRAND JURY SYSTEM COMMITTEE RECOMMENDATIONS

A. RECOMMENDATION NUMBER ONE

ASSEMBLY BILL 102 (1963—Dannemeyer and Belotti)

Bill Provides: That a county grand jury may employ an independent investigator the cost not to exceed \$5,000 per year to be a county charge.

Committee Finding: Testimony before the Committee on Criminal Procedure has not indicated either the need for independent investigative assistance for the grand juries or the desirability of the particular type of assistance suggested by this bill. At the present time, adequate assistance is available through the offices of the district attorneys and, when necessary, through the Attorney General of the State of California.

Furthermore, the mechanics already exist for obtaining independent auditors for the inspection of county financial records.

Committee Recommendation: That this bill should *not* be passed by the 1965 session of the California Legislature.

B. COMMITTEE RECOMMENDATION NUMBER TWO

ASSEMBLY BILL 1236 (1963—Henson)

Bill Provides: For selection of grand jurors on a supervisorial district basis in counties where the superior court so desires.

Finding: The committee is aware that the present method of selection of grand jurors may, at some times and especially in the urban areas of the state, result in grand juries whose composition is not entirely representative of the ethnic, cultural and socioeconomic ranges of the community that it represents. However, the committee is hesitant to tamper with the mechanics of selection of grand jurors until it has before it (1) more comprehensive evidence of the sort of problems that, in fact, exist; and, (2) convincing evidence that legislation proposed will effectively address itself to those problems.

Committee Recommendation: That A.B. 1236 should *not* be passed by the 1965 Regular Session of the California Legislature but that an in-depth study of the composition of California grand juries be sought for the 1965-67 interim period.

C. COMMITTEE RECOMMENDED LEGISLATION

ASSEMBLY BILL 566

Bill Provides: That a grand jury may employ the services of an expert for the purpose of implementing its authority to examine the books of special purpose assessing or taxing districts located wholly or partly in the county.

Justification: At the present time, the Legislature has directed grand juries to make a "careful and complete examination of the accounts and records . . . of all the officers of the county . . ." *Penal Code*, Section 925. It has also authorized the grand juries to employ an expert for the purpose of assisting them in the implementation of this mandate (*Penal Code*, Section 926).

The Legislature has, furthermore, authorized the grand juries to "examine the books and records of any special purpose assessing or taxing district located wholly or partly in the county." *Penal Code*, Section 933.5. However, the Legislature has not granted authority, similar to that given under Sections 925 and 926, to employ expert assistance in such examinations.

It is the feeling of the committee that if Section 933.5 of the *Penal Code* is to be effectively implemented by grand juries desiring to do so, expert assistance should be available to them for that purpose.

Recommendation: That Section 926 of the *Penal Code* be amended to allow grand juries to employ expert assistance for the purpose of implementing Section 933.5 if they so desire.

*An act to amend Section 926 of the Penal Code,
relating to grand juries.*

The people of the State of California do enact as follows:

SECTION 1. Section 926 of the *Penal Code* is amended to read:

926. If, in the judgment of the grand jury, the services of an expert are necessary for the ~~purpose~~ purposes of Section 925 or Section 933.5 or both such sections, the grand jury may employ one, at an agreed compensation, to be first approved by the court. If, in the judgment of the grand jury, the services of assistants to such experts are required, the grand jury may employ such assistants, at a compensation to be agreed upon and approved by the court.

Legislative Counsel's Digest

Grand juries.

Amends Sec. 926, Pen.C.

Authorizes employment of experts to aid grand jury in the examination of books and records of any special purpose assessing or taxing district located wholly or partly in the county.

D. COMMITTEE RECOMMENDED LEGISLATION

ASSEMBLY BILL 567

Bill Provides: That an indictment can be returned by a grand jury with the concurrence of a simple majority of the members of the grand jury.

Justification: The committee feels that there is a logical persuasiveness to a provision for allowing a simple majority rather than the present simple majority plus two to return an indictment from the grand jury. It also feels that this will, to some degree, facilitate the work of the grand jury.

The committee recognizes that, in reducing the number required for indictment, it also, to some degree, increases the ease with which such indictments may be obtained, and it proposes a compensating safeguard for potential defendants in the recommended legislation following this bill.

Recommendation: That *Penal Code*, Section 940 be amended to allow a simple majority of a grand jury to return an indictment.

An act to amend Section 940 of the Penal Code, relating to grand juries.

The people of the State of California do enact as follows:

SECTION 1. Section 940 of the Penal Code is amended to read:

940. An indictment cannot be found without concurrence of at least ~~14~~ 12 grand jurors in a county in which the required number of members of the grand jury prescribed by Section 888.2 is 23, and at least ~~12~~ 10 grand jurors in other counties. When so found it must be endorsed, "A true bill," and the endorsement must be signed by the foreman of the grand jury.

Legislative Counsel's Digest

Grand juries.

Amends Sec. 940, Pen.C.

Provides that an indictment cannot be found without concurrence of at least 12, rather than 14, grand jurors in a county in which the required number of members of the grand jury prescribed by Sec. 888.2, Pen.C. is 23, and at least 10, rather than 12, grand jurors, in other counties.

E. COMMITTEE RECOMMENDED LEGISLATION

ASSEMBLY BILL 565

Bill Provides: That a witness in a grand jury proceeding may retain counsel to be present during any examination or attempted examination of the witness for the purpose of advising the witness of the extent to which he is or is not obligated to testify or produce papers or other material.

Justification: At the present time, there is no provision for legal counsel on the part of persons called before the grand jury to appear as witnesses. The committee feels that this is a serious deficiency in the present criminal law. It feels that this deficiency becomes even more critical in light of recent court decisions involving the issues surrounding the right to counsel and in view of its own recommendation to lower the number of jurors necessary to return an indictment. The committee wishes, therefore, to insure that any person called before a grand jury who is or, even remotely, might be, put in an accusative position has the benefit of proper legal counsel at all stages of his appearance before the grand jury.

The committee views with favor the recent California Supreme Court holding in the case of *People v. Sharer*, 61 A.C. 969, and it does not intend, by this legislation, to in any way diminish the implications of

that case as they may pertain to the right to counsel before grand juries.

Recommendation: That Penal Code, Section 939 be amended to allow counsel on the part of witnesses before a grand jury as provided in the following legislation.

An act to amend Section 939 of the Penal Code, relating to grand jury proceedings.

The people of the State of California do enact as follows:

SECTION 1. Section 939 of the Penal Code is amended to read:

939. No person other than those specified in Article 3 (commencing with Section 934), Chapter 3 of this title and in Section 939.1 is permitted to be present during the session of the grand jury except the members and witnesses actually under examination *and, as hereafter provided in this section, counsel for such witnesses*. No person shall be permitted to be present during the expression of the opinions of the grand jurors, or the giving of their votes upon any matter before them.

A witness may retain counsel to be present during any examination or attempted examination of the witness for the purpose of advising the witness of the extent to which he is or is not obligated to testify or produce papers or other material.

Legislative Counsel's Digest

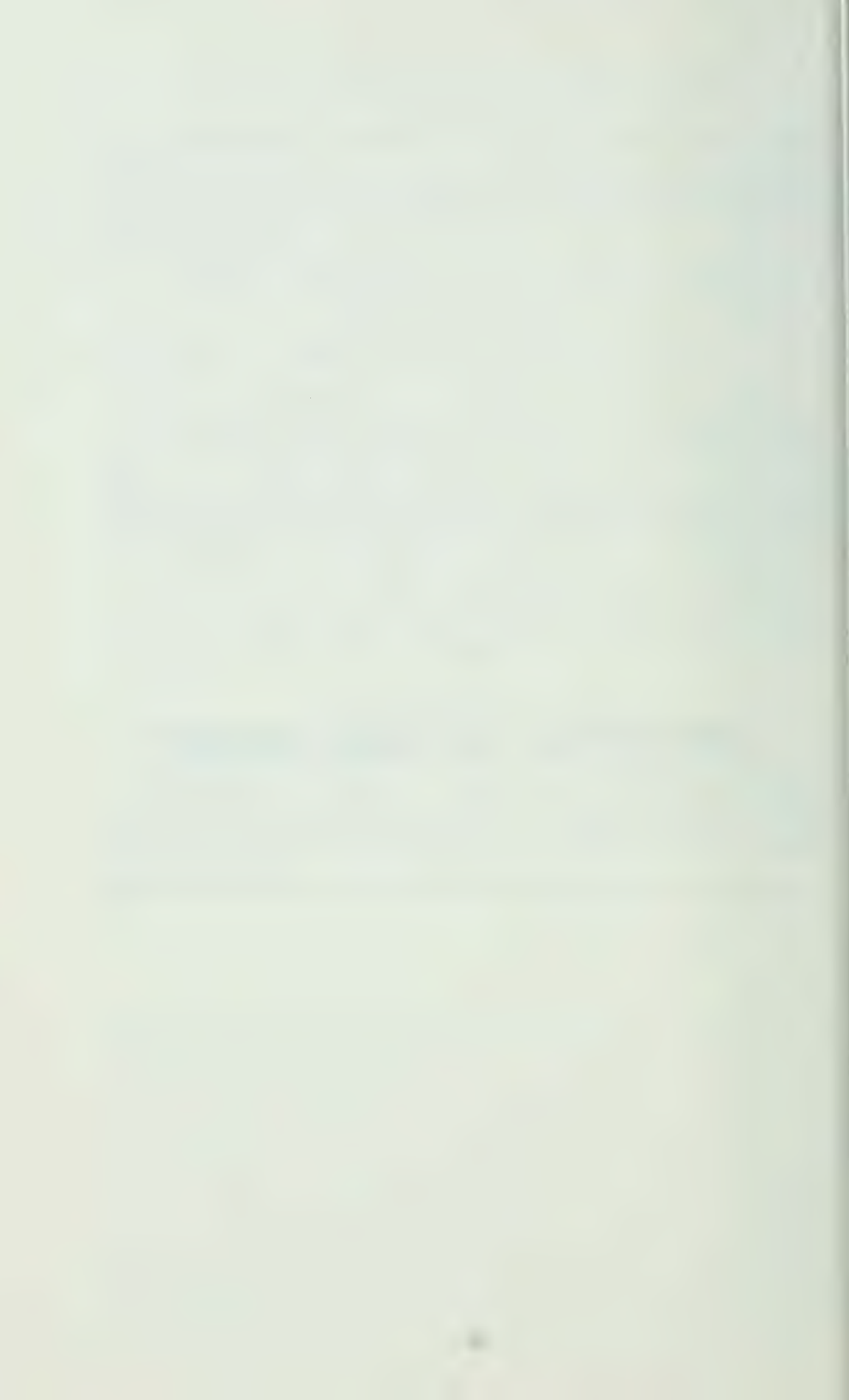
Grand jury proceedings.

Amends Sec. 939, Pen.C.

Provides that a witness in a grand jury proceeding may retain counsel to be present during any examination or attempted examination of the witness for the purpose of advising the witness of the extent to which he is or is not obligated to testify or produce papers or other material.

PART 5

REPORTING OF CHILD ABUSE



I. BACKGROUND

A. *Public Outrage*

Paul Coates, of the Los Angeles *Times*, wrote as follows in a recent article:

... [W]e are infuriated by the occasional stories of child abuse. But we would be far more infuriated if we realized that these are not just occasional crimes.

The awful truth is that this is a widespread offense. The vast majority of the cases never come to public attention.¹

It is widely felt that love is the normal and natural consequence of having children. Thus, primary responsibility for protection of the defenseless child rests with the parent. When so absolute a trust is violated, when innocence inspires violence, when protector turns into predator, public outrage is inevitable.² Such emotion can be a spur to action, but it should not be permitted to obscure available solutions to the problem.

B. *Immaturity of Parents*

The possibility that a parent can produce a child for whom he cannot fulfill even minimal responsibilities of parenthood contains threatening aspects...³

Some insight into the character of the problem has been acquired in recent studies conducted by the Children's Division of the American Humane Association:

We see abuse to result from parental inadequacy, from immaturity, and from lack of capacity for coping with the pressures and tensions which beset the modern family. With rare exceptions, these are parents with problems—problems which run the full range of human experience. They frequently are people with personality defects; they are neurotic; emotionally disturbed or mentally ill. The outer symptoms of their disorganized state are manifested in deviant behavior and bursts of violence and anger directed at other people, including their children.

Parents who abuse children are parents who react violently to their own unmet needs—needs which may be in conflict with needs of their children. They are people with a low level of frustration tolerance, with hair-trigger controls which any irritant can set off into emotional violence. With few exceptions, these parents are not sadists. They do not take cruel delight in mistreating children. They can be described more accurately as people who can't help themselves. They are incapable of providing adequate care for their children without outside help.⁴

¹ Paul Coates, *L.A. Times*, Sept. 23, 1964.

² See article by Lester David, *Good Housekeeping*, April 1964, p. 87.

³ Helen E. Boardman, "A Project to Rescue Children from Inflicted Injuries," 7 *Social Work* 43, 47 (January 1962).

⁴ Vincent DeFrancis, *Child Abuse*, pp. 2-3 (May 19-24, 1963). See also, for a breakdown of parental factors behind abuse, James D. Delsordo, "Protective Casework for Abused Children," *Children*, pp. 213-218 (Nov.-Dec. 1963).

C. *Size of the Problem*

The American Humane Association's study discloses somewhat the gravity of the situation.⁵ More than one out of four of the children in the cases investigated, cases recorded in newspapers throughout the country, succumbed to their injuries. Of those who died, over 80 percent were under four years of age and over 50 percent were children under two years of age.⁶

Precisely how many children are seriously abused annually is well beyond determination at present. Only estimates are available:

Dr. Katherine Bain, Deputy Chief of the U.S. Children's Bureau in Washington, estimates that in the past 12-month period between 50,000 and 75,000 children have been grossly mistreated, most of them repeatedly.⁷

Probably most cases never come to the attention of any one other than members of the family. Of the rest, many are treated by physicians without anything more of a preventative nature being done. In California, statistics on reported cases are not presently accumulated in any central index.

D. *Types of Families*

As Mrs. Helen Boardman, director of social services at Children's Hospital in Los Angeles, points out:

There has been no identification in the multicultural population of Los Angeles, of any significant incidence of injury-inflicting relating to race, cultural background, or religion, nor is it restricted to families with low income.⁸

At the same time, there is hope statistical studies of such factors as composition of the families involved, degree of marital solidarity, health of the members, occupational status or absence thereof, etc., could prove informative.

Beyond the need for statistical development lies the need for acquiring experiences with such families on an individual basis. This would entail prudent deemphasis of punitive social machinery and its selective use only.

The need for understanding is again underlined by Mrs. Boardman when she states that we have thus far "learned little more than superficial facts about those adults who . . . inflict injuries. . . ."⁹

E. *Background of the Report*

Public clamor that something be done has reached a high pitch. Organized research into the problems of mistreatment of children is on the increase. Experiences with inflicted injuries to children have (unfortunately) multiplied in recent years. Advanced medical techniques have improved ability to recognize true abuse cases.

⁵ See DeFrancis, *supra*, note 4.

⁶ *Id.* at 4.

⁷ David, *supra*, note 2, at 184.

⁸ Boardman, *supra*, note 3, at 44.

⁹ *Id.* at 47.

Concern for the welfare of children subject to abuse has been expressed at all levels. In recognition of this concern and in response to specific needs such as are documented in this report, Assemblyman Don Allen introduced House Resolution No. 354 on May 19, 1964. This study of the Committee on Criminal Procedure was undertaken pursuant to Assemblyman Allen's Resolution.

II. MANDATORY REPORTING; IMMUNITY FOR PHYSICIANS

A. Medical Responsibility

If victims of child abuse are discovered by anyone outside the immediate family, it is almost invariably a physician. To him, the parents frequently relate a nervous history of injury, often inconsistent, but fairly spontaneous, since there is usually no thought of prosecution at the time. Such evidence may well be all that is available to initiate action on behalf of the child.

It is physicians, also, who have access to radiological facilities which are proving increasingly useful in substantiating initial suspicions of "battered-child syndrome."¹⁰

It is thus appropriate that responsibility for primary identification of child abuse cases be imposed upon the doctor. It follows from this that he must be given every opportunity to execute his responsibility and every aid in establishing a positive identification of abuse where it is present. Three of the recommendations which follow are directed toward these ends:

- (a) Immunity for physicians from civil suit,
- (b) Eliminating the accusatory posture of reporting, and
- (c) Establishing a registry to which physicians can go to check previous similar occurrences.

B. Present Law Inadequate

An agency study conducted by the Massachusetts Society for the Prevention of Cruelty to Children indicates that, among cases studied, less than one-third of those child abuse cases involving physicians were referred to an appropriate protective agency.¹¹

The language of California Penal Code, Section 11161.5, appears on the surface to mandate physicians and surgeons to report all suspected violations of Penal Code, Section 273(a), dealing with child abuse. However, the last paragraph of the former Section, added in 1963, provides that "the physician and surgeon shall not be required to report as provided herein if in his opinion it would not be consistent with the health, care, or treatment of the minor." As authorities who had previously commended the California reporting law quickly pointed out, "This provision negates the whole concept of mandatory reporting."¹²

The reason for insertion of what amounts to an escape device is that involvement of the parents with the criminal law enforcement authorities is an almost inevitable consequence of reporting in California.

¹⁰ But see Elizabeth Elmer, "Identification of Abused Children," *Children*, pp. 180-184 (Sept.-Oct., 1963).

¹¹ Edgar J. Merrill, *Physical Abuse of Children*, p. 3 (May 31, 1962).

¹² Vincent DeFrancis, *Review of Legislation to Protect the Battered Child*, p. 12 (1964).

C. Physician's Dilemma

A hypothetical case will illustrate the physician's dilemma under present law: A badly bruised infant is brought in for treatment. The parents report the child toppled its highchair, hitting the floor, as well as the kitten table on its way down (or fell down a flight of stairs, etc.). Unless the physician knows of prior similar injuries to the same child, or a sibling, or X-rays by chance reveal old suspicious fractures, the physician must decide, on a bare minimum of evidence, whether the parents are to be believed. The physician will frequently identify with the parents¹³ and fail to initiate police action. Under present law, he may decide that the story given by the parents is sufficiently plausible and that the case ought not to be reported, but he is forced to live with the fact that nothing has been done to prevent recurrences, possibly fatal.

D. Immunity From Suit for Physicians

If reporting under Penal Code, Section 11161.5, compels the physician to do "all or nothing," the balance is clearly in favor of doing nothing. If the physician consults his attorney about the problem, his attorney must advise that the physician who reports pursuant to Section 11161.5 may be subjected to civil suit by the parents for invasion of privacy, malicious prosecution, defamation, etc. The physician would probably win, but he does not know this when he ponders his dilemma, nor does his insurance carrier, which might be inclined to drop coverage after several such suits.

Also, because physicians depend so heavily on their reputation, they are peculiarly vulnerable to all law suits brought against them, even those which lack substantial merit. If doctors are to be heavily depended upon for administration of a system of child protection, as they must be, the handcuffs must be removed. The doctor must not have to bare the burden of substantiating in court abuses which he honestly believes have occurred; otherwise, his suspicions will go unreported. Immunity of physicians and surgeons from civil suit for making reports pursuant to a mandatory reporting law is an absolute necessity.¹⁴

E. Nonaccusatory Reporting to County Departments of Social Welfare

There are a number of important functions other than prosecution of offending parents to be served by reporting to a central registry.¹⁵ Reporting—and recall the reporting is of *suspected* violations of Penal Code, Section 273(a)—must therefore, be encouraged by creating alternatives to prosecution. For this purpose, we can draw upon various ingenious devices now dormant, and often entirely unavailable, under present methods of handling cases of suspected child abuse.

Prosecution of parents may well be inevitable in some cases of serious and willful child abuse. But if welfare of the child is to be the paramount objective, prosecution will in many cases be unnecessary and in others undesirable. There are a host of alternatives to prosecution, ranging all the way from education of the parents by way of community

¹³ See Boardman, *supra*, note 3, at 46; Philip R. Dodge, *Medical Implications of Physical Abuse of Children*, p. 23 (May 31, 1962).

¹⁴ See generally *Public Hearing Before the New Jersey Assembly Committee on Institutions, Public Health and Welfare on Assembly Bill No. 514*, March 26, 1964.

¹⁵ These functions are considered more fully in Section III *infra*.

social services to removing the child from an unfit environment by way of the juvenile courts.

While the physician may be best situated for initially uncovering the problem, this leaves unanswered the question of who should then channel it to an appropriate remedial agency. If the punitive aspects of reporting are to be deemphasized, in the interest of getting doctors to report and of helping emotionally ill parents to whom prosecution will be no deterrence, then law enforcement agencies would not appear to be suitable.

County departments of social welfare, already engaged in dealing with many child welfare problems, and experienced with intervention into difficult family situations, would appear to be best equipped to intelligently determine what is to be done with a reported incident. Under the recommendations for legislation which will follow, they may merely investigate. They may rely on child protective services where available. They can, as can the physician, notify the sheriff of police in serious cases, and they may do so where the physician has delayed acting; they must do so where there is a history of two prior reportings. They can request juvenile court jurisdiction.¹⁶ They will, under any circumstances, consult with the reporting physician. They will, at all times, have immediate access to the proposed statewide central registry. *In short, they can act immediately, with the best information available, and can select any one of an arsenal of weapons at their disposal.*

III. FUNCTIONS OF A CENTRAL REGISTRY

A. Statistical Function

It has been evident for some time that the magnitude of the problem we are dealing with is not understood. The statistics which are available are limited and, as has been pointed out, represent a very small segment of a very large picture. A statewide central registry of suspected cases would help to correct this shortcoming.

Besides informing the public generally, and medical people specifically, of the full magnitude of the problem, the information compiled would provide a pool of data upon which interested researchers could draw. This statewide "laboratory" would be of immeasurable benefit to the youth of California and a model for the rest of the nation. Incidents which are now brought to light only in the heat of public emotion could be transformed into valuable statistics generating intelligent research and understanding.

B. Identification Function

It has been the experience of hospital groups engaging in experimentation with central registries that parents usually do not bring abused children back to the same hospital (or physician) for treatment. This is obviously done out of shame or fear of the consequences. Such parents cannot presently be identified except by sheer chance. Also, the children of transient families, where home life is characteristically unstable anyway, are particularly susceptible to this inadequacy. A statewide central index would, for all practical purposes, eliminate the possibility of concealment of prior abuses.

¹⁶ California Welfare and Institutions Code, Sec. 600 (b) (Deering 1963),

The importance of documenting the various suspicions is based upon a significant conclusion of all experts in the field. *This crucial conclusion is that the most definitive evidence of child abuse is repetition characteristic of compulsive illness.*¹⁷

The nature of the injuries, an implausible story given by the parents, and questionable X-rays, may all contribute to a doctor's suspicions. However, it is previous incidents, similar in kind, which will convince him that his suspicions are justified. A single extraordinary incident is a possibility; the parents may be blameless. But repetition is the giveaway. Thus, access to a central registry would provide the physician with an invaluable diagnostic tool.

C. Remedial Function

Whether the abusing parent will be identified is not the only important factor. Equally important is *when* he will be identified. If immediate action is not taken, it is entirely possible that the remedy will be too late to protect the child from permanent or fatal harm.

In the more serious cases, where drastic remedies to protect the child ought to be contemplated, but where substantiation of suspicion is limited, the problem is compounded. More than mere suspicions will be necessary to initiate action to permanently remove a child from a home or subject the parent to the possibility of a prison term. A mistake would forever disrupt the family involved and thus constitute a social tragedy of the highest order. A central registry would help to justify drastic action where needed, with a minimum of delay and a minimum of error.

D. Parent-protective Function

The hazardous situations in which young children can place themselves are as unlimited as their imaginations. This can be attested to by any parent. Injuries occur in ways which are scarcely credible to most adults.

Many injuries to children are the product of unavoidable accident. Many others may be attributable to a parental slip. As individual incidents, these are virtually impossible to distinguish from injuries which have been inflicted. In such cases, it is the parent who needs protection from legal action, not the child who needs protection from the parent. Since deliberate abuse is an habitual disease, the absence of prior reportings in a central index would help to protect the innocent parent. He is not so protected under present law.

¹⁷ David, *supra*, note 2 at 196.

IV. COMMITTEE RECOMMENDED LEGISLATION

The following bill, which embodies the above recommendations relating to mistreatment of children, is respectfully submitted with the recommendation that it be adopted:

(Mr. Henson does not approve the recommendation to add Section 11161.7 to the Penal Code.)

ASSEMBLY BILL 277

An act to amend Sections 273a and 11161.5 of, and to add Section 11161.7 to, the Penal Code, and to add Section 114.8 to the Welfare and Institutions Code, relating to mistreatment of children.

The people of the State of California do enact as follows:

SECTION 1. Section 273a of the Penal Code is amended to read:

273a. Any person who willfully causes or permits any child to suffer, or who inflicts thereon unjustifiable physical pain or mental suffering, and whoever, having the care or custody of any child, causes or permits the life or limb of such child to be endangered, or the health of such child to be injured, and any person who willfully causes or permits such child to be placed in such situation that its life or limb may be endangered, or its health likely to be injured, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for not less than one year nor more than 10 years.

When any person is arrested for or convicted of a violation of this section, the arresting law enforcement agency, in the case of an arrest, and the prosecuting agency, in the case of a conviction, shall report such occurrence to the county welfare department (or other agency in a chartered county which administers public social services) and to the State Department of Social Welfare.

SEC. 2. Section 11161.5 of said code is amended to read:

11161.5. In any case, in which a minor is brought to a physician and surgeon for diagnosis or treatment, or is under his charge or care, and it appears to the physician and surgeon from observation of the minor that the minor may have been a victim of a violation of Section 273a, he shall may report such fact by telephone and in writing to the head of the police department of the city or city and county, if the observation is made in a city or city and county, or to the sheriff, if the observation is made in unincorporated territory, or to the nearest child welfare agency offering child protective services. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries.

~~The physician and surgeon shall not be required to report as provided herein if in his opinion it would not be consistent with the health, care, or treatment of the minor.~~

~~No physician and surgeon shall incur any civil or criminal liability as a result of making any report authorized by this section.~~

SEC. 3. Section 11161.7 is added to said code, to read:

11161.7. In any case in which a minor is brought to a physician and surgeon, in his office or in a hospital or in such other place in which he is practicing medicine, for diagnosis or treatment, or is under his

charge or care, and it appears to the physician and surgeon that there are any grounds for suspecting that the minor may be a victim of a violation of Section 273a of this code, he shall report such information immediately, both by telephone and in writing, to the welfare department of the county in which the minor was diagnosed, treated or received care, stating the character and extent of the minor's injuries and, if known, the name of the minor and his parents and any other pertinent facts.

Upon receipt of such report, the county welfare department shall determine whether previous reports of suspected violations of Section 273a or arrests or convictions for violating such section, concerning the same minor or other minors in the same family, have been made in the county. Copies of all written reports received by a county welfare department shall be forwarded by the county welfare department to the State Department of Social Welfare. If the records of the State Department of Social Welfare maintained pursuant to Section 114.8 of the Welfare and Institutions Code reveal any reports of suspected violations of Section 273a, or arrests or convictions for violation of such section, in other localities on the same minor or other minors in the same family or other pertinent information, the county welfare department shall be notified immediately of such information.

Upon receipt of the physician and surgeon's report, the county welfare department shall immediately consult with such physician and surgeon and shall determine whether, by the standards of the best interest of the child, the case is one that it should investigate by itself or in collaboration with an agency offering child protective services or is one that should be referred to law enforcement authorities. It may, in any case, refer the case to the district attorney or to the police department or sheriff's office having jurisdiction to investigate offenses where the minor is then present, and must do so if records of the county welfare department or of the State Department of Social Welfare or both include reports of two incidents of suspected violation of Section 273a, or arrests or convictions for violation of such section, in the same family. The county welfare department may also, where it believes such action appropriate, request the juvenile probation officer to file a petition in the juvenile court to commence proceedings to have such minor declared a dependent child of the court.

No physician and surgeon shall incur any civil or criminal liability as a result of making any report authorized by this section.

As used in this section "county welfare department" includes such other agency of a chartered county as is designated by charter to administer public social services.

SEC. 4. Section 114.8 is added to the Welfare and Institutions Code, to read:

114.8. The department shall maintain records of all reports of suspected violations of Section 273a of the Penal Code and reports of arrests for, and convictions of, violation of such section. On receipt from a county welfare department or other county agency administering public social services of a copy of a report of suspected violation of Section 273a received from a physician and surgeon, the state department shall transmit to the county department or agency information detailing all previous reports of suspected violations of Section

273a and reports of arrests for, and convictions of violation of Section 273a, concerning the same child or other children in the same family.

The state department may adopt rules governing recordkeeping, reporting, and requests for information by counties under Section 11161.7 of the Penal Code.

Counsel's Digest

Mistreatment of children.

Amends Secs. 273a, 11161.5, adds Sec. 11161.7, Pen.C., and Sec. 114.8, W. & I.C.

Makes it permissive rather than mandatory that physician report suspected violation of such section to police or sheriff, but requires physicians to report suspected violations to county welfare department and requires law enforcement agencies to report arrests for and convictions of violations of such section to such department and State Department of Social Welfare. Specifies that physicians incur no liability when reporting pursuant to foregoing provisions. Requires county welfare department to transmit copies of such reports received by it to state department, and requires state department to maintain records of such reports and to advise county of reports of suspected violation of Sec. 273a, or arrests for, or convictions of violation of such section, in other counties, involving same minor and other minors in same family. Provides that county department may report incident to police or prosecuting authorities and must do so when there were two such incidents involving same minor or other minor.



PART 6

TELEPHONE MONITORING DEVICES



I. BASIS FOR THE STUDY

Early in 1964, staff physicians in a San Francisco Bay Area hospital complained that the hospital superintendent was monitoring their private telephone calls. Although the charge was denied, the telephone company withdrew the monitoring equipment.

Some question naturally arose regarding a possible need for regulation of monitoring equipment. The following resolution was offered by Assemblyman John T. Knox:

House Resolution No. 267

Relative to an interim study of the practice of monitoring telephone conversations

WHEREAS, It has been brought to the attention of this Assembly that numerous California business and other private establishments may be making a practice of monitoring telephone conversations to such establishments without the knowledge of either or both of the participants to the conversation; and

WHEREAS, Telephone companies are able to install monitoring devices for a relatively small fee, and there apparently is no legal prohibition against installation or use of such equipment; and

WHEREAS, An investigation is necessary to determine the extent of this practice, its legitimate uses, if any, and to determine whether the right of privacy of employees or others is being unduly invaded; now, therefore, be it

Resolved by the Assembly of the State of California, That the Assembly Committee on Rules is directed to refer the subject matter of this resolution to an appropriate interim committee for study, including the laws relating thereto, and to direct such committee to report its findings, together with its recommendations for needed legislation, to this Assembly not later than the fifth legislative day of the 1965 Regular Session of the Legislature.

The California Public Utilities Commission held a hearing on October 14, 1964, to consider the same problem. Staff Counsel Eleanor Charles conducted a revealing cross-examination of telephone corporation personnel.¹ No decision has been reached as of this time.

II. RECOMMENDATIONS

A. We recommend that no legislation be considered until such time as findings and decision of the Public Utilities Commission issue on Case No. 7915.

B. We recommend, in the event of the Public Utilities Commission's failure to take action with respect to this problem, that legislation be drafted requiring decal stickers, conspicuously located and phrased in clear and concise language, on all telephones subject to monitoring.

C. We further recommend that no action be taken at this time with reference to the mere possibility that monitoring equipment might be installed in private residences, subject to later reconsideration of unwarranted uses.

¹ Transcript available at California Public Utilities Commission Office in San Francisco.

III. LEGITIMATE USES OF MONITORING EQUIPMENT

The practice of "monitoring" should be distinguished from certain other well-known practices of interfering with telephone privacy. "Wiretapping" usually refers to a clandestine operation, unauthorized by the telephone subscriber and against his interests; recording devices may be used to unlawfully assist the wiretapper. Monitoring equipment, on the other hand, is specifically requested by the subscriber and, if installed in conjunction with recording equipment, must conform to federal requirements.

At the Public Utilities Commission Hearing referred to above, Mr. Clifford F. Goode, General Commercial Engineer for the Pacific Telephone and Telegraph Company, testified as to the purposes of monitoring equipment:

Monitoring or service observing equipment is used by business subscribers for two basic purposes.² The first of these is the training of employees.

Telephone usage for sales, service and other dealings with customers is an important part of many business operations. Information on prices, rates, products, travel and delivery schedules, and numerous other matters is routinely furnished by telephone. Courteous and efficient handling of telephone calls in connection with sales and service undertakings is important to establish and maintain good customer relations. Service observing is a valuable method for training employees in good telephone usage.

Examples of service observing applications are use of such equipment by airline companies to train employees handling ticket reservations and flight schedule information, and by department stores to train employees who take customer orders by telephone, and who handle billing and other business office problems. Many other businesses have similar applications of service-observing equipment.³

. . . The second purpose can be generally described as supervisory, to permit evaluation of an improvement in the overall quality of service being rendered by employees of a business. Review of the actual handling of telephone contacts with customers enables business supervisors to determine the overall quality of service that is being given and to make sound recommendations for better performance. Once again, such use of the equipment is made by a range of different businesses.

Thus, the *intended* uses of monitoring equipment are commercially valuable, and are limited to telephone conversations related to an employer's business operations. The equipment has been widely offered for over twenty years, during which time complaints sufficient to receive public notice have been virtually nonexistent. However, the potential for misuse of such equipment is considerable. Moreover, the sum of individually insignificant invasions of privacy may be indicative of a socially undesirable trend.

² See Appendix I.

³ See Appendix II.

IV. POSSIBLE ABUSES

Assuming monitoring equipment is successfully restricted to commercial uses, the interests of the subscriber, the employer, seem adequately protected by knowledge of the monitored equipment. There is an additional argument that the employer assumes the risk of having the equipment and may reduce that risk by appropriate supervision and hiring practices.

The outside party to the conversation has only so much of an interest in privacy as the other party chooses to respect. The same is true of a face-to-face conversation. There is no guaranty that one of the parties will not repeat widely what was intended for his ears alone. Thus, the most protection that can be given is to ensure that *one* of the parties to a conversation is aware that privacy is not certain.

The employee who is not informed that a particular telephone is subject to monitoring, and the party to whom he is speaking, are the most likely victims of monitoring abuses. Private recording devices, not utilizing the required "beep tone," magnify the dangers involved.

It is not enough to say that a business telephone should not be used for private purposes, when in many places such is the custom, and management assents by silence.

Use of monitoring equipment in private homes is a related problem. The telephone companies have stated that installation in private residences is against their policy, is inconsistent with intended uses of the equipment, and, more importantly, does not occur. There are, however, no legal restrictions on offering the equipment to noncommercial subscribers.

The crux of the problem is that proper use of monitoring devices, wherever employed, cannot be assured. "Policing" of the equipment is a practical impossibility.

V. CONSIDERED SOLUTIONS

There is a wide spectrum of suggested resolutions of the dilemma. These range from taking no action to outlawing the equipment.

In view of the aforementioned legitimate uses for monitoring devices, and their apparent commercial utility, a total ban would seem socially unjustified. On the other hand, taking no action in view of the gravity of potential misuse appears equally unjustified.

As indicated, informing one of the parties to a conversation that conditions of absolute privacy do not exist may well constitute the maximum of protection that can be offered. Merely informing employees at the inception of their employment, or even periodically, represents a routine gesture likely to be soon forgotten. Confusion is likely to result in large commercial operations where only some small portion of the equipment is subject to monitoring. Moreover, the cost to such employers of informing *all* employees might discourage the limited use of monitoring devices among employees in positions of public contact.

The most practicable solution at this time would require the placing of decal-stickers on all telephones subject to monitoring equipment, thereby notifying the user of this fact. The cost to either the telephone

company or the subscriber would be minimal. The employee would be made conscious of the fact that the telephone was "off-limits" to confidential conversation. The outside party would then be protected.

VI. CONCLUSION

There is definite evidence of a degree of commercial utility in the practice of telephone monitoring. On the opposite side of the balance is the social interest in protecting the right of privacy. It is believed that the included recommendations represent a compromise solution preserving and protecting both interests.

APPENDIX A

The Pacific Telephone and Telegraph Company Schedule Cal.P.U.C. No. 32-T
San Francisco, California Revised Sheet 25-C

SPECIAL CONDITIONS UNDER WHICH EQUIPMENT OFFERED

1. The Company furnishes service observing and training equipment to enable business subscribers to train their employees in providing service by telephone, and to observe and improve the quality of service rendered by their employees in handling telephone communications incident to the subscribers' businesses.
2. Orders for service observing and training equipment shall be made by the business subscriber in writing, and shall include a statement of the subscriber's intended use of the equipment. Each business subscriber shall sign an agreement respecting the use of service observing and training equipment on a form provided by the Company.
3. Service observing and training equipment is for use only by business subscribers in connection with telephone calls related to the business of the subscriber. It is not furnished for residential or other personal use.
4. Service observing and training equipment is furnished to hotels, hospitals and other subscribers which may allow public use of telephone service only for administrative purposes, and only for observing business telephone conversations to which an employee of the subscriber is a party.
5. The business subscriber shall keep those employees whose telephone conversations are subject to observation advised of that fact.
6. The business subscriber shall require each of its employees who uses the service observing and training equipment to sign a statement that he has read these special conditions, section 605 of the Federal Communications Act, sections 619, 640 and 641 of the California Penal Code, and General Order No. 107-A of the California Public Utilities Commission, and understands the penalties for violating secrecy of communications. The business subscriber shall file and retain such employee statements throughout the period during which the employees use the equipment or are subject to observation.
7. The Company shall furnish to each business subscriber to service observing and training equipment a copy of these special conditions and a copy of the Federal and California statutes and the California Commission general order relating to secrecy of communications. The business subscriber shall have a copy of this material available at each service observing installation, and shall post a notice of the penalties for misuse of the equipment.

8. The Company may remove the service observing and training equipment and discontinue the service if the business subscriber fails to comply with any of the conditions applicable to this service.
9. Service observing and training equipment at the rates stated above is furnished on the same premises (or on different premises of the same business subscriber in the same building) as those on which the service observed is located. Where facilities and operating conditions permit, service observing and training equipment is furnished on premises of the same business subscriber in a different building from that in which the service observed is located at the rates stated above, together with mileage rates for the lines extended for observing purposes equal to the mileage rates applicable to off-premises station lines or private lines, and an installation and monthly charge based on the cost or any additional equipment furnished or special work performed in furnishing the service observing and training equipment in a different building. The rates and charges for Key Equipment Service set forth in Schedule Cal. P.U.C. No. 22-T apply in addition to the rates and charges stated in (2)(d) above; each Key Equipment Service station provided in connection with service observing and training equipment shall be arranged to observe at least one central office line, private branch exchange station line, private line, extension station line, telephone answering equipment station line, or intercommunicating line.
10. The business subscriber releases, indemnifies and holds the Company harmless from any and all claims, demands, losses and liabilities, whether suffered or asserted by the business subscriber or by any other person, which arise directly or indirectly from use of the service observing and training equipment.

Issued:

Issued by
R. M. CUNNINGHAM
Vice President

Date Filed:

Effective:

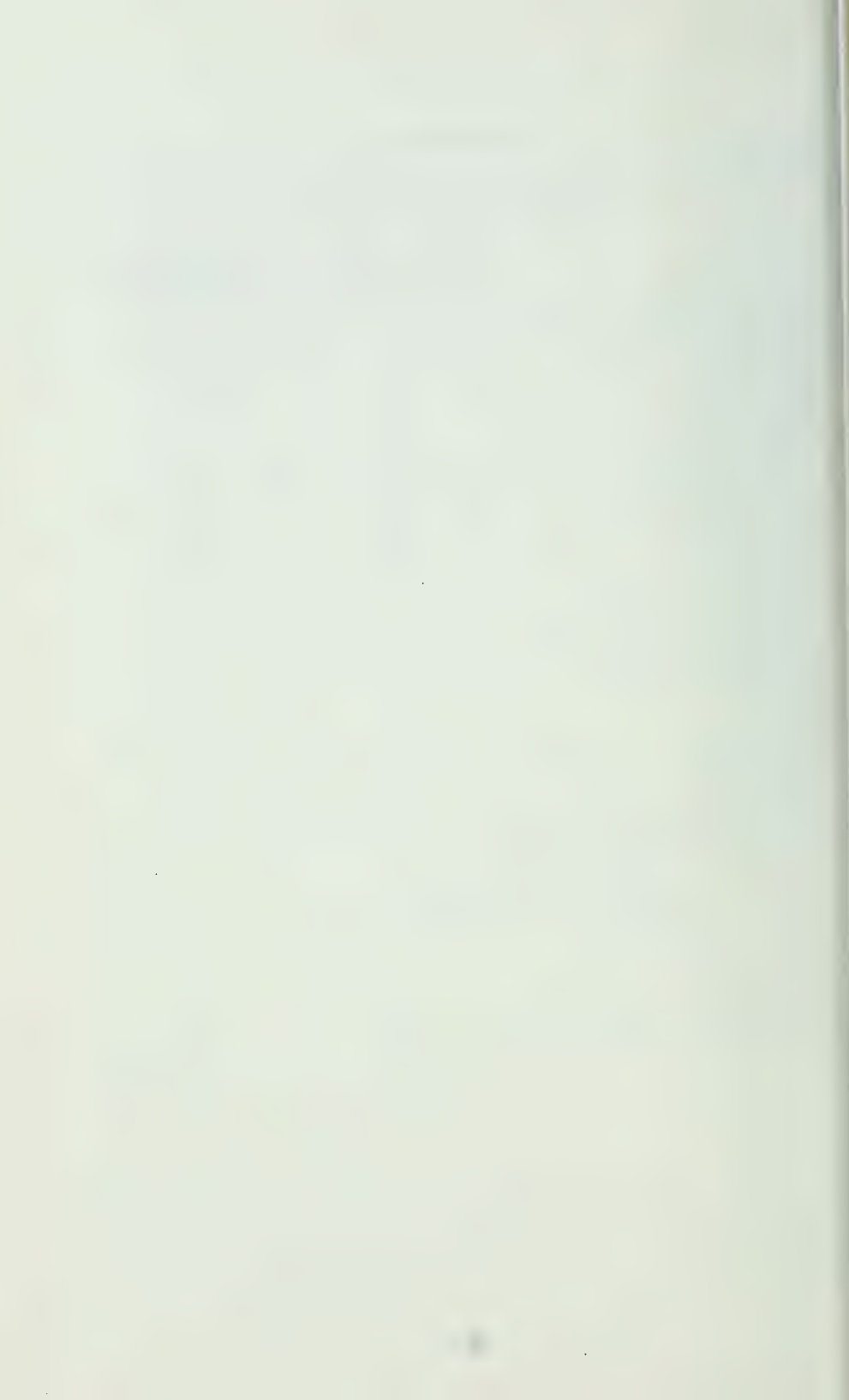
Dec. No.

Resolution No.

APPENDIX B

PACIFIC TELEPHONE SUBSCRIBERS WITH MONITORING OR SERVICE OBSERVING EQUIPMENT

<i>Business category</i>	<i>Number of services as of August 1, 1964</i>	
	<i>Service observing equipment</i>	<i>Recorder-connector equipment</i>
Airlines and aircraft companies-----	30	2
Answering services -----	31	0
Auto dealers -----	11	0
Auto leasing -----	3	0
Banks, savings and loan -----	6	1
Commercial business		
(service and equipment dealers)---	30	2
Credit associations -----	15	0
Credit card companies -----	1	0
Department stores -----	26	0
Food companies -----	2	0
Gas, electric and mobile		
telephone companies -----	25	1
Hospitals and clinics -----	6	0
Insurance companies -----	7	0
Investigation services -----	8	0
Magazine circulations -----	3	1
Manufacturers -----	13	0
Movie studios -----	1	0
Newspapers -----	12	0
Oil companies -----	3	0
Other businesses -----	12	0
Governmental bodies -----	18	1
Professional services (consulting, M.D.) and other services -----	10	0
Radio-TV stations -----	1	0
Realty companies -----	1	0
Schools (beauty, dance, driving, etc.) -----	8	0
Stockbrokers -----	0	0
Transportation (except airlines) ----	23	0
Unions -----	1	0
Total -----	307	8



PART 7

THERAPEUTIC ABORTION LEGISLATION



THERAPEUTIC ABORTION LEGISLATION

The Interim Committee on Criminal Procedure has studied the problems inherent in the California abortion law extensively during the 1963-1965 interim period. This study has included major legislative hearings on the subject in the northern and the southern parts of the state. Transcripts of these hearings are available through the office of the chairman. The following statement represents the current position of the committee.

STATEMENT OF COMMITTEE POSITION

California's existing abortion law, now more than 100 years old, which allows abortions only when necessary to preserve the woman's life, is unduly restrictive.

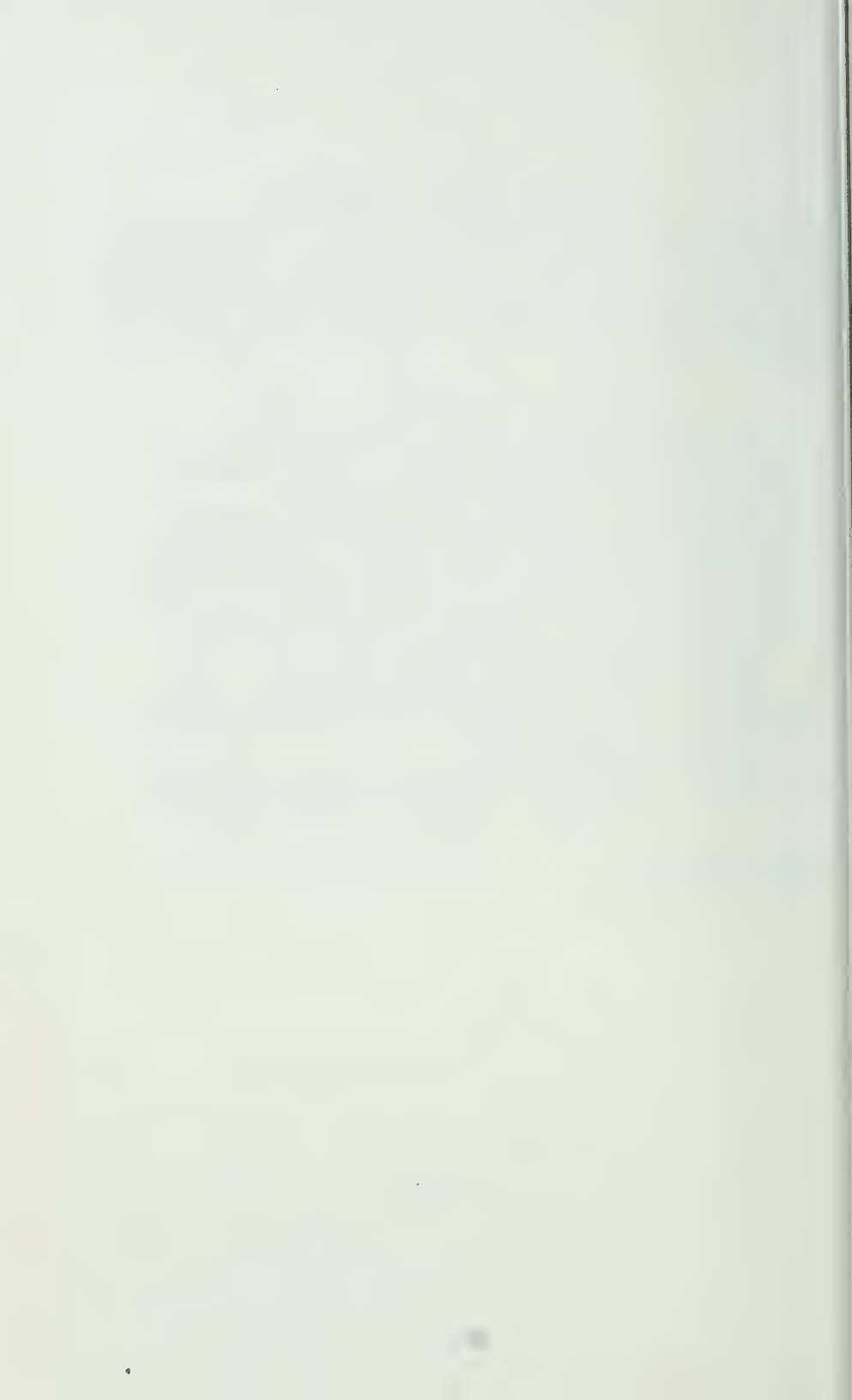
The stringency of the law outlaws abortions in some instances of such great potential tragedy for the women involved and their families that it no longer commands either the respect or the support of a great many of the state's citizens—especially women. This lack of respect and support is reflected in the estimated 100,000 illegal abortions performed each year on California women.

Many California groups, including responsible medical organizations, have urged that the law be amended to allow properly performed, hospital-approved abortions in certain carefully prescribed instances.

It is the consensus of the committee that serious problems exist with respect to the present law and that serious thought must be given to modifying it to some extent.

(Mr. Deukmejian concurs in the statement except for parts of the second paragraph.)

(Mr. Thelin abstains.)



PART 8

**USE OF BAIL AND CITATIONS IN THE
ADMINISTRATION OF JUSTICE
IN CALIFORNIA**



Report and Recommendations

on

BAIL AND CITATION PROCEDURES

by the

ASSEMBLY INTERIM COMMITTEE ON CRIMINAL PROCEDURE

Several resolutions concerned with problems related to citation, arrest, detention, bail, court and jail procedures were referred for interim study. Although some agencies view these areas as presenting separate administrative problems, they are in fact closely interrelated. The committee found that statistics concerning these subjects are not routinely collected and many that are available cannot be correlated due to variations in definitions, time of collection and population basis.

The first phase of inquiry was therefore directed towards collection of basic, comparable data. This was accomplished by directing questionnaires to all California chiefs of police and the courts.

I. SUMMARY OF FINDINGS

Citations: Police departments, responding to a questionnaire, reported a total of 2,351 citations issued between January 1, 1963, and June 30, 1963. The number of citations issued by departments ranged from 1 to 470. If the citations for traffic violations, local ordinances and state codes other than the *Penal Code* are excluded, the total number is reduced to 375. In order to appreciate the significance of this figure it should be noted that for an equivalent six-month period in 1963 there were about 297,996 misdemeanor arrests in California, and 375 is one-tenth of 1 percent of this number. It may be safely concluded that there is minimal use of the citation procedure in California under Penal Code Section 853.6. It is used exceptionally and experimentally by very few police departments and does not constitute a regular and definite procedure for law enforcement in general.

The problem is not one of legislation, but rather of local implementation and education. The enactment of Section 853.6 in 1959 had no practical significance for the majority of police departments. The survey, however, has demonstrated that certain police departments are willing to experiment with citations for misdemeanors under state law, provided that enough interest, concern and cooperation can be secured from responsible state agencies. The few law enforcement agencies which have attempted to implement the section complain generally about the lack of standard procedures and the problems of statistical reports.

Bail: Bail schedules were received from 67.9 percent (286) of the 421 judges queried, and this indicated a response of only 56.9 percent

(33) of our 58 counties. The request was mailed on July 7, 1964, and all replies prior to September 14, 1964, were tabulated. In the intervening time, followup letters were sent endeavoring to increase the response, and to clarify reported data. No firm conclusions can be drawn from the replies. It does appear that the wide variation in the amount of bail established for identical offenses is due to the purpose the various judges feel should be served by the procedure.

The comments of a number of judges indicated an interest in securing information concerning the amount of bail established for various offenses by other jurisdictions. The data received by the committee is presented in the report. It is not complete and no existing statute requires the regular collection of this information. In view of the apparent need for facts in this important area in the judicial process, the committee recommends fixing this responsibility with the Judicial Council by adoption of the legislation proposed in Appendix I of this report.

The committee commends the issuance by the Judicial Council of the State of California of Rule 850 which provides a recommended bail schedule for traffic offenses and urges similar action with respect to criminal offenses.

II. CITATION SURVEY

Origin: On February 28, 1963, Assemblymen Greene, Winton, and Danielson jointly introduced House Resolution No. 121 relative to bail, fines, and sentencing. A portion of the resolution stated "Whereas, almost no use is being made of the procedure provided in Section 853.6 of the Penal Code for citations and forfeitures of bail in misdemeanor cases, etc., it is resolved by the Assembly of the State of California, that it is appropriate, at this time that a study be undertaken of the law and practices in the state regarding bail, fines, and sentencing." The Penal Code section referred to in the resolution was enacted following the introduction of Assembly Bill 2492 by Mr. L. P. Francis on April 15, 1959. This permissive section provides:

"In any case in which a person is arrested for an offense declared by State law to be a misdemeanor, and does not demand to be taken before a magistrate, the arresting officer may, instead of taking such a person before a magistrate, issue a citation." (Section 853.6a.)

A citation was further defined as a process of arrest by which the arresting officer:

"shall deliver a copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, must give his written promise so to appear in court by signing the duplicate notice which shall be retained by the officer. Thereupon the arresting officer shall forthwith release the person arrested from custody." (Section 853.6d.)

Some concern for the effectiveness of this particular statute was voiced at public hearings of the Assembly Interim Committee on Criminal Procedure held in February 1960 and December 1961. All of the discussants welcomed the enactment of Section 853.6 and suggested

many diverse situations in which it could be effectively and efficiently operated. Few participants, however, knew of actual cases or places where it was incorporated into the working procedure of police departments. The 1963 resolution then charged the committee with a study of the use of citations pursuant to this section as a part of the larger problem concerning bail and sentencing procedures.

Police Reports: One portion of the survey was devoted to collection of data directly from police departments. In this connection a research assistant at the School of Criminology, University of California, Berkeley, was employed on a part-time basis to draft a suitable questionnaire, test it with seven police departments, and revise the questionnaire on the basis of the pilot survey responses. It was then sent to 388 city police departments in California with an accompanying letter from the committee chairman.

The response from the seven police departments furnished information which suggested that a statewide survey would prove both useful and instructive. Furthermore, the initial survey did provide a means of clarifying and improving the questionnaire which was subsequently utilized. The questionnaire was mailed on June 1, 1964, with an accompanying letter from Chairman Winton of the Assembly Committee on Criminal Procedure. The purpose and objective of the survey was described in this letter which stated:

"The Assembly Committee on Criminal Procedure is interested, as you know, in the problems of law enforcement and police administration, especially in the field of arrest where increased police duties and a growing population make it difficult for police departments to function efficiently and economically. As you know, Section 853.6 of the *California Penal Code* encourages the extension of the citation system. We believe that the citation system may offer an opportunity to improve police efficiency and reduce police work loads. The Legislature, too, is interested in learning what problems may exist in extending the citation system and they have referred the subject to us under House Resolution 121 of February 28, 1963.

Our committee would appreciate your help and advice in our study. Will you please complete the enclosed questionnaire and return it to us together with a sample form of citation? A second copy of the questionnaire is attached for your own use and reference.

We will, of course, be happy to send you the results of our statewide survey when it is completed. If you have any questions concerning this request, please do not hesitate to write or call our committee consultant at 445-8528 in Sacramento."

Court Reports: The other method was designed to seek information from the courts. The Bureau of Criminal Statistics of the State of California Department of Justice in the Division of Law Enforcement annually publishes reports concerned with crime in California. The data which was desired by the committee was not routinely collected by the Bureau of Criminal Statistics but because of well established lines of communication with the court and the necessary data

processing equipment it was felt that with some small assistance from the committee a special study could be made concerning both the use of citations and of bail schedules. Chairman Winton by letter to Justice Stanley Mosk formerly Attorney General and Director of the Department of Justice outlined the committee's interest and accordingly four questions related to the use of citations were incorporated in a larger pilot survey of California bail procedures. A staff associate was employed on a part-time basis to compile the special data being requested by the committee.

Limitations: The findings and observations based on the findings are limited to the data contained on questionnaires which were actually returned by the departments. By October 1964 a total of 174 replies from the police survey had been received. The number returned then constituted 44.85 percent of the total sent, and a second followup letter had been used in an endeavor to secure a higher return.

A higher percentage of return was received from the questionnaires sent to the courts. A total of 421 were sent and there were 286 responses or about 68 percent. A return by July 22, 1964, was requested, but actually returns were tabulated until September 14, 1964. Of possible related interest, in spite of the followup letters copies of bail schedules could not be obtained from 25 out of 58 California counties.

Further, in response to the question

“Does a schedule exist within your jurisdiction which designates types of offenses, for which citations other than traffic may be utilized?”

95 judges answered “yes” and 158 “no.” In only 2 of the 24 counties in which their courts were located was this practice uniform. For example, in one county four responded “yes” and five with a “no.” The lack of uniformity may not indicate that such a schedule does not exist since a “no” response leaves the possibility that the schedule simply includes traffic offenses. Nevertheless, it may explain why in the police survey confusion was often expressed concerning the specific offenses for which citations could be utilized. In fact, 12 cities in 2 counties indicated an established procedure for using citations and yet the judges answered the above question negatively.

Interpretations of data from the police survey were complicated by the fact that some respondents listed a variety of local and city ordinances as well as those offenses specified as misdemeanors under the state law sections in the Penal Code. Some departments also listed citations issued for offenses contained in state codes other than the Penal Code, such as the Vehicle Code and Business and Professions Code which includes violations of the Alcoholic Beverage Control Act.

The actual population of the 174 cities which returned the questionnaire amounted to 8,068,836 of the total state population or 45.6 percent. The unreported population areas in addition to covering the 214 police jurisdictions that did not respond to the inquiry also included the 58 sheriffs' departments with responsibility over the unincorporated areas. Some portion of this latter area was, however, covered by the inquiry to the courts through the Bureau of Criminal Statistics. The Juvenile Court Law provides for a separate citation procedure to be

utilized for juveniles; therefore, that portion of the state population under 18 years of age might also well be excluded from any interpretations of the use of Penal Code based citations.

Findings: Compilations of data from the 174 returned questionnaires revealed that very few police departments in California have either used or formulated a working procedure for implementation of Penal Code Section 853.6. A total of 72 departments stated that they had established a procedure for arrest by citation, but only 58 or one-third of those responding had actually used it. It might well be assumed that a department which was not using the citation procedure, did not respond. If this is true, then only 15 percent of all police departments in the state had used the process.

The questionnaire requested a report on the number of citations issued between January 1, 1963, and June 30, 1963. The departments reported a total of 2,351, ranging from a single citation to 470. If the citations for traffic violations, local ordinances, and state codes other than the Penal Code are excluded, the total number is reduced to 375. In order to appreciate the significance of this figure it should be remembered that for an equivalent six months' period in 1963 there were about 297,996 misdemeanor arrests in California, and 375 is one-tenth of 1 percent of this number. It may be safely concluded that there is a minimal use of the citation procedure in California under Section 853.6. It is used exceptionally and experimentally by very few police departments, and it does not constitute a regular and definite procedure for law enforcement in general. A review of the Penal Code offenses for which citations were issued again indicates wide variation and includes 15 misdemeanors as follows:

<i>Number of Departments</i>	<i>Offenses</i>	<i>Penal Code Section</i>
24	Petty theft -----	488
21	Disturbing the peace -----	415
17	Disorderly conduct, intoxication -----	647f
8	Larceny (theft) -----	484
7	Malicious mischief -----	594
3	Disorderly conduct -----	647
2	Crimes against the public health and safety -----	374
2	Battery -----	242
1	Assault -----	240
1	Refusing to disperse upon lawful command -----	416
1	Issuing bank check with intent to defraud -----	476a
1	Indecent exposure -----	314
1	Gaming -----	330
1	Sending letters threatening to expose another -----	650
1	Trespass -----	602a

Dishonored Citations: The extensive use of citations for overtime parking violations and as "traffic tickets" may have lowered in the public mind the status of this procedure particularly considering the number of "dishonored" citations for such offenses. On the other hand, from the data received from the questionnaires it appears that for citations which departments claim to have issued on state law misdemeanors the number of actual appearances has been exceptionally high. The departments in reporting the number of citations, and this figure includes all the citations issued for all offenses reported on the question-

naires, was 2,351. Out of this number the departments reported only 110 did not result in an appearance which is 4.6 percent.

Police Comments: Some of the general comments attached to the questionnaires include the following statements from different departments:

- A. "The reason we do not use the citation in lieu of arrest is that our local district attorney prefers that we do not. It is my opinion that it could be used to advantage in many cases, however, we bow to his request."
- B. "The statute serves its purpose by permitting hardship cases, where person unable to raise bail for their release, to be released by a police officer when he believes that the defendant would abide by the rules of the statute."
- C. "Citations are issued for traffic offenses and for juveniles only. Issuing citations for other offenses will in my opinion lead to more warrants being issued for failure to appear and this department is overburdened with warrant service."
- D. "It is my opinion that this procedure is very convenient to the recipient as well as being a very effective time-saving tool for law enforcement. I feel quite strongly that the section should remain as it is in regard to giving the officer the option."
- E. "Many circumstances arise wherein a person arrested for violation of a state law could, very properly, be released immediately upon his written promise to appear. However, if an immediate release is made, we are precluded from obtaining the definite identification provided by fingerprints, etc."
- F. "Our law enforcement association has agreed to participate in a survey of trial enforcement under Section 853.6. Therefore, we will become a part of this program in our future arrest procedures."
- G. "We are at a loss to determine what offenses under Penal Code, Business and Professions Code, Health and Safety Code, etc., on which we would be authorized to write such citations and under what circumstances."
- H. "It appears to me that courts and district attorneys are not particularly interested in placing this system in operation."
- I. "We do not have any specific form to use even if citations were to be issued in this area."
- J. "This is good legislation. We have found it useful. Also I feel that it is *fair* to the first offender."
- K. "Our instructions are to use the citation method in cases of misdemeanors committed by persons whose reputations or community standing would be seriously damaged if arrested, constituting an undue hardship."
- L. "The citing procedure should not be used on persons that the officer believes will not appear, or when the officer believes justice will be better served if the person were detained."
- M. "We have found this section to be very satisfactory as it now stands. This section saves us a 25-mile round trip to the jail, and 25-mile round trip to the district attorney. Our record of guilty pleas has been very good on citations."

- N. "There are court jurisdictions who resist, to a degree, because of crowded agendas and lack of personnel."
- O. "We do not use it in cases where the accused is not a resident of the city and where, because of a failure to appear in compliance with the citation, it would be necessary to secure a warrant and return him from another part of the state."
- P. "It still provides us with a procedure which speeds the arrest and which is more equitable wherein the citizen is believed to be of reputable character and who it appears will comply with the appearance date on the citation rather than requiring a posting of bail before his release."
- Q. "We feel it far more effective to fingerprint and photograph persons arrested prior to their release and thereby avoid the possibility of missing a wanted person."
- R. "A conflict in reporting may arise as credit would not be received by departments for arrests recorded on citations in the monthly reports to the California Identification and Investigation Bureau and to the Federal Bureau of Investigation."

Court Comments: The following responses by various judges were taken from statements contained on the questionnaires returned with the bail schedules.

- 1. "This court takes issue with Section 853.6 P.C. In this court most misdemeanors are by people living in other sections of the state; quite often the mileage to their homes is 150 to 300 miles. For the arresting officer to release the violator to go home, after having had him in custody, merely on his promise to appear, without first requiring that bail be posted in adequate amount, is, in this judge's opinion, ridiculous. Many violators are wholly irresponsible. The ends of justice do not lie in acceptance of bail without court procedure."
- 2. "Bail and citations in my opinion should be left to the discretion of the jurisdiction."
- 3. "A jurisdiction on the border of another state faces a problem of failure to appear on a citation on their release on their own recognizance. The California Highway Patrol in lieu of returning the violator to the court or sheriff's office for the purpose of posting bail instructs him to communicate with the court, but rarely does he comply. Consequently, we have hundreds of warrants of arrest at issue."
- 4. "The police department has authority to 'OR' defendants, under state law, and in my area they are just beginning to use it."
- 5. "I feel that release on written promises to appear should be greatly expanded and the use of bail reduced, in the case of responsible residents within the district. Registration to vote might be a criteria for release without bail. Punishment for non-appearance should be severe."
- 6. "I believe that citations for nontraffic offenses should be used more often (minor misdemeanors) than is the practice currently in this area."
- 7. "This community has a rather large turnover of population due to the military base and the type of person who follows such

establishments. We have a heavy violation of written promises to appear on citations due to transfers and just plain trying to get away without appearing. It has been my experience that posting of bail is very important in this jurisdiction."

8. "Regarding citations, they are used in practically all cases involving violation of the Fish and Game Code. Except in extreme cases, bail forfeiture is permitted."
9. "In my opinion all law enforcement agencies should use the citation system rather than having various agencies differing. This is on the low misdemeanor level."
10. "It is our feeling, however, that citations could and should be used in all the areas where booking is now used in cases of non-violence. However, the booking procedure should not be used in crimes of violence and narcotics."

OBSERVATIONS ON FUTURE NEEDS

Guidance: The following comments from the police survey appear indicative of a feeling of need for some direction:

"We do hope that some uniform procedure will be adopted for the issuance of the specific citations and that a uniform set of citation forms will be developed."

"We suggest that an Attorney General's opinion be drafted and directed to all law enforcement agencies, including district attorneys' offices, wherein the legal processes should be outlined and any court cases in question be brought to attention. That a *sample procedure* be drafted by the Attorney General's office and submitted to all law enforcement agencies for recommended adherence. Departmental policy and procedure appears to be the problem area as on one occasion a disturbing the peace arrest by this department under the citation system did not meet with the approval of the district attorney's office."

Experimentation: This survey indicates that, in regard to citations for misdemeanors under state law, no further legislative action would be appropriate at this time. The problem is not one of legislation, but rather of implementation and education. The enactment of Section 853.6 in 1959 had no practical significance for the majority of police departments. The survey, however, has demonstrated that certain police departments are willing to experiment with citations for misdemeanors under state law provided that enough interest, concern and cooperation can be secured on a statewide level. The few law enforcement agencies which have attempted to implement the section complain generally about the lack of standard procedures and the problems of statistical reporting.

Additional studies in depth of individual departments for the purpose of understanding and appreciating the basis for resistance to this type of procedure might provide valuable factual data.

Institutes: The Administrative Office of the Courts of California recently conducted a conference, an institute, attended by municipal court judges. More experimental data such as has only been briefly touched upon in these surveys is needed to provide the basis for real-

istic discussions at these institutes. The staff of the Judicial Council and the Administrative Office of the Courts are well qualified to direct and participate in the preparation of such study materials. The conclusions from the proceedings of such conferences may well lead to more uniformity in practice and procedures as well as in an expanded use of the citation system.

Research: The very simple old-fashioned "pick-and-shovel" type of research which was the methodology of these surveys should point the way towards developing of electronic data processing techniques in the recording of all aspects of the administration of justice. Modern equipment will lead toward more rapid analysis, more valid and reliable results. Law enforcement agencies of the nine San Francisco Bay counties have been working on the applications of electronic data processing to problems of law enforcement for the past several years and within the past few months the County of Alameda has computerized its warrant file. It has also offered to make available to other jurisdictions the filing and servicing of a central warrant index. In its application to citations it should be self-evident that if there is a concern that a "wanted" person might escape apprehension an almost instantaneous identification clearance can be obtained by the officer on the basis of an inquiry processed through the computer. The International Business Machines office in Oakland has a specialist working on applications to law enforcement and from the Sacramento district office special state teams are working on applications to other aspects of law enforcement of concern to the Sacramento bureaus. They have equipment that can optically read forms, sort, classify, store, and evaluate information needed by law enforcement.

Legislative Action: The surveys briefly reported should be but the beginning of much larger research projects into the revealed administrative problems to the end that more facts can be made available for study by conferences of the courts and law enforcement agencies. Progress can be based, not on projections from small samples, but actual experimentation by the operating team, the police and the courts. Then and only then should legislative action take place; action oriented toward improving the functioning of the law and the administration of justice.

III. BAIL SURVEY

Scope: Operational research in New York City in the Manhattan Bail Project and in several other eastern and midwestern cities indicated considerable success with pretrial release of defendants on their own recognizance (O.R.). The committee felt that as a necessary prerequisite to any legislative action in this area, factual data concerning bail procedures in California should be accumulated and evaluated. The project was divided in two parts. One which examined in detail court dispositions for a two-week period in San Francisco and the second portion was an attempt to gather on a statewide basis data concerning bail schedules established for criminal offenses.

San Francisco: The San Francisco Bar Association and the municipal courts, with the cooperation of the police department and the

office of the district attorney, secured financial support from the San Francisco foundation for an analysis of the practices and procedures in San Francisco related to use of bail. The specific aims of this project are:

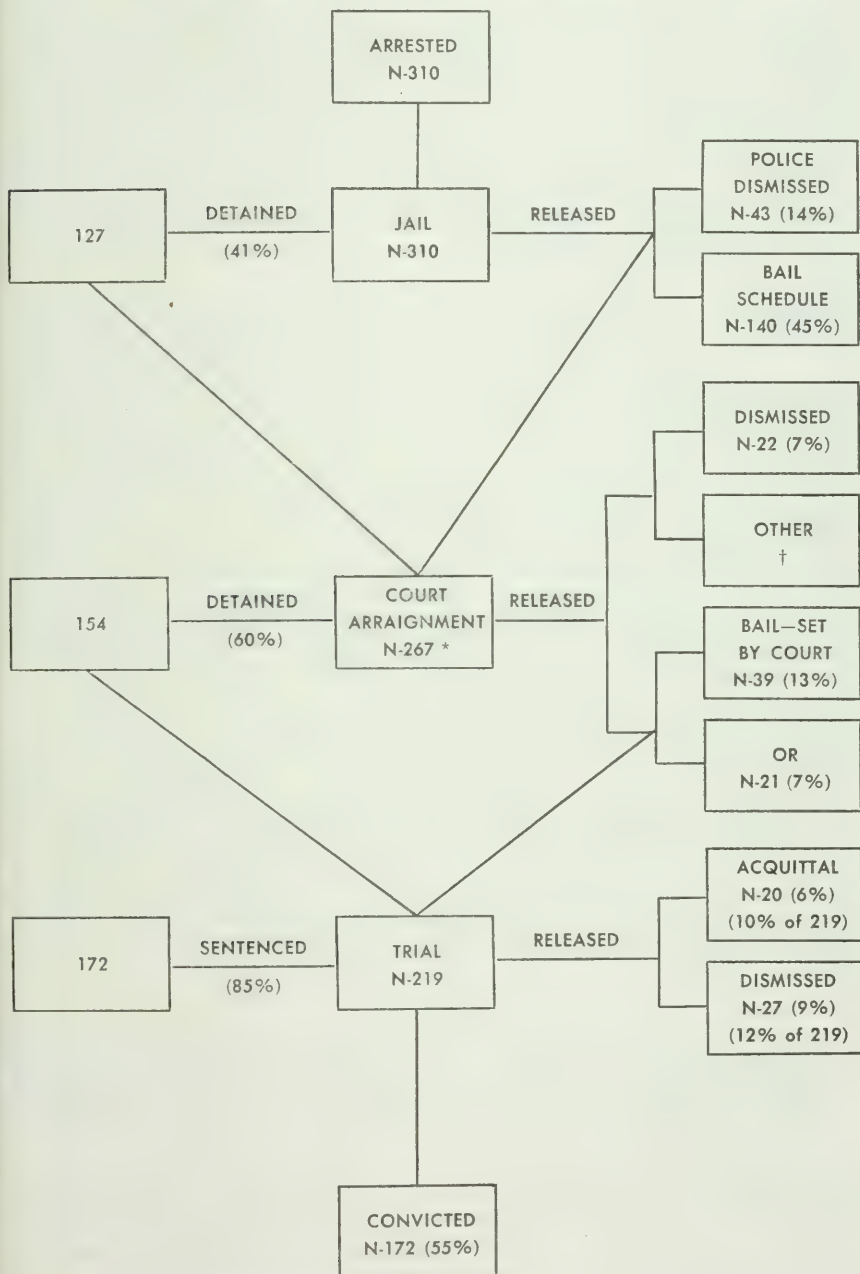
1. *Extend* the preliminary findings of the Manhattan Bail Project to an evaluation of bail procedure in California.
2. *Explore* the value of other selected criteria in accordance with the characteristics of the arrested population in California.
3. *Record* demographic data concerning a section of the population who has by their arrests given evidence of possible antisocial behavior.
4. *Develop* a computer program primarily for (a) manipulation of the data for this project by electronic processing and (b) suitable for replicating this study for other time periods or geographical areas.

In order that facts could be obtained concerning the use of pretrial O.R. releases prior to the establishment of the new project, an analysis was made of court actions over a two-week period in August of 1963.

The data recorded concerned those misdemeanors and felonies, including traffic, which would be of primary interest to the bail project. As a further limitation, mental cases, drunks, persons arrested on bench warrants, having detainers or booked on route to another jurisdiction were excluded. The committee provided student research assistance for correction, recording and tabulation of data.

DISPOSITION

San Francisco Misdemeanor and Felony Arrests (Male and Female)
(Excluding Traffic)—Two Weeks, August 1963



* Arraignment and Trial may occur at same session.

† There were 26 "unknowns" and Bench Warrants which reduced this figure.

In Table, p. 105, the disposition of San Francisco misdemeanor and felony arrests for approximately a two-week period in August 1963 is reported. It can be noted that there was a 25 percent increase in the number detained after court arraignment. At the time of arrest, 45 percent were able to be released in accordance with a bail schedule, but only 39 or 13 percent were able to afford release on bail as set by the court at time of court arraignment. All studies have indicated a direct relationship between the number of persons retained in jail and the amount of bail that it was necessary to have posted for their release pending trial. The second portion of this survey, then, turned to an examination on a statewide basis of not only the range of bail established for various offenses but how the exact amount was determined and some indication as the purpose the court felt should be served by the bail procedure.

Statewide: The committee, through the office of the Attorney General, secured the assistance of the Bureau of Criminal Statistics of the Department of Justice in the collection of facts relative to the administration of bail in the courts of the state. In view of the fact that such data is not routinely collected by the bureau, the committee provided additional research assistance for the purpose of recording and tabulating the questionnaire responses. The cover letter, questionnaire and followup letter are shown in Appendices III and IV. The return of bail schedules was incomplete, even after followup letters, and many schedules were incomplete for various offenses. Because some of these schedules failed to specify bail for intoxication as being either ordinance or Penal Code violations, it is shown apart from the other codes. The felony bail schedules were few in number and were not posted for that reason. The misdemeanor bails shown include the state assessment.

Questionnaire Results: Some of the responses to questions are shown in Table, pp. 114-117. The letters in the left margin refer to a specific question in the questionnaire shown in Appendix IV. The numbers 1, 2 and 3 and the headings under municipal court and justice court indicate the volume of work of the particular court. The first four questions, A through D, are related to the citation portion of the survey previously discussed in this report. The responses related to bail practices begin with Question E. In the following commentary, the query is shown in bold face type preceding the statement concerning the response.

Commentary

- E. Does the misdemeanor bail schedule adopted by your jurisdiction provide for fixing a minimum and maximum amount of required bail, as opposed to one fixed amount for each class of offense?**
(1) Yes. (2) No.

A fixed amount for each offense was established in the bail schedule by only 10 percent of the responding courts, and 21 of these 25 were justice courts. In the other 90 percent, a sliding bail schedule fixing a minimum and maximum amount of required bail was the practice. There was almost a 100 percent response to this question, since only 7 out of the 252 responses to this question were left blank.

F. If a misdemeanor sliding bail schedule is used, at the point of a defendant being booked who decides the actual amount of bail to be imposed? (1) Jailer. (2) Arresting officer. (3) Other—please specify.

This question was used to determine how the exact amount, along a permissible sliding scale, was determined as the appropriate amount for bail. At the outset it should be noted that with respect to this particular question, 78 percent of the judges failed to answer this question. The 57 (22 percent) that did, in one-half of their responses indicated that the jailer fixed the amount. In 12 percent the arresting officer, and in 36 percent of the time some other person.

G. Is it your observation in using a sliding bail schedule, that bail tends to be set toward the (1) Maximum? (2) Minimum?

There was an even poorer response to the above question since 80 percent of the time this question was left blank. The 47 responses were divided 60 percent towards the belief that bail would be set towards the maximum and 40 percent towards the minimum.

H. Does your jurisdiction provide a felony bail schedule applicable to a felony arrest made without a warrant having been issued? (1) Yes. (2) No.

There was a reasonably good response to this question with over 80 percent, however, indicating a negative response and only 18.5 percent of the courts apparently having a bail schedule for felony cases where arrests are made without warrants having been issued.

I. If your jurisdiction does not have a felony bail schedule, is bail set by the court in a session held prior to the time of preliminary hearing? (1) Yes. (2) No.

There were about 75 percent of the courts that responded to this question and almost 90 percent indicated an affirmative answer. The majority of the courts not setting bail prior to the preliminary hearing were justice courts.

J. Do superior court judges within your jurisdiction customarily modify prearrestment bail following superior court arraignment? (1) Yes. (2) No.

The response to this question again was poor as only 65 percent of the courts replied and they were divided with 18 percent indicating modification of the prearrestment bail and 82 percent reporting no modification. It can thus be seen that with a sliding bail schedule the method of initial determination of the amount of bail becomes extremely important to the defendant.

K. If bail is customarily modified at that time, is the modification usually in the direction of (1) Bail increase? (2) Bail decrease?

Again in this question we find an extremely poor response from the courts wherein 80 percent (28) did not wish to venture an opinion concerning this question. Of the 51 responses, 12 percent felt that bail would be increased, but 88 percent indicated the modification would be in the direction of a bail decrease.

L. What are the criteria used for establishing/revising the bail schedule in your jurisdictions?

The responses to this question have been grouped under general factors and will be discussed more completely at the conclusion of this commentary.

M. Are the opinions of persons other than judges considered in establishing/revising bail schedules in your jurisdictions? (1) Yes. (2) No.

There was good response to this question, 58 percent (139) indicating that the judges alone without the opinions of other persons establish the bail schedules. There were 42 percent, however, that did seek the opinions of other persons.

N. If persons other than judges are consulted in relation to bail schedule revision, are they (check one or more) (1) Court clerks? (2) Law enforcement agencies? (3) District attorney? (4) Public defender? (5) Other? (Please specify.)

This question was left blank by about 60 percent (153). Several alternate questions could be checked in the response, so the rank order of importance as determined by the total number of checks appears to be first consultation with law enforcement agencies closely followed by district attorneys, then court clerks, public defenders and other persons when other judges are excluded.

Own Recognizance

O. Does your jurisdiction grant releases on own recognizance for misdemeanor offenses? (1) Yes. (2) No.

There were only 9 out of 259 courts that did not respond to this question, and 97 percent indicated an affirmative reply concerning the use of releases on persons' own recognizance.

P. If your jurisdiction grants the release of misdemeanor defendants on own recognizance, will the release be authorized (1) Either prior to or following court appearance, depending on circumstances? (2) Never prior to court appearance?

A similar high response was received on this question with about one-third indicating that an OR release is not permitted prior to court appearance. It is this type of release that the Manhattan Bail Project in New York City has demonstrated can be successfully utilized and that the San Francisco project is in the process of confirming as a successful procedure in that area.

R. If your jurisdiction permits the release of a felony defendant on his own recognizance, will the release be authorized (1) Either prior to or following court appearance, depending on circumstances? (2) Never prior to court appearance?

Again, there is only about a 50 percent response to this question of which two-thirds indicated that a felony defendant would never be released prior to his court appearance and on his own recognizance.

S. Will your jurisdiction authorize daytime release (with nighttime custody) of defendants awaiting trial? (1) Yes. (2) No.

The responding courts in 87 percent of the cases indicated that daytime release with nighttime custody would not be permitted.

T. Will a third party be permitted to assume responsibility for appearance of a defendant without being required to file a cash or property bond? (1) Yes. (2) No.

A third party assumption of responsibility for the appearance of a defendant without a bond or cash surety would not be authorized in about three-fourths of the responding courts.

U. If your jurisdiction permits release on defendant's own recognizance, is this done (1) Formally—with established procedures for assessing risk of releasing the defendant? (2) Informally—without established procedures but with reliance on information provided by police, prosecuting and defense attorneys?

The procedure for releasing a defendant on his own recognizance is formally established in about 30 percent of the cases and is only informally handled in 70 percent of the responding courts.

V. If your present procedures for granting OR releases are informal, do you believe that a formal screening agency, by providing more information, might help you in your assessment of the desirability of an OR release? (1) Yes. (2) No.

The responding courts were about equally divided as to the desirability of having the benefit of a more formal screening or assistance from an agency in determining OR releases.

W. If in your opinion a screening agency would be of value, which of the following would be best qualified to provide the factual data you need to properly assess the risk in "own recognizance" releases? (1) Probation department. (2) Police department. (3) Prosecuting attorney. (4) Public defender. (5) Other—please specify.

Again, in this question, a little less than half of the courts left this question blank. The 193 that responded suggested the probation department (41.5 percent); police department (29.0 percent); prosecuting attorney (17.6 percent); public defender (6.7 percent); and other (5.2 percent).

CRITERIA FOR BAIL SCHEDULES

The following are verbatim statements which were made in answering Question L, "What are the criteria used for establishing or revising the bail schedule in your jurisdiction?" The responses are grouped under categories determined by selecting key words out of the phrases used by the courts. Each quoted statement is from a different court though not necessarily from different counties or court districts. The most frequently named criteria was the type of offense with comments as follows:

The principal criterion in establishing the bail schedule is the seriousness of the particular *offense*.

Current trend in types of violations being committed; seriousness of the alleged *offense*.

Seriousness of *offense* from the standpoint of threat to public's safety.

The gravity of the statutory *offense* against society commensurate with penalty set forth in the Code.

Gravity of the *offense*. Bail customarily being synonymous with the fine ultimately imposed.

Seriousness of *offense*, frequency of violations, causes or factors involved in local traffic problems and accidents. Check bail schedules of other areas throughout the state and usually use an average bail.

Based upon the seriousness of the *offense*.

Depends on the nature of the *crime*.

Adequacy of bail to effect compliance—severity of *offense*.

Nature and gravity of the *offense*.

Type of *offense*; severity of offense; minimums and maximums set by governing codes; what a fine might be for same offense if there were a plea of guilty and after consideration of circumstances. In most cases, bail is the same as a *fine* would be. However, after circumstances are known, fine might be higher or lower than bail.

Serious nature of *offense*; approximate usual fines in traffic categories.

In traffic cases where bail forfeitures are generally accepted, bail is generally set at a maximum of a fine. In other cases they are set upon the basis of the seriousness of the crime based upon the consensus of the experience of the judges.

Consideration is given to the seriousness of each *offense* and if a possible bail forfeiture is to be permitted.

Nature of *offense* and bail as set by other courts in similar cases.

Judges in joint session classify *offenses* in terms of gravity, based on potential hazard to public and the extent of antisocial venture—ment evinced by offense.

The next most frequently mentioned criteria was the frequency of violation, some listed in combination with seriousness of the offense, as is shown by the following comments:

Frequency of violation incident, both as to repeaters individually and general.

Experience as to frequency of *offenses*, seriousness and traffic conditions.

Severity and frequency of *offense*.

Bail schedules of other counties; seriousness of section involved; and review of sections in each judicial district which are most frequently *violated* and/or are the cause of accidents.

We usually try to conform to other statewide courts. We take into consideration the *volume of occurrences* of each *offense*.

Seriousness of offense; frequency of violation.

The *frequency* of the *offense*; whether it is accident causing in traffic situations; the potential for injury or physical harm; the willfulness of the *offense*.

Next in order of apparent importance was the question of equating the amount of bail with the fine which would be imposed after determination of guilt of the defendant. This position is reflected by the following comments:

Average of usual *fine* imposed.

Usually keep it at about the same amount the *fine* would be.

The amount which if the defendant fails to appear will be adequate as a maximum *fine*.

Basically to parallel the *fine*.

Bail is set in relation to the average *penalty* that may be imposed in a given case.

In two instances, the criteria for the bail schedule was conditioned by area considerations as is indicated in the following comments:

Since this is the only justice court in this county, this judge feels that in fairness to the public the bail schedule should be established by more than one judge. Therefore, this court has adopted and uses the bail schedule prepared by the justice court judges of our sister county (named).

Conditions peculiar to this *area*. For example, condition of local roads; distance from nearest jail; traffic conditions on the river.

In one instance, it was reported that one criterion for changing the bail schedule might stem from offending citizens.

Changes are not made unless some substantial dissatisfaction has been expressed as to a particular bail amount. The expression of dissatisfaction might come from anyone including citizens who have had to post bail.

Another interesting purpose for bail is apparently the belief of one court of its deterrent effect on crime. The court indicates in the following statement that the amount of bail is increased in relationship to higher accident incidents.

Bail schedule primarily relates to traffic violations. In revising schedule account is taken of increase or decrease in particular type of offense and the relationship of the offense to accidents in the jurisdiction e.g. Failure to yield and higher accident incident equals increased bail (based on the hope of *deterrent effect*). The foregoing factor is considered in situations where it is likely that the defendant will forfeit bail rather than appear. Consideration is also given to whether a mandatory appearance is necessary e.g. drunk driving, comparison with bail in other jurisdictions, and where personal information is available concerning defendant, his ability to post bail.

A number of comments combined several of the above criteria in an attempt to relate these to the probability of a defendant appearing in court, as indicated by the following comments:

To insure defendant's *appearance in court*; severity of offense. Based entirely on need to assure appearance in court and to indicate the minimum *fine* to the defendant.

We try to set bail at the very minimum that will guarantee the subjects *appearance in court*.

The experience that we have had during the past year in non-appearance of defendant's where it has been necessary to increase bail and issue bench warrants to guarantee appearance.

Seriousness of charge, information or lack of information on accused. Certainty or lack of certainty of his likelihood *to appear*.

Risk of failure to appear in view of seriousness of charge; gravity of average offense where bail can be forfeited without appearance.

There is an annual meeting of judges countywide and a uniform bail schedule is adopted. Criterion depends on type of *crime* and past experience of success of defendants showing for court appearances.

Seriousness of *crime*; relation, if any, between nature of offense and possibility of defendant's appearance in court as required; and in the revising of schedule, past performance of defendants appearing is considered.

Uniformity—to other jurisdictions. Seriousness of violations and frequency of occurrence in jurisdiction. Character of *individual* and record dictate what to apply.

The response from one superior court was unique in that it linked factors other than the offense together with the probability of the appearance in court such as social or family ties in the community.

Superior court does not use a schedule. We consider the offense, employment and length of residence of defendant in the area, his ownership of property, family and other *ties* in considering the risk of nonappearance and fixing bail.

A considerable number of the responses by the courts indicated that there were meetings of judges held for the purpose of establishing the bail schedules as required by Section 1269b of the *Penal Code*. Since the code requires such an annual meeting, it is difficult to understand why copies of such schedules could not be obtained from every county of the state. One explanation might be found in the following comment which was received from one judge:

"Undersigned appointed to bench September 1962. Since that time to my knowledge there have been no formal meeting of justice court judges and municipal court judges for specific purpose of revising or amending bail schedule. *We are using one dated May 1964, however.*"

The National Conference on Bail and Criminal Justice in the publication, *Bail in the United States: 1964*, stated:

“The bail system in the United States determines whether an accused person in a criminal proceeding will be released or jailed in the period between his arrest and trial. In the typical case, the accused is brought by the police before a committee magistrate or judge who will set bail in a monetary amount. The legal theory underlying this procedure is that the bail will be sufficient to insure the appearance of the defendant at trial. If he is able to post bond in the bail amount, or to pay bondsman to post it for him, the accused is released. If he is financially unable to make bail, he is detained in jail.

Each year, the freedom of hundreds of thousands of persons charged with crime hinges upon their ability to raise the money necessary for bail. Those who go free on bail are released not because they are innocent but because they can buy their liberty. The balance are detained, not because they are guilty, but because they are poor. Though the accused be harmless, and have a home, family and job which make it likely that—if released—he would show up for trial, he would still be held. Conversely, the habitual offender who may be dangerous to the safety of the community, may gain his release.” (V.I.I.)

The California *Penal Code* in Section 1275 provides:

“In fixing the amount of bail, the judge or magistrate shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his appearing at the trial or hearing of the case. No bail bond shall be accepted unless the judge or magistrate be convinced that no portion of the consideration, pledge, security, deposit or indemnification paid, given, made, or promised for its execution was feloniously obtained by the defendant.”

BAIL PROCEDURES **By Item, Court, and Caseload With Percentages of Total Response**

Statewide	Total response Number	Superior court Number	Total less superior court*		Municipal court				Justice court							
			Number	Percent	Total*		1	2	3	Total*		1	2	3		
					Number	Percent				Number	Percent				Number	Percent
CITATIONS																
A. Total Response Less than 1 citation per 100 arrests Less than 1 citation per 100 arrests Less than 1 citation per 500 arrests Never Blank	285	26	244	100.0	52	100.0	32	14	7	192	100.0	55	124	27		
	98	1	97	39.8	20	38.5	12	6	2	77	40.1	26	40	11		
	79	1	78	32.0	16	30.8	11	4	1	62	32.3	9	45	8		
	41	1	40	16.8	15	28.8	8	3	4	26	13.5	1	18	7		
	35	17	28	11.5	1	1.9	1	1	1	17	14.1	7	15	1		
B. Total Response Yes No Blank	285	26	249	100.0	53	100.0	32	14	7	196	100.0	55	124	27		
	99	1	95	38.2	15	28.3	10	3	2	80	40.8	26	44	10		
	165	11	154	61.8	38	71.7	22	11	5	116	59.2	25	76	15		
	25	15	10							10		4	4	2		
C. Total Response Assaults Disturbing the peace Petty theft Drunk Drunk Driving Other Ordinances Blank	533	26	383	100.0	55	100.0	57	19	9	338	100.0	126	232	64		
	27	1	27	7.0	2	3.6	2	2		23	7.6	88	13	4		
	35	1	35	9.1	2	3.6	2	2		33	10.1	12	15	6		
	25	1	25	6.5	3	5.5	3	3		22	6.7	9	18	4		
	49	1	49	12.8	10	18.2	7	3		39	11.9	14	9	7		
	45	1	45	11.7	1	1.8	1	1		14	13.4	13	26	5		
	95	1	95	24.8	16	29.1	11	3	2	79	24.1	23	44	12		
	107	1	107	27.9	21	38.2	14	4	3	86	26.2	23	49	14		
	150	26	124		30		17	9	4	94		24	58	12		
	D. Total response All Some None Blank	285	26	213	100.0	45	100.0	32	14	7	168	100.0	55	124	27	
17		1	17	8.0	1	2.2	1	1		16	9.5	4	10	2		
163		1	162	76.1	34	75.6	22	9	3	218	76.2	30	80	18		
36		2	34	15.9	10	22.2	4	4	2	24	14.3	8	12	3		
69		23	46		8		5	1	2	38		13	22	3		

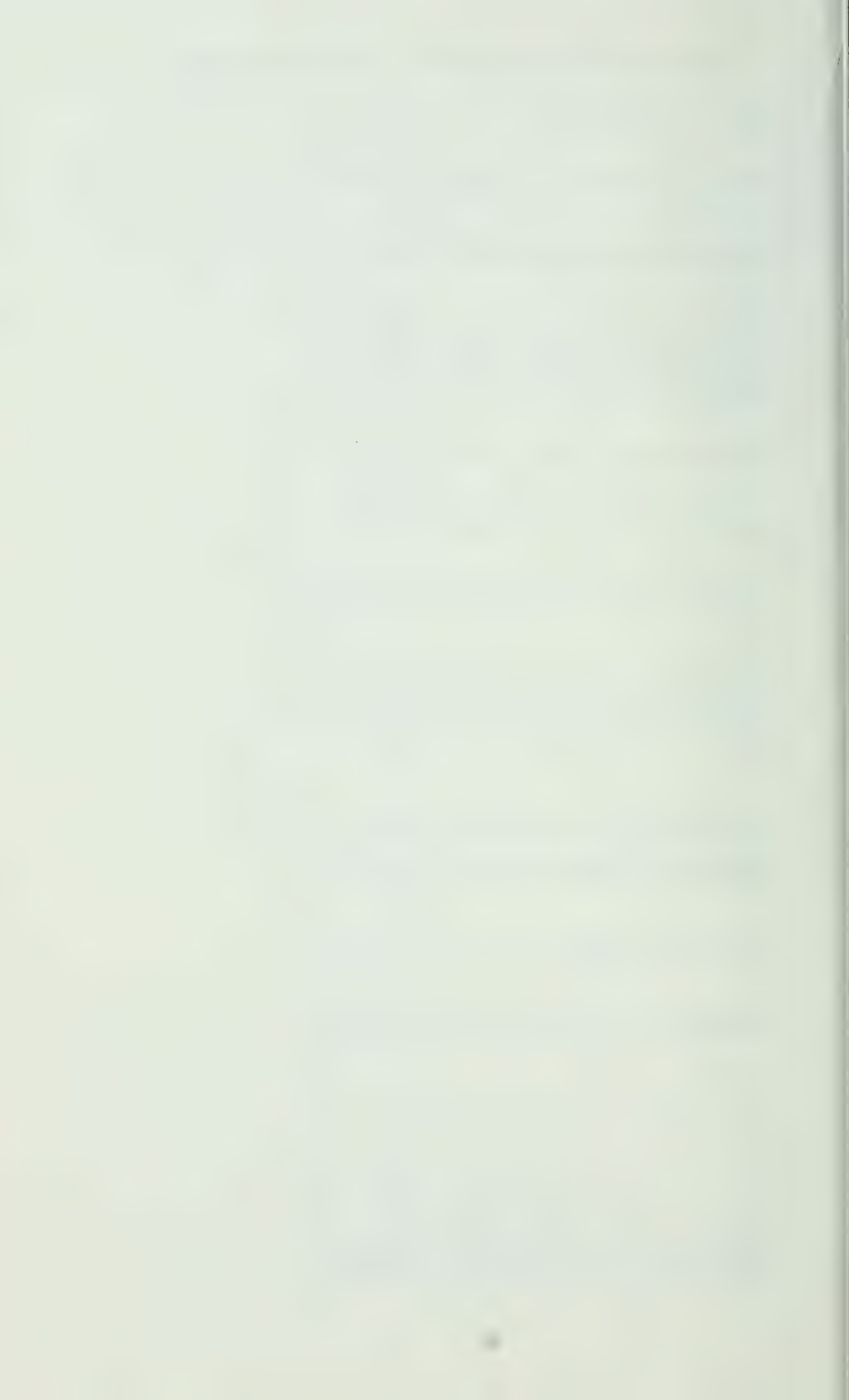
BAIL PRACTICES									
E.	Total response.....	252	100.0	53	100.0	32	14	7	109
	Yes.....	25	9.9	4	7.5	30	2	---	21
	No.....	227	90.1	49	92.4	3	12	7	178
	Blank.....	27	7	---	---	---	---	---	4
F.	Total response.....	286	100.0	7	100.0	32	14	7	50
	Jailer.....	29	50.9	1	14.3	1	---	---	28
	Arresting officer.....	7	12.3	1	14.3	1	---	---	6
	Other.....	21	36.4	5	71.4	3	2	---	16
G.	Total response.....	203	100.0	46	100.0	27	12	7	157
	Yes.....	203	100.0	46	100.0	27	12	7	157
	No.....	---	---	---	---	---	---	---	---
	Blank.....	---	---	---	---	---	---	---	---
H.	Total response.....	26	100.0	2	100.0	32	14	7	45
	Maximum.....	28	59.6	---	---	---	---	---	28
	Minimum.....	2	40.4	2	100.0	2	---	---	17
	Blank.....	212	---	51	---	30	14	7	161
I.	Total response.....	26	100.0	50	100.0	32	14	7	188
	Yes.....	45	18.5	8	16.0	6	1	1	36
	No.....	206	81.5	42	84.0	23	13	6	152
	Blank.....	34	---	3	---	3	---	---	18
J.	Total response.....	26	100.0	40	100.0	32	14	7	153
	Yes.....	193	89.1	35	87.5	19	11	5	137
	No.....	21	10.9	5	12.5	4	1	---	16
	Blank.....	32	---	3	---	9	2	2	53
K.	Total response.....	26	100.0	36	100.0	32	14	7	134
	Yes.....	84	17.6	6	16.7	3	---	3	24
	No.....	132	82.4	30	83.3	19	7	4	110
	Blank.....	99	---	17	---	10	7	---	72
L.	Total response.....	26	100.0	11	100.0	32	14	7	40
	Increase.....	7	11.8	1	9.1	---	---	1	5
	Decrease.....	55	88.2	10	90.9	7	---	3	35
	Blank.....	223	---	42	---	25	14	3	166
M.	Total response.....	26	100.0	48	100.0	32	14	7	190
	Yes.....	104	41.6	24	50.0	14	5	5	75
	No.....	144	58.4	24	50.0	16	6	2	113
	Blank.....	37	---	5	---	2	3	---	16
BAIL SCHEDULES									
N.	Total response.....	285	100.0	48	100.0	32	14	7	190
	Yes.....	104	41.6	24	50.0	14	5	5	75
	No.....	144	58.4	24	50.0	16	6	2	113
	Blank.....	37	---	5	---	2	3	---	16

BAIL PROCEDURES—Continued By Item, Court, and Caseload With Percentages of Total Response

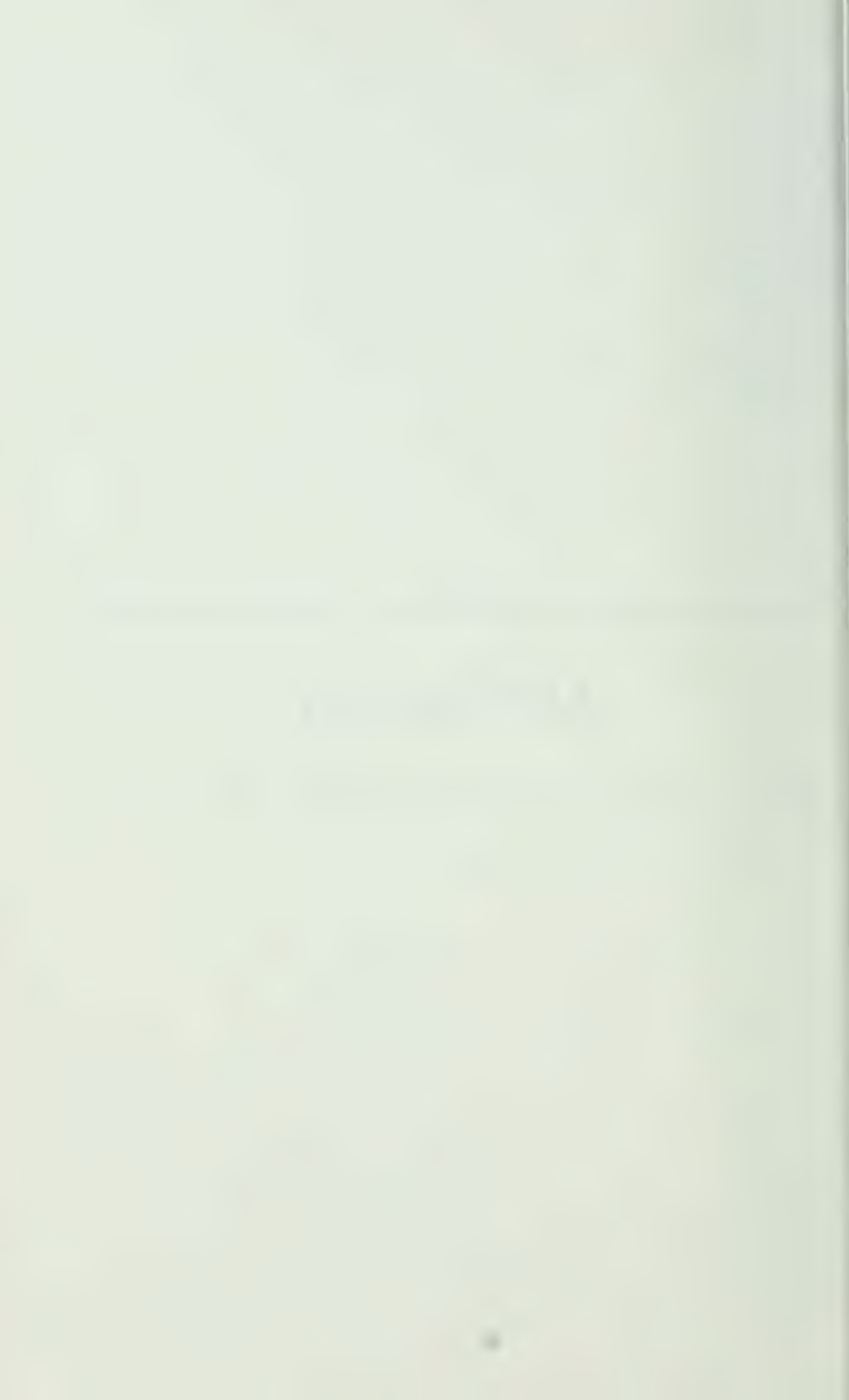
Statewide	Total response	Superior court	Total less superior court*				Municipal court				Justice court			
			Number		Percent		Total*		1		2		3	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
N. Total response..... Court Clerks..... Law enforcement agencies..... District attorneys..... Public defenders..... Other..... Blank.....	414	32	229	100.0	54	100.0	43	26	14	100.0	71	100.0	184	100.0
	43	3	43	18.8	14	25.9	8	3	3	3	3	3	22	3
	76	3	73	31.9	16	29.6	7	5	4	4	12	16.6	34	12
	75	5	70	30.6	14	25.9	7	4	3	3	57	32.6	32	11
	25	3	22	9.6	5	9.3	1	4	1	1	56	32.0	14	10
	21	2	21	9.2	5	9.3	2	2	1	1	17	9.7	11	2
O. OWN RECOGNIZANCE Total response..... Yes..... No..... Blank.....	174	21	153	100.0	29	100.0	18	8	3	100.0	38	100.0	73	100.0
	285	26	259	100.0	51	100.0	32	14	7	100.0	55	100.0	124	100.0
	257	14	243	97.2	51	100.0	31	13	7	96.5	49	96.5	118	96.5
	7	7	2	2.8	2	100.0	1	1	7	3.5	2	3.5	4	2
	21	12	9	100.0	51	100.0	32	14	7	100.0	55	100.0	124	100.0
	285	26	247	100.0	51	100.0	32	14	7	100.0	55	100.0	124	100.0
P. Total response..... Either..... Never..... Blank.....	175	10	165	66.8	38	74.5	24	8	6	64.8	31	64.8	127	64.8
	86	4	82	33.2	13	25.5	7	5	1	35.2	19	35.2	43	3
	24	12	12	100.0	2	100.0	1	1	1	100.0	5	100.0	3	100.0
	285	26	225	100.0	49	100.0	32	14	7	100.0	55	100.0	124	100.0
	120	18	102	45.3	36	73.5	21	8	7	37.5	11	37.5	43	11
	125	2	122	54.2	13	26.5	9	4	4	62.5	34	62.5	65	11
Q. Total response..... Yes..... No..... Blank.....	40	6	34	100.0	4	100.0	2	2	2	100.0	10	100.0	10	100.0

R.	Total response.....	285	26	139	100.0	46	100.0	32	14	7	93	100.0	55	124	27
	Either.....	59	8	51	36.7	21	45.7	13	4	4	30	32.3	6	15	9
	Never.....	99	11	88	63.3	25	54.3	14	8	3	63	67.7	10	46	7
	Blank.....	127	7	120	-----	7	-----	5	2	-----	113	-----	39	63	11
S.	Total response.....	285	26	235	100.0	52	100.0	32	14	7	183	100.0	55	124	27
	Yes.....	31	2	29	12.3	7	13.5	5	2	-----	22	12.0	5	12	5
	No.....	221	15	206	87.7	45	86.5	20	12	7	161	88.0	38	103	20
	Blank.....	33	9	24	-----	1	-----	1	-----	-----	23	-----	12	9	2
T.	Total response.....	285	26	246	100.0	52	100.0	32	14	7	104	100.0	55	124	27
	Yes.....	69	4	65	26.4	16	30.8	9	3	4	49	25.3	12	25	12
	No.....	192	11	181	73.6	36	69.2	22	11	3	145	74.7	37	94	14
	Blank.....	24	11	13	-----	1	-----	1	-----	-----	12	-----	6	5	1
U.	Total response.....	285	26	253	100.0	56	100.0	33	15	9	107	100.0	55	128	29
	Formally.....	82	6	76	30.0	21	37.5	10	8	3	55	27.9	14	39	7
	Informally.....	193	16	177	70.0	35	62.5	22	7	6	142	72.1	31	91	20
	Blank.....	21	5	16	-----	1	-----	1	-----	-----	15	-----	10	3	2
V.	Total response.....	285	26	207	100.0	40	100.0	32	14	7	167	100.0	55	124	27
	Yes.....	107	11	96	46.4	26	65.0	17	6	3	70	41.9	13	45	12
	No.....	118	7	111	53.6	14	35.0	7	4	3	97	58.1	30	59	8
	Blank.....	60	8	52	-----	13	-----	8	4	1	39	-----	12	20	7
W.	Total response.....	348	37	193	100.0	35	100.0	34	15	7	158	100.0	65	158	32
	Probation department.....	92	12	80	41.5	22	62.9	15	5	2	58	36.7	13	38	7
	Police department.....	60	4	56	29.0	7	20.0	4	3	-----	49	31.0	10	31	8
	Prosecuting attorney.....	39	5	34	17.6	5	14.3	3	2	-----	29	18.4	5	18	6
	Public defender.....	16	3	13	6.7	-----	-----	-----	-----	-----	13	8.2	3	5	1
	Other.....	11	1	10	5.2	-----	2.8	-----	-----	-----	9	5.7	3	5	1
	Blank.....	130	12	118	-----	21	-----	11	5	5	97	-----	31	57	9

* Does not include blanks.



APPENDICES



APPENDIX I

Committee Recommended Legislation, A.B. 871

An act to amend Section 1269b of the Penal Code, relating to bail.

The people of the State of California do enact as follows:

SECTION 1. Section 1269b of the Penal Code is amended to read:
1269b. The officer in charge of a jail wherein an arrested person is held in custody and the clerk of the justice or municipal court of the judicial district in which the offense was alleged to have been committed and the clerk of the superior court in which the case against the defendant is pending shall have authority to approve and accept bail in such amount as fixed by the warrant of arrest or schedule of bail or order admitting to bail in cash or surety bond executed by a certified, admitted surety insurer as provided in the Insurance Code, to issue and sign an order for the release of the arrested person, and to set a time and place for the appearance of the arrested person before the appropriate court and give notice thereof, as follows:

(a) For appearance before the court of an arrested person who has been arrested for having committed a misdemeanor and is being held in custody prior to the filing of a formal complaint, and for appearance before the court of a defendant charged with a misdemeanor by a formal complaint filed in the court. If a defendant has appeared before a judge of the court on the charge contained in the complaint the bail shall be in the amount fixed by such judge at the time of such appearance; if no such appearance has been made the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall be pursuant to a schedule of bail in such case previously fixed and approved by the judge or judges of the court of the judicial district in which the offense is alleged to have been committed.

(b) For appearance before the court of a defendant charged with a felony by a formal complaint filed in court. If a defendant has appeared before a judge of the court on the charge contained in the complaint, the bail shall be in the amount fixed by such judge at the time of such appearance; if no such appearance has been made the bail shall be in the amount fixed in the warrant of arrest.

(c) It is the duty of the municipal and justice court judges in each county to prepare and adopt, by a majority vote, a schedule of bail for all misdemeanor offenses. It shall contain a list of such misdemeanor offenses and the amounts of bail applicable thereto as the judges determine to be appropriate, and, if it does not list all misdemeanor offenses specifically, it shall contain a general clause providing for a designated amount of bail as the judges of the county determine to be appropriate for all misdemeanor offenses not specifically listed in the schedule. The schedule of bail may be revised from time to time by the judges of the county, and the senior judge at each county seat shall call not more

than two or less than one meeting each year of all municipal and justice court judges in the county for the purpose of establishing or revising a countywide uniform bail schedule. A copy of the schedule shall be sent to the officer in charge of the county jail ~~and~~, to the officer in charge of each city jail within the county, *and to the Judicial Council of the State of California.*

Upon posting such bail the defendant or arrested person shall be discharged from custody as to the offense on which the bail is posted.

All money and surety bonds so deposited with such officer shall be transmitted immediately to the judge or clerk of the court by which the order was made or warrant issued or bail schedule fixed.

If a defendant or arrested person so released fails to appear at the time and in the court so ordered upon his release from custody, the court before which he was ordered to appear may forfeit the cash bail or surety bond, with or without issuing a warrant, and if the bail is a surety bond the surety company is obligated as provided by Section 1306 of the Penal Code, subject to the right of the court to set aside the forfeiture as provided by law.

Legislative Counsel's Digest

Amends Sec. 1269b, Pen.C.

Requires copy of bail schedule for all misdemeanor offenses to be sent to Judicial Council of State of California, as well as to the officers in charge of city and county jails within the county.

APPENDIX II

1964 SURVEY OF BAIL PROCEDURES
Scheduled Bail for Specified Offenses by Reporting County

County	Code	Penal Code violation			Drunk	Vehicle Code violation		Alcoholic Beverage Control violation	
		Battery	Petty theft	Disturbing peace		Drunk driving	Revoked license	Possession	Furnishing
		242PC	488PC	415PC	Drunk	23102VC	14601VC	25662 B&P	25658 B&P
Southern California	00		550	110	22	276	276	110	110
Los Angeles	30								
9 other counties	31	276	276	56	56	550	550	56	
Imperial	32								
Kern	33								
Orange	34	38/110	56/110	56/110	29	276	276	29	110
Riverside	35	276	276	56	29	276	276	100	
San Bernardino	36					550	276		
San Diego	37								
San Luis Obispo	38	110	264	110	29	276	276	110	110
Santa Barbara									
Ventura									
San Francisco Bay area	20	276	330	110	29	396	396	22	110
Alameda	10	110	220	56	12				
San Francisco									
7 other counties	40	262 50		110	56	276	276	56	276
Contra Costa	41	276		110	29	276	276	56	
Marin	45								
Napa	42	176	276	110	29	276	276	56	276
San Mateo	43								
Santa Clara	44	110	56	29		276	276	56	110
Solano	46								
Sonoma									
Sacramento Valley	50								
Butte	51								
Colusa	52					550	276		110
Glenn	53	550	110	29	25/83*	276	550	29	110
Placer	54								
Sacramento	55	276		110	56†		330		
Shasta	56	166	330	166	34	550	550	56	276
Sutter	57					550	276		
Tehama	58	276	276	220	56	550	550	110	276
Yolo									
Yuba	59								

1964 SURVEY OF BAIL PROCEDURES—Continued
Scheduled Bail for Specified Offenses by Reporting County

County	Code	Penal Code violation			Drunk	Vehicle Code violation		Alcoholic Beverage Control violation	
		Battery	Petty theft	Disturbing peace		Drunk driving	Revoked license	Possession	Furnishing
		242PC	488PC	415PC	Drunk	23102VC	14601VC	25662 B&P	25658 B&P
San Joaquin Valley									
Fresno	60	242	276	56	29	330	276	110	276
Kings	61	550	550	220	56	550	220	56	220
Madera	62								
Merced	63	386	276	276	110*	386	276		
San Joaquin	64								
Stanislaus	65	276	276	110	39	303	276	83	110
Tulare	66	550	550	276	56			56	550
22 other counties									
Alpine	80								
Amador	81	550	550	110		276	276		
Calaveras	82								
Del Norte	70								
El Dorado	83								
Humboldt	71	110/550	110/550	56/550	29/550*	276	276/550	29	220
Inyo	90	110		110	29	276	166		
Lake	72								
Lassen	84					386	166		
Mariposa	91								
Mendocino	73	56	276		17	276	276	166	110
Modoc	85								
Monro-	92								
Monterey	93	276	550	110	29	276	220	110	276
Nevada	86								
Plumas	87	276	550	110	110*	330	166	110	550
San Benito	94	276	276	56	29	276	276	110	276
Santa Cruz	95								
Sierra	88								
Siskiyou	89								
Trinity	76	276	276	166	56	386	440	110	330
Tuolumne	96								

* 647

† Different schedule for cities.

APPENDIX III

STATE OF CALIFORNIA

Stanley Mosk
Attorney General

Fred A. Knoles
Chief of Bureau

BUREAU OF CRIMINAL STATISTICS
DEPARTMENT OF JUSTICE
2700 Meadowview Road, Sacramento

Mail Address:
P.O. Box 1583
Sacramento 95807

August 3, 1964

The California State Assembly Committee on Criminal Procedure is very anxious to have the benefit of the experience and thoughts of the California judiciary on the subjects of bail and OR release. A large number of responses to our letter of July 7 asking for the answers to several specific questions and for general comments have been received from justice, municipal and superior courts. Compilation of the returns has commenced.

You will realize that the value of the results of an inquiry of this kind (in a field in which practices are quite variant) is in direct proportion to the volume of responses. We need yours.

We hope that you may be able quite soon to return the questionnaire and a bail schedule.

FRED A. KNOLES
Chief of Bureau

Stanley Mosk
Attorney General

STATE OF CALIFORNIA

Fred A. Knoles
Chief of Bureau

BUREAU OF CRIMINAL STATISTICS
DEPARTMENT OF JUSTICE
2700 Meadowview Road, Sacramento

Mail Address:
P.O. Box 1583
Sacramento 95807

July 7, 1964

The California State Assembly Committee on Criminal Procedure has sought the assistance of Attorney General Mosk, through the agency of this bureau, in collecting a few basic facts relative to the administration of bail in the courts of this state.

Bail practices are presently the subject of inquiry and controlled experiment in a number of jurisdictions at federal and state level. In their consideration of the matter, the committee found themselves hampered by the fact that there is no up-to-date body of objective information relating to bail practices in California. This lack, the bureau hopes to meet with the assistance of the public officers directly responsible—the judiciary.

The inquiry is intended to be factual and noncritical. Responses will be accorded the utmost confidentiality possible in the light of the public positions of inquirer and respondent.

The enclosed questionnaire has been prepared for your convenience. We shall appreciate your response to the questions and any comments you may care to make relative to the present inquiry or the situation that it is designed to explore. We hope you will be able to reply before July 22, 1964.

FRED A. KNOLES
Chief of Bureau

STATE OF CALIFORNIA

Stanley Mosk
Attorney General

Fred A. Knoles
Chief of Bureau

BUREAU OF CRIMINAL STATISTICS
DEPARTMENT OF JUSTICE
2700 Meadowview Road, Sacramento

Mail Address:
P.O. Box 1583
Sacramento 95807

July 7, 1964

We are enclosing a questionnaire and cover letter which have been sent to the presiding judges of municipal courts and to the individual judges of justice courts.

This inquiry has been generally directed to judges of the judicial district courts, as courts of original jurisdiction in misdemeanor offenses. However, since your court has original jurisdiction over the so-called "high" misdemeanors, it becomes appropriate to ask you to fill out the questionnaire, which deals largely with misdemeanor bail practices.

However, we have also directed copies of the inquiry to the presiding judge of each superior court so that the committee may have the benefit of their comments, even though their response to the detailed questionnaire might be repetitive in their county.

FRED A. KNOLES
Chief of Bureau

Stanley Mosk
Attorney General

STATE OF CALIFORNIA

Fred A. Knoles
Chief of Bureau

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Sacramento 95807

July 7, 1964

We are enclosing a questionnaire and cover letter which have been sent to the presiding judges of municipal courts and to the individual judges of justice courts.

While the area under examination appears to be most appropriately studied through the judicial district courts, we wish to avail ourselves of the experience of the superior court judges. We would very much appreciate your response to the items asking for comments, as well as your comments on any other factors in the bail situation, whether covered by questions in the schedule or not.

FRED A. KNOLES
Chief of Bureau

APPENDIX IV

State Department of Justice Bureau of Criminal Statistics

PILOT SURVEY OF CALIFORNIA BAIL PROCEDURES

The Bureau of Criminal Statistics will tabulate your response to the following questions. While this material is related primarily to municipal and justice courts, the section on felony bail and release practices involve superior courts who will be sent a separate questionnaire.

One further tabulation will involve bail schedules, and the bureau asks that you submit, with the completed questionnaire, a copy of the current bail schedule used by the various detention facilities in your jurisdiction.

Any other comments that you wish to make will be collated and forwarded verbatim to the legislative committee.

Citations

- A. Are citations for other than traffic offenses ever used in lieu of physical detention for misdemeanor arrests within your jurisdiction? If so, how frequently? (Check appropriate line.)
- ☐ 1. Less than one citation for every 10 arrests.
 - ☐ 2. Less than one citation for every 100 arrests.
 - ☐ 3. Less than one citation for every 500 arrests.
 - ☐ 4. Never.
- B. Does a schedule exist within your jurisdiction which designates types of offenses for which citations other than traffic may be utilized?
- ☐ 1. Yes.
 - ☐ 2. No.
- C. If there is a schedule, which of the following general offenses are included in citation use?
- ☐ 1. Assaults.
 - ☐ 2. Disturbing peace.
 - ☐ 3. Petty thefts.
 - ☐ 4. Drunk.
 - ☐ 5. Drunk driving.
 - ☐ 6. Other minor misdemeanors.
 - ☐ 7. Ordinances.
- D. If misdemeanor citations for other than traffic arrests are used, indicate in the appropriate box as to whether bail forfeitures without further proceedings are permitted on misdemeanor citations checked in question (3).
- ☐ 1. All?
 - ☐ 2. Some?
 - ☐ 3. None?

Bail Practices

- E. Does the misdemeanor bail schedule adopted by your jurisdiction provide for fixing a minimum and maximum amount of required bail, as opposed to one fixed amount for each class of offense?
- ☐ 1. Yes.
- ☐ 2. No.
- F. If a misdemeanor sliding bail schedule is used, at the point of a defendant being booked, who decides the actual amount of bail to be imposed?
- ☐ 1. Jailer.
- ☐ 2. Arresting officer.
- ☐ 3. Other—please specify _____
- G. Is it your observation in using a sliding bail schedule, that bail tends to be set toward the
- ☐ 1. Maximum?
- ☐ 2. Minimum?
- H. Does your jurisdiction provide a felony bail schedule applicable to a felony arrest made without a warrant having been issued?
- ☐ 1. Yes.
- ☐ 2. No.
- I. If your jurisdiction does not have a felony bail schedule, is bail set by the court in a session held prior to the time of preliminary hearing?
- ☐ 1. Yes.
- ☐ 2. No.
- J. Do superior court judges within your jurisdiction customarily modify prearrestment bail following superior court arraignment?
- ☐ 1. Yes.
- ☐ 2. No.
- K. If bail is customarily modified at that time, is the modification usually in the direction of
- ☐ 1. Bail increase?
- ☐ 2. Bail decrease?

Bail Schedules

- L. What are the criteria used for establishing/revising the bail schedule in your jurisdiction?
- _____
- _____
- _____
- _____
- _____
- M. Are the opinions of persons other than judges considered in establishing/revising bail schedules in your jurisdiction?
- ☐ 1. Yes.
- ☐ 2. No.

N. If persons other than judges are consulted in relation to bail schedule revision are they (check one or more)

- ☐ 1. Court clerks?
- ☐ 2. Law enforcement agencies?
- ☐ 3. District attorney?
- ☐ 4. Public defender?
- ☐ 5. Other? (Please specify) _____

Own Recognizance

O. Does your jurisdiction grant releases on own recognizance for misdemeanor offenses?

- ☐ 1. Yes.
- ☐ 2. No.

P. If your jurisdiction grants the release of misdemeanor defendants on own recognizance, will the release be authorized

- ☐ 1. Either prior to or following court appearance, depending on circumstances?
- ☐ 2. Never prior to court appearance?

Q. Does your jurisdiction permit releases on own recognizance where bailable felony charges are involved?

- ☐ 1. Yes.
- ☐ 2. No.

R. If your jurisdiction permits the release of a felony defendant on own recognizance, will the release be authorized

- ☐ 1. Either prior to or following court appearance, depending on circumstances?
- ☐ 2. Never prior to court appearance?

S. Will your jurisdiction authorize daytime release (with night time custody) of defendants awaiting trial?

- ☐ 1. Yes.
- ☐ 2. No.

T. Will a third party be permitted to assume responsibility for appearance of a defendant without being required to file a cash or property bond?

- ☐ 1. Yes.
- ☐ 2. No.

U. If your jurisdiction permits release on defendant's own recognizance, is this done

- ☐ 1. Formally—with established procedures for assessing risk of releasing the defendant?
- ☐ 2. Informally—without established procedures but with reliance on information provided by police, prosecuting and defense attorneys?

Comments

V. If your present procedures for granting OR releases are informal, do you believe that a formal screening agency, by providing more information, might help you in your assessment of the desirability of an OR release?

- ☐ 1. Yes.
- ☐ 2. No.

ASSEMBLY INTERIM COMMITTEE REPORTS
1963-1965

VOLUME 23

NUMBER 5

FINAL REPORT OF THE ASSEMBLY INTERIM
COMMITTEE ON JUDICIARY

(January 11, 1965)

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HARVEY JOHNSON, *Vice Chairman*

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GEORGE E. DANIELSON

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PEARCE YOUNG

EDWIN L. Z'BERG

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Helen Myers, *Secretary*

Thomas Silk, Jr., *Legislative Intern* (to 5/16/64)

Howard C. Anawalt, *Legislative Intern*



Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA

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HON. JEROME R. WALDIE
Majority Floor Leader

JAMES D. DRISCOLL
Chief Clerk

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Speaker pro Tempore

HON. ROBERT MONAGAN
Minority Floor Leader



HOUSE RESOLUTION NO. 500

(ASSEMBLY JOURNAL, JUNE 11, 1963, PAGE 5232)

Relative to constituting certain standing committees of the Assembly as interim committees

Resolved by the Assembly of the State of California as follows:

1. The following standing committees of the Assembly are hereby constituted Assembly interim committees and are authorized and directed to ascertain, study and analyze all facts relating to (1) the subjects and matters assigned to them by this resolution; (2) any subjects or matters referred to them by the Assembly; (3) any subjects or matters related to (1) or (2) which the Committee on Rules shall assign to them upon request of the Assembly or upon its own initiative:

(1) The Committee on Judiciary is assigned the subject matter in the Civil Code, the Code of Civil Procedure and the Probate Code, uncodified laws relating to civil matters, and other matters relating to the civil law and procedure of the State.

LETTER OF TRANSMITTAL

ASSEMBLY JUDICIARY COMMITTEE
January 11, 1965

HON. JESSE M. UNRUH
Speaker of the Assembly, and
Members of the Assembly
Assembly Chamber, State Capitol
Sacramento, California

Gentlemen:

Your Interim Committee on Judiciary, in accordance with your instructions, herewith respectfully submits a report on the following matters:

Discovery in Administrative Proceedings
Nomination of Administrators of Estates
Proposed Statute of Limitations Affecting Improvements to Real Property
Court Reporter Compensation
Comparative Negligence
Reduction of Jurors in Civil Matters
Repeal of Guest Statute
Court Consolidation—Los Angeles County Municipal and Justice Courts Attachments, Garnishments and Exemptions

Respectfully submitted,

GEORGE A. WILLSON, *Chairman*
HARVEY JOHNSON, *Vice Chairman*

WILLIAM T. BAGLEY ¹
GEORGE E. DANIELSON
WILLIAM E. DANNEMEYER
JOHN F. FORAN ¹
MILTON MARKS ¹
NICHOLAS C. PETRIS

ALFRED H. SONG ²
WILLIAM F. STANTON
ROBERT S. STEVENS ³
JAMES E. WHETMORE ³
PEARCE YOUNG ⁴
EDWIN L. Z'BERG

¹ Dissents from the recommendation that the Guest Statute be repealed, pages 11 and 36.

² Dissents from the recommendation on consolidation of Los Angeles County courts, pages 12 and 46. Assemblyman Song believes that the Legislature should make a decision on this issue on the basis of the information presently before it.

³ Agrees with the recommendation that proposed revisions of the California exemption laws should be studied, but dissents from the conclusion stated on pages 12 and 50.

⁴ Agrees with the recommendation that proposed revisions of the California exemption laws should be studied, but dissents from the conclusion stated on pages 12 and 50. Mr. Young believes that the exemption laws should be revised, but he also believes that the committee has not studied the problem in sufficient depth to arrive at a conclusion on what direction the revision should take.

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PART ONE

SUMMARY OF RECOMMENDATIONS AND FINDINGS ON SUBJECT STUDIED DURING THE INTERIM

I. DISCOVERY IN ADMINISTRATIVE PROCEEDINGS

Recommendation. The committee recommends that the following three discovery techniques be made applicable to administrative proceedings:

1. The right of either party to freely use interrogatories to the adverse party;
2. The right to take depositions if stipulated by the parties or ordered by the hearing officer in his discretion;
3. The requirement that the agency shall list the last known address of all persons named in its accusatory pleadings.

Findings. Discovery has become a basic tool used by parties in preparing their arguments in legal controversies. California has statutory discovery provisions applicable to civil litigation and judicial doctrines applicable to criminal proceedings, but it does not have discovery provisions which apply to administrative proceedings. The committee found that it would be desirable to establish limited discovery provisions applicable to administrative proceedings in order to give administrative litigants the benefit of these important legal tools, and at the same time preserve the speed and efficiency of administrative proceedings.

II. NOMINATION OF ADMINISTRATORS OF ESTATES

Recommendation. The committee recommends that Probate Code Section 423 be amended to require that the nomination of administrators be granted when requested by a nonresident who is otherwise entitled to letters of administration.

Findings. Present California law does not allow nonresidents to nominate the administrator or administratrix of an estate. (Probate Code 420 and 423.) AB 2496 (1963, Willson) proposed to amend Probate Code 423 to require that the nomination of administrator be granted when requested by a nonresident who is otherwise entitled to letters of administration. The amendment will not change the requirement that the administrator himself must be a resident of the state.

The committee concluded that a nonresident heir should have the right to nominate the administrator. In some cases, it will be a nonresident heir who has the crucial interest in the estate, and to prevent him from nominating the administrator is unjustified, as it is the administrator upon whom he will rely to preserve the assets. It concluded that there would not be a great danger of the dissipation of assets or the encouragement of "heir hunters." It was not convinced that there would be an increased tax burden because of reduction of income with only slight reduction in workload.

The committee recommended in favor of passage of a bill similar to AB 2496 (1963).

III. PROPOSED STATUTE OF LIMITATIONS AFFECTING IMPROVEMENTS TO REAL PROPERTY

Recommendation. The committee recommended against the adoption of AB 648 (1963), which provided essentially that no action for property or personal injury damages shall be brought against a designer, planner, supervisor or builder of an unsafe and defective improvement to real property more than six years after any of these persons has performed his services.

Findings. The proposed statute of limitations would relieve the burden of protecting against potential tort actions arising out of making an improvement to real property, but in doing so it would establish a general limitation which would bar the commencement of actions which might fully warrant a day in court or a recovery. The committee concluded:

- a. That the proposal would bar the pursuit of justifiable claims of damage;
- b. That the proponents have adequate legal protections against stale claims and against false claims under existing law; and
- c. That the proponents' burden of protecting themselves against potential liability does not warrant enacting a statute of limitations which would bar legal actions which may fully warrant a day in court.

IV. COURT REPORTER COMPENSATION

Recommendation. The committee recommends that the counties be given full authority to set the compensation of superior court reporters, and that they be given authority to set salaries of municipal courts according to a standard, such as a maximum and minimum, established by the Legislature.

Findings. The Legislature has not provided a general schedule for compensating municipal and superior court reporters, but has established separate pay scales for individual counties or groups of counties. This approach has left the Legislature with the tedious job of considering a series of bills each year which propose modification to specific Government Code pay provisions. This approach is a difficult one for the legislators and it was feared that it may cause some difficulties throughout the state.

The committee has considered several alternative approaches to the present method of establishing court reporter compensation. In its consideration, it has kept in mind the constitutional requirement that it prescribe municipal court reporter salaries. The five alternatives which offered the greatest merit are:

1. Establish a statewide salary schedule with cost of living advances or periodic general reviews by the Legislature.
2. Establish such a schedule with some provision for county leeway.
3. Make the court reporters fully subject to civil service practices and procedures.
4. Delegate the responsibility for setting compensation to the Administrative Director of the Judicial Council.

5. Allow the counties a very large measure of control over the compensation, e.g., the Legislature might simply set a maximum and minimum.

In considering these alternatives the committee was concerned with the need to assure that the various communities throughout the state have adequate court reporter services. It was also aware that the local entity, the county, bears the burden of paying the compensation of the reporters. It concluded that it would be desirable to allow the counties the maximum authority permitted by the Constitution.

V. COMPARATIVE NEGLIGENCE

Recommendation. The committee recommends that there be further study of the possibility of adopting the rule of comparative negligence.

Findings. The basic notion of the doctrine of comparative negligence is that damages are reduced in proportion to the plaintiff's fault. The main argument in favor of adoption is that a fair division of damages will replace the harsh all or nothing approach which results from the doctrine of contributory negligence. The negative arguments are that comparative negligence is too difficult for the jury to determine, and that a certain kind of comparative negligence is available through settlement of cases out of court.

VI. REDUCTION OF JURORS IN CIVIL MATTERS

Recommendation. The committee recommends that ACA 7 (1963, Willson), an Assembly-sponsored constitutional amendment, receive further consideration.

VII. REPEAL OF THE GUEST STATUTE

Recommendation. The committee recommends that the guest statute be repealed for a period of four years.

Findings. The present guest statute provides that a gratuitous vehicle passenger has no right of action against the driver of that vehicle unless the proximate cause of the passenger's injury or death was the driver's intoxication or willful misconduct. (Vehicle Code 17158.)

The committee has concluded that the driver of a vehicle should be under a duty of reasonable care for the safety of his passengers. The guest statute relieves the driver of this legal duty by insulating him from suits by gratuitous passengers. The committee believes that this encroachment on the general duty of care is not justified by the alleged dangers of collusive suits and increased insurance costs, or by the argued difference between compensated and uncompensated drivers. The committee notes that there are other safeguards against collusion and fraud in our courts. It believes that the duty of care and attendant tort liability should be reinstated in the case of the driver who carries a gratuitous passenger. It is recommended that the guest statute be repealed for a period of four years and that at the end of that period there be a determination of whether the guest statute should be repealed permanently.

VIII. CONSOLIDATION OF LOS ANGELES COUNTY MUNICIPAL AND JUSTICE COURTS

Recommendation. The committee recommends that the Legislature defer action on consolidation of Los Angeles County Municipal and Justice Courts until there has been a firm recommendation by the Los Angeles County Board of Supervisors that the courts should be re-organized.

IX. ATTACHMENTS, GARNISHMENTS AND EXEMPTIONS

Recommendation. The committee recommends that the various proposals contained in the report and any additional proposals which come to light be studied carefully in order to arrive at a suitable revision of the exemption laws.

Findings. The committee concluded that a revision of the law which will increase the debtor's protection by way of exemption and which will make that protection more modern and equal will be of benefit to both debtors and creditors. This conclusion reflects the underlying fact that neither the debtor nor the creditor benefits when the debtor is financially crippled. A more powerful exemption law will help keep the debtor from sinking further into a financial abyss and losing his job. At the same time it will protect the creditors to the extent that it allows the debtor to keep going and avoid bankruptcy.

PART TWO

DISCOVERY IN ADMINISTRATIVE PROCEEDINGS

"Discovery" is the term for various legally enforceable methods of obtaining evidence and other information in preparation for trial.

California has statutory discovery provisions applicable to civil litigation and judicial doctrines applicable to criminal proceedings. Now, the state faces the question of extending discovery into administrative proceedings.

Is discovery already provided for in existing law? An examination of the Administrative Procedure Act (APA) shows that it does not provide for discovery. Assistant Attorney General E. G. Funke, a witness before a hearing held by the committee in San Diego on June 24, 1964, explained his understanding that the APA requires accusations and statements of issues to be set out in full particulars, and that this in itself is sufficient to cover all the discovery problems. (Government Code 11503, 11504, and 11506.) The requirement that the respondent be charged by way of a concise statement of his alleged acts or omissions is a feature intended to give the respondent a fair opportunity to defend, but it is not discovery as we have come to know the term. Since the civil and criminal rules of discovery have not been carried generally into the administrative field by court decision, the committee started with the notion that discovery is not yet a tool in administrative procedure.

Is discovery desirable? The laws which are administered and enforced by the administrative agencies of the State of California govern a vast number of the people's activities. The procedure which is used by the agencies in enforcing these laws is thus extremely important. Mr. Roderic Duncan, an attorney testifying to the committee, stated: "The Administrative Procedure Act, as I am sure most of you know, vitally affects the lives and livelihoods of hundreds of thousands of California citizens . . . and when you handle these things (administrative proceedings) day in and day out, as I did for a couple of years, you get a real feeling for the vital importance of administrative law . . . and the need of the respondent who is charged with something by his licensing agent to have a fair hearing—and to be able to present his case under the best possible circumstances."

The argument in favor of discovery is that individuals who must face government agencies in an administrative proceeding need discovery in order to adequately prepare their cases. Often it is a lone individual with very limited resources who faces the government agency with its legal and investigatory staffs and its large accumulations of information. Discovery would allow the individual to say, "wait a minute, what have you got there?" This will not put the agency at a disadvantage on the merits of the case, but will open the case so that each side can get the merits and thus allow the administrative tribunal to arrive at the correct decision.

Some of the agencies have replied that the introduction of discovery into administrative proceedings would cause the proceedings to be unnecessarily lengthened. A memorandum from the Attorney General's

office states that license suspension proceedings "are intended to be handled expeditiously so as to speedily remove from the professions licensees who have proved unworthy of the trust reposed in them."

The Department of Insurance has taken the position that the present provisions are generally adequate in that "an administrative hearing under the Administrative Procedure Act is, generally speaking, a discovery procedure per se." The Department of Education has indicated its opinion is that direct application of the Code of Civil Procedure provisions would be unduly time consuming, but that incorporation of certain discovery techniques might be valuable.

In reviewing the materials which were submitted, the committee has discovered that it is in the interest of both the licensee and the public that the licensee have the necessary legal tools to prove that he is worthy of the public trust and to adequately defend the license which is his livelihood. Though the need for legal tools and the need for sufficient speed are competing considerations in this problem, the committee believes that each need can be met through a well-tailored discovery bill. Since discovery is proving to be a positive force to assure fairness and the production of truth in other adversary proceedings, it is desirable to extend it to administrative proceedings.

Discovery Techniques. The following discovery techniques are available under the Code of Civil Procedure: depositions, interrogatories, motions for inspection, motions for physical examination, requests for admissions and conferences. A bill on discovery could include any combination of these techniques. The right to use any given technique can be made either absolute or conditional. Conditioning the right can be a means of guarding against abuse. One draft considered by the committee requires a showing of "specific facts justifying discovery" as a condition to the use of certain techniques. One of the committee members suggested that the normal costs of using techniques such as depositions would discourage abuse without conditioning the right in any other way.

Discovery Proposals. The committee has had four proposals placed before it:

1. AB 3067 (1963). This bill introduced by Assemblyman Petris provided that any party may take testimony of any person by deposition and may serve any adverse party with written interrogatories pursuant to discovery provisions of the Code of Civil Procedure. (Code of Civil Procedure 2016, 2018, 2019, 2020, 2021, 2024, 2030, 2032 and 2034.) This bill does not provide for inspections, mental or physical examinations, requests for admissions, or conferences.

2. Draft B. A draft administrative discovery act prepared by three Boalt Hall law students was submitted to the committee for consideration. In two senses, this proposal is broader than AB 3067. First, it extends discovery procedure to all adjudications which are "to be determined on the record after opportunity for a state agency hearing." AB 3067 would apply only to enumerated agencies and other specially designated agencies. (Government Code 11501(a) and Government Code 11500(a), definition of "agency.") Second, Draft B provides for more discovery techniques than AB 3067. It provides for demands for admissions, demands for production and inspection of

documents or other things, and physical and mental examinations, as well as for depositions and interrogatories.

On the other hand, Draft B has attempted to narrow the availability of certain discovery techniques by requiring a showing of "specific facts justifying discovery," in addition to the normal requirements of relevancy and absence of privilege.

The draft is unique in several respects. It proposes to add an entire new chapter to the APA. With this chapter it establishes a branch of administrative procedural law which extends beyond the coverage of the APA adjudication provisions. In accomplishing its object, the proposal sets up a body of definitions which differs substantially from the similar body in the APA adjudication provisions. This variation of definitions might be the source of confusion. The proposal sets up discovery procedures and enforcement procedures which differ in some respects from those included in the Code of Civil Procedure. (P. M. Little, M. W. Tripp and D. H. Melnick were the students who prepared the draft.)

3. Office of Administrative Procedure's Proposals. The Office of Administrative Procedure proposes that some form of legislation be adopted which would give the respondent the right to inspect, copy or analyze documentary or written statements in the possession of the agency. It also proposes that the agency should be required to list the last known address of all persons mentioned in its accusatory pleadings.

4. Department of Education's Suggestions. The Department of Education has suggested that the following techniques of discovery might prove of value: (a) motions for production and inspection of documents, (b) requests for admissions of genuineness of documents or truth of matters of fact from adverse parties, and (c) possible interrogatories to the adverse party, if limited to the ascertainment of identity of witnesses and parties.

Conclusions and Recommendations. The committee concluded that it is desirable to extend limited discovery to administrative proceedings. Recognizing the need for a proper balance between the availability of discovery tools and the maintenance of sufficient speed in administrative proceedings, the committee recommended in favor of a law which would incorporate the following three discovery techniques:

1. The right of either party to freely use interrogatories to the adverse party;
2. The right to take depositions if stipulated by the parties or ordered by the hearing officer in his discretion;
3. The requirement that the agency shall list the last known address of all persons named in its accusatory pleadings.

NOMINATION OF ADMINISTRATORS OF ESTATES

Introduction

Present California law does not allow nonresidents other than the surviving spouse of the decedent to nominate the administrator or administratrix of an estate. (Probate Code 420 and 423.) AB 2496 (1963, Willson) proposed to amend Probate Code 423 to require that the nomination of administrator be granted when requested by a non-resident who is otherwise entitled to letters of administration. The amendment will not change the requirement that the administrator himself must be a resident of the state.

Arguments favoring and opposing the amendment

The main argument in favor of the amendment is that interested nonresident heirs should be allowed to nominate the administrator, who is the party charged with the responsibility of preserving the assets.

It is also argued that this revision might result in reductions of staff in public administrator's offices, and a consequent savings in public administration costs.

The following arguments were submitted in opposition to the change:

The change would delay the handling of decedent's remains, postpone the otherwise immediate preservation of assets for protection of the estate and creditors, as well as create hardship in handling business affairs on behalf of decedent's estate. The delay would result from waiting for both the nomination and the issuance of letters.

There would be a decrease in the few large estates handled by public administrators, but not in the small ones which create most of the workload. This would mean a reduction of income to the county treasury from fees, with slight reduction in workload. Thus a tax burden would result in order to provide for continued public service.

The change would encourage "heir hunters," genealogists who seek out foreign heirs to secure nomination.

Conclusions and recommendation

The committee concluded that a nonresident heir should have the right to nominate the administrator. In some cases, it will be a nonresident heir who has the crucial interest in the estate, and to prevent him from nominating the administrator is unjustified, as it is the administrator upon whom he will rely to preserve the assets. The committee noted that the amendment will retain the requirement that the administrator be a resident. It concluded that there was not a great danger of dissipation of assets or encouragement of "heir hunters." It was not convinced that there would be an increased tax burden because of reduction of income with only slight reduction in workload.

The committee recommended in favor of passage of a bill similar to AB 2496 (1963).

APPENDIX

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 2496

Introduced by Mr. Willson

April 18, 1963

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 423 of the Probate Code, relating to nomination of an administrator of estate.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 423 of the Probate Code is amended to
2 read:
3 423. Administration ~~may~~ shall be granted to one or more
4 competent persons, although not otherwise entitled to the
5 same, at the written request of the person entitled, *or who*
6 *would be entitled but for his nonresidence in California*, filed
7 in court. If the person making the request is a child, grand-
8 child, parent, brother or sister of the decedent, the nominee
9 shall have priority next after those in the class of the person
10 making the request; otherwise the court, in its discretion, may
11 appoint either such nominee or a person of a class subsequent
12 in rank to that of the person making the request; but other
13 persons of the class of the person making the request shall
14 have priority over such nominee.

LEGISLATIVE COUNSEL'S DIGEST

A.B. 2496, as introduced, Willson (Jud.). Nominating administrators of estates.

Amends Sec. 423, Prob.C.

Authorizes appointment of administrator of estate on nomination of nonresident otherwise qualified to serve as administrator.

PROPOSED STATUTE OF LIMITATIONS AFFECTING IMPROVEMENTS TO REAL PROPERTY

Introduction

When a contractor makes an improvement to real property, he generally incurs a duty to exercise reasonable care to prevent damage to third parties who may reasonably be expected to be affected by his work.¹ Architects, engineers and contractors have expressed the view that this duty exposes them to suits and liability long after they have performed their services.

In order to relieve themselves of the extended period of liability, the architects, engineers and contractors advocated the adoption of AB 648 (1963) which provided essentially that no action for property or personal injury damages shall be brought against a designer, planner, supervisor or builder of an unsafe and defective improvement to real property more than six years after any of these persons has performed his services. This bill was referred to the committee for interim study. The committee received memoranda concerning the problem and held a hearing on the bill on October 20, 1964.

Discussion of the merits of the proposed statute of limitations

The proponents argued that the long-extended period of liability results in suits which are long delayed and thus are practically impossible to defend. They stated that they are compelled to maintain extensive records over a long period of time, and that the long period of potential liability makes it difficult or impossible to obtain insurance. It was urged that these burdens are excessive and that there must be some point in time when they can be assured that former work will not give rise to tort liability.

In evaluating these arguments, the committee found that it was true that the potential liability did create a burden of maintaining records, and that long-delayed suits are difficult to defend. It appeared that insurance costs may be higher than if there was a more confined liability, but it also appeared that adequate insurance could be obtained.

The principal argument against the proposal was that if it can be proved that an architect or contractor's negligence caused damage, then the injured party should have a remedy so long as he does not delay too long after discovering his damage. The general rule with respect to statutes of limitation is in agreement with this contention, that is that a tort statute of limitations will not begin to run until the plaintiff is damaged or discovers the damaging condition. This general rule is derived from the code provision that civil actions can only be commenced within specified periods "after the cause of action shall have *accrued*," (Code of Civil Procedure 312). The proposal is a departure from this general rule as it specifies a statute of limitations which would begin to run *on the date of construction or performance of other services*, without regard to date of damage or discovery by the plaintiff.

¹ Prosser, William L., *Law of Torts*, 2nd ed., p. 514; Witkin, B. E., *Summary of California Law*, p. 1480.

The committee noted that probably every type of tort action arising out of an unsafe condition to real property would be covered by the statute, e.g., actions by owners of the improved property, and of adjacent property, actions by nonowners, and actions for indemnity. An example of an action which would fall within the scope of the proposed statute is the following: Assume that a gas heater was installed in a home with no safety valve in 1964. This was an unsafe and defective condition when installed, but the owner did not know about it and had no reason to suspect it or inspect the installation himself. The owner has no trouble with the heater until 1974, when for the first time, the pilot light blows out. The kitchen fills with gas and the owner ignites the gas when lighting a cigarette. Both the owner and a friend are injured and the kitchen is greatly damaged. Owner and friend will be barred from suing under the proposed statute. This basic fact situation has many variables: The architectural design of a staircase in a department store with employees and shoppers injured; a lathe installed in a factory with workers injured; a home in which not a single electric outlet has been grounded and a resident or friend is shocked.

The committee found that under existing law the proponents are protected against stale claims by statutes of limitations running from the date of damage. (Code of Civil Procedure 338, subdivision 3, and 340, subdivision 3.) The committee found further that when an architect, engineer or contractor is sued within the presently applicable periods of limitations, he has existing protections against false claims of liability. Negligence must be proved, for these persons are not generally liable without fault. The plaintiff generally bears the burden of proof and is subject to the defenses of assumption of risk and contributory negligence. The proponents can make contractual provisions excluding themselves from certain liabilities.

Conclusions and recommendations

The proposed statute of limitations would relieve the burden of protecting against potential tort actions arising out of making an improvement to real property, but in doing so it would establish a general limitation which would bar the commencement of actions which might fully warrant a day in court or a recovery. One member felt that the bar was so extreme in its effect that it should be characterized as an extinction of a cause of action even before it arises, rather than a statute of limitations. The committee concluded:

a. That the proposal would bar the pursuit of justifiable claims of damage;

b. That the proponents have adequate legal protections against stale claims and against false claims under existing law; and

c. That the proponents' burden of protecting themselves against potential liability does not warrant enacting a statute of limitations which would bar legal actions which may fully warrant a day in court.

The committee recommended against the passage of a bill in the form of AB 648 (1963), or any bill substantially embodying its provisions.

COURT REPORTER COMPENSATION

PART ONE

Introduction

The California Constitution provides that the Legislature "shall prescribe . . . compensation of . . . attachés of municipal courts . . ."¹ Thus the Legislature is required to prescribe the compensation of court reporters in municipal courts. However, no such constitutional requirement exists requiring the Legislature to fix the compensation for either superior court reporters or justice court reporters. By Government Code 71600, the Legislature has delegated the authority to establish compensation for justice court reporters to the county boards of supervisors. However, the Legislature has retained the task of establishing the compensation for reporters in the superior courts.

The Legislature had not provided a general schedule for compensating municipal and superior court reporters, but has established separate pay scales for individual counties or groups of counties. This approach has left the Legislature with the tedious job of considering a series of bills each year which propose modification to specific Government Code pay provisions. This approach is a difficult one for the Legislators and it was feared that it may cause some difficulties throughout the state. Recognizing the problem, the Legislature resolved to study the area of court reporter compensation. (HR 168, 1964—Dannemeyer.)

General conclusions derived from the study

The study which was completed by the committee is somewhat detailed, and a summary of its findings has been included in this report as Part Two. The two main conclusions established by the study are: (1) Municipal and superior court reporter compensation varies widely throughout the state. (2) The variation in compensation may cause some pressure to the counties to raise their compensation to keep pace, but the system has apparently not resulted in critical shortages of personnel to any counties.

Possible approaches

The committee has considered several alternative approaches to the present method establishing court reporter compensation. In its consideration, it has kept in mind the constitutional requirement that it prescribe municipal court reporter salaries. The five alternatives which offered the greatest merit are:

1. Establish a statewide salary schedule with cost-of-living advances or periodic general reviews by the Legislature.
2. Establish such a schedule with some provision for county leeway.
3. Make the court reporters fully subject to civil services practices and procedures.

¹ California Constitution, Article VI, Section 11, "Except as such matters are otherwise provided in this article, the Legislature shall prescribe the manner in which, the time at which, and the terms for which the judges, officers and attachés of municipal courts and of justice courts shall be elected or appointed, the number, qualifications and compensation of the judges, officers and attachés of municipal courts, and provide for the manner in which the number, qualifications and compensation of the judges, officers and attachés of justice courts shall be fixed."

4. Delegate the responsibility for setting compensation to the Administrative Director of the Judicial Council.

5. Allow the counties a very large measure of control over the compensation; e.g., the Legislature might simply set a maximum and minimum.

Conclusion and recommendation

In considering these alternatives, the committee was concerned with the need to assure that the various communities throughout the state have adequate court reporter services. It was also aware that the local entity, the county, bears the burden of paying the compensation of the reporters. It concluded that it would be desirable to allow the counties the maximum authority permitted by the Constitution. The committee recommends that the counties be given full authority to set the compensation of superior court reporters, and that they be given authority to set salaries of municipal courts according to a standard, such as a maximum and minimum established by the Legislature.

PART TWO

The committee wished to determine the variation of court reporter compensation throughout the state, and also to determine whether the variations produced any hardships on the counties or reporters. The committee wished to determine whether there was heavy salary competition which caused financial burdens or shortages of reporters to given counties. To answer these questions, the committee conducted studies of the following three areas: (1) Survey of current Government Code requirements on court reporter compensation. (2) A direct questionnaire survey of the counties in the state. (3) A direct questionnaire survey of individual court reporters in the state. The results of these studies are summarized in this part.

1. Government Code requirements

The statutory requirements on court reporters comprise a good portion of one volume of the Government Code. These provisions have been tabulated by the Legislative Counsel. Based on this tabulation, the various salaries and per diems paid in the superior courts throughout the state have been classified. The classification reveals the wide variation in the compensation paid around the state. A similar wide variation exists with respect to the municipal courts also.

CLASSIFICATION OF PRESENT SUPERIOR COURT REPORTERS' COMPENSATION

The table set forth below lists the counties in order of their total population. In columns 3 and 4 are listed the salaries and per diems paid in the county, based on the present Government Code requirements. Column 5 classifies the salaries and per diems paid as follows:

<i>Class</i>	<i>Salary</i>	<i>Per Diem</i>
A	880+	40+
B	800+	36+
C	700+	32+
D	600+	27+
E	500+	23+
F	400+	18+
G	350+	16+

A county is always classed according to salary it pays one. Where a county has a range of salaries, it has been classed according to the arithmetic mean between extremes. Thus, Los Angeles was classed at a salary of 895, the average of 797 and 992. Counties are classed according to per diems only when no salary is paid.

In parentheses next to the salary and per diem figures are symbols "R," "PT," and "all," which indicate what type of reporter is earning the listed salary:

R = regular official court reporter

PT = pro tempore court reporter

All = all official reporters

1	2	3	4	5
County	Population	Salary*	Per diem†	Classification
Los Angeles.....	6,038,771	797-992 mo. (All)	36.34 day (All)	A
San Diego.....	1,033,011	940 mo. (R)	42 day (PT)	A
Alameda.....	905,670		52 (R); 43 (PT)	A
San Francisco.....	742,855	992 mo. (R)	43 (PT)	A
Orange.....	703,925	797-992 mo. (All)	36.34 day (All)	A
Santa Clara.....	642,315	883 mo. (R)		A
San Bernardino.....	503,591	883 mo. (R)	40 day (PT)	A
Sacramento.....	502,788		35 day (All)	C
San Mateo.....	444,387	890 mo. (R)		A
Contra Costa.....	409,030	883 mo. (R)	37 day (PT)	A
Fresno.....	365,945	800 mo. (R)	35 day (PT)	B
Riverside.....	306,191	842 mo. (R)	40 day (PT)	B
Kern.....	291,984	800 mo. (R)	35 day (PT)	B
San Joaquin.....	249,989		35 day (All)	C
Ventura.....	199,138	500 mo. (R)	15 day (PT)	E
Monterey.....	198,351	600 mo. (R & PT)		D
Santa Barbara.....	168,962	500 mo. (All)		E
Tulare.....	168,403		35 day (All)	C
Stanislaus.....	157,294	600 mo. (R)		D
Sonoma.....	147,375	875 mo. (R)	35 day (PT)	B
Marin.....	146,820		35 day (All)	C
Solano.....	134,597	350 mo. (R)	15 day (PT)	G
Humboldt.....	104,892	600 mo. (R)	35 day (PT)	D
Merced.....	90,446	600 mo. (R)	25 day (PT)	D
Santa Cruz.....	84,219	350 mo. (R)	15 day (PT)	G
Butte.....	82,030	350 mo. (R)	15 day (PT)	G
San Luis Obispo.....	81,044	350 mo. (R)	15 day (PT)	G
Imperial.....	72,105	677-889 mo. (R)		C
Napa.....	65,890	583.33 mo. (R)	25 day (PT)	D
Yolo.....	65,727	350 mo. (R)	15 day (PT)	G
Shasta.....	59,468	400 mo. (R)	25 day	F
Placer.....	56,998	350 mo. (R)	15 day (PT)	G
Mendocino.....	51,059	715-889 mo. (R)		B
Kings.....	49,954		35 day (All)	C
Madera.....	40,468		35 day (All)	C
Yuba.....	33,859		35 day (All)	C
Sutter.....	33,380		35 day (All)	C
Siskiyou.....	32,885		35 day (All)	C
El Dorado.....	29,390	350 mo. (R)	15 day (PT)	G
Tehama.....	25,305		35 day (All)	C
Nevada.....	20,911	433.33 mo. (R)	35 day (PT)	F
Del Norte.....	17,771		35 day (All)	C
Glenn.....	17,245		35 day (All)	C
San Benito.....	15,396		35 day (All)	C
Tuolumne.....	14,404		35 day (All)	C
Lake.....	13,786		35 day (All)	C
Lassen.....	13,597		35 day (All)	C
Colusa.....	12,075		35 day (All)	C
Inyo.....	11,684		35 day (All)	C
Plumas.....	11,620		35 day (All)	C
Calaveras.....	10,289		35 day (All)	C
Amador.....	9,990		35 day (All)	C

1 County	2 Population	3 Salary*	4 Per diem†	5 Classification
Trinity-----	9,706	440 mo. (R)	25 day (PT)	F
Modoc-----	8,308		35 day (All)	C
Mariposa-----	5,064		35 day (All)	C
Sierra-----	2,247		35 day (All)	C
Mono-----	2,213		35 day (All)	C
Alpine-----	397		35 day (All)	C

* Salaries paid to court reporters. Where a yearly salary is prescribed in code, it has been stated as a monthly in the chart.

† Daily compensation paid to reporters in lieu of salary.

2. County questionnaires

Questionnaires were submitted to all the counties to determine the salaries and per diems paid, the supplies and office space furnished, sick leave and vacations allowed, the number of hours worked and the number of vacant reporter positions in the county.

From these questionnaires, it appears that the salaries paid in both municipal and superior courts range from a low of \$350 per month to a high of \$889 per month, with an average of \$571. The largest spread in any one county was in Fresno, where municipal reporters are paid \$350 and superior reporters are paid \$800 per month. Per diems ranged from \$30 to \$52 per day with an average of \$38.

Court reporters receive items of support in their work ranging from the bare grant of an office to a complete complement of a furnished office, telephone, typewriter and stationery supplies. Only one-sixth of the counties indicated that reporters were granted any sick leave. In these counties, the average provision was 12 days per year. One-fifth of the counties indicated that any paid vacation was granted. The vacation periods varied from 10 to 15 days per year. The questionnaires did not indicate whether or not the counties were providing health insurance or retirement plans for the reporters. The Legislative Counsel's office has stated that there is no generally applicable provision of law which would require that the reporters be members in a public retirement system. Thus, it appears that there is wide variation among the counties as far as what is granted in the way of retirement and health insurance.

The counties indicated that the reporters spent an average of six hours a day on their county-compensated services. Sonoma County volunteered the comment that its reporters worked seven hours a day, but that these hours were "long hours." This comment may be true of other counties, and it may mean either that the hours of work are grueling, or that there are hidden hours of homework, or it may mean both. One individual court reporter commented that the reporters' profession required her to do "moonlighting" whether she wished to or not, since court business must be accomplished. She said: "Nights, weekends and holidays mean nothing to a reporter, except, perhaps, an opportunity to 'catch up' on work." The elements of time and effort required by the job are not objectively clear, but probably, once again vary widely from county to county.

The questionnaires do not support the notion that competition in salaries among the counties has caused a troublesome shortage of reporters in some counties. Only one current vacancy was reported in the 37 counties which returned the questionnaires. Only two of the counties reported that this lack of vacancies was unusual.

The counties were asked whether they were "subject to considerable pressure to match increases paid to court reporters by other counties." Fourteen counties replied that they were subject to such pressure, while nine said they were not. Fourteen counties made no comment. The counties were also asked for suggestions as to improving the present court reporter system. About half of the counties made some suggestion, but their ideas did not fall into any pattern. One county suggested that the reporters should be within the civil service system. Two counties indicated that reporters throughout the state should be on a salary scale. One county suggested that the Judicial Council provide a pool of trained reporters from which the counties could draw new reporters as they needed them.

3. Individual court reporter questionnaires

Questionnaires were sent to certified shorthand reporters throughout the state. Fifty-four percent of the questionnaires which were returned were from individuals who were currently engaged as official court reporters, or as pro tem court reporters. These 249 replies form the basis of our statistical survey of the individuals in the profession.

These questionnaires supplied some information which was not obtained through the county questionnaires. For one thing, more light was shed on the issue of fringe benefits. Eighty-two percent of the replies indicated that the reporter was a member of a county or state retirement plan. The majority of the surveyed reporters had less than five days of sick leave per year. The answers indicated that the paid vacations earned varied from five to more than 25 days per year.

The reporters indicated that they, rather than the public entity, paid for most of the supplies, equipment and utilities required by their job. In one specific expense item, there was a sharp division in the replies. Fifty-four percent of the reporters reported that less than five percent of their office space rental was paid by the public entity. On the other hand, thirty-seven percent reported that more than seventy-five percent of their office space rental was defrayed by the public entity.

The replies showed that there is some variation among the reporters as to the relative importance of depositions, recording, and transcribing as a source of income. However, the statistics did not provide a firm answer as to how important these sources of income are to the reporters. The majority of the reporters were earning a total compensation of between \$10,000 and \$16,000 per year. However, there were substantial numbers who earned less than \$5,000 and substantial numbers who earned more than \$19,000.

A great majority of the reporters had more than six years' experience and had worked in more than one county. They obtained their current jobs in a wide variety of ways, but a very large number found the job "through a judge." A majority felt that there were vacant court reporter positions in their county. This contradicts the reply made by the counties that vacancies were generally rare. Most of the

reporters had no opinion as to whether the current number of vacancies is high or low compared with the past.

Conclusions

The study confirmed the fact that there are wide variations in reporter compensation around the state. The variation of compensation perhaps causes pressure upon the counties to raise compensation to keep pace, but it has not caused any undue financial burden to the counties, nor has it caused any critical shortages to individual counties.

COMPARATIVE NEGLIGENCE

Pursuant to HR 162 (1963 Zenovich) the committee has studied the adoption of comparative negligence. The basic notion of this doctrine is that damages are reduced in proportion to the plaintiff's fault. The main argument in favor of adoption is that a fair division of damages will replace the harsh all or nothing approach which results from the doctrine of contributory negligence. The negative arguments are that comparative negligence is too difficult for the jury to determine, and that a certain kind of comparative negligence is available through settlement of cases out of court.

The committee has considered the arguments favoring and opposing the adoption of comparative negligence and has concluded that further study and public hearings should be scheduled on this matter. The committee had decided that it will be beneficial to publish at this time the following brief summary of arguments it has received on the subject.

Arguments opposing comparative negligence

1. The rule of comparative negligence favors the plaintiff.
2. Contributory negligence may be harsh in theory. But, in fact, juries just don't decide against plaintiffs who were only slightly negligent.
3. The rule is difficult to administer. It is impossible to weigh the negligence of plaintiff and defendant with any degree of precision. Jurors will simply respond by granting awards based on emotion rather than law.
4. The rule is simply another step along the short road to liability without fault.
5. Only rural states have adopted the rule.
6. Over 90 percent of negligence actions are settled. Settlement is actually comparative negligence in operation. Our system presently then accomplishes what the proponents seek and should not be altered.
7. The rule of comparative negligence discourages safe driving by allowing one who is grossly negligent to recover.

Arguments favoring comparative negligence

1. The present rule of contributory negligence is unjust. It places the entire loss caused by the fault of both on the plaintiff and allows the defendant to escape scot free. Even when the negligence of the defendant is grossly disproportionate to that of the plaintiff, the plaintiff still is visited with the entire loss.
2. Estimating the relative degrees of negligence is no more difficult than the estimate that results in an award of \$3,000 to the plaintiff for pain and suffering in connection with his broken arm. A division of damages, based on the relative degrees of negligence, will still be more accurate than visiting 100 percent on the plaintiff.
3. Comparative negligence has nothing to do with liability without fault. It merely corrects the effect of contributory negligence which allows the defendant to be at fault without liability.

4. Comparative negligence is not an exotic doctrine. The United States is the last stronghold of contributory negligence. It has disappeared from continental Europe, Turk, "Comparative Negligence on the March," 28 Chi-Kent Rev. 189 (1950) and from Great Britain, Williams, "The Law Reform Act," 9 Mod. L. Rev. (1945). Comparative negligence is used in the United States in the F.E.L.A. and in Admiralty Law, although damages are divided between the negligent parties. The California Employer's Liability Act (Labor Code 2801) also uses comparative negligence.

5. Settlement is not comparative negligence since the defendant's counsel would seldom settle with a plaintiff who was clearly contributorily negligent.

6. Opponents of comparative negligence argue that the rule discourages safe driving. But it makes just as much sense to argue that contributory negligence encourages recklessness since the defendant, even though negligent, is not liable.

7. Finally, Dean Prosser, writing of the rule of contributory negligence, says, "No one ever has succeeded in justifying that as a policy, and no one ever will." Prosser, "Comparative Negligence," 41 Cal. L. Rev. 1 at 4 (1953).

REDUCTION OF JURORS IN CIVIL MATTERS

The committee has studied ACA 7 (1963, Willson), an Assembly-proposed constitutional amendment to require reduction of number of jurors in civil actions from 12 to 8. Perhaps the chief advantage offered by this proposal is the possibility of savings in time and money, in that fewer prospective jurors would have to be called, the *voir dire* might be shortened and fewer jurors would have to be maintained through the trial.

Several objections to the change were explored by the committee. The first of these is the general notion that the reduction would tamper with the essence of a valued American legal institution. The jury of 12 is grounded in history and tradition, though Professor Hazard pointed out that the exact number of jurors has varied through time and that the final selection of 12 "is simply an historical accident." A second objection was that by reducing the number of jurors, you also reduce the cross section of people represented in the box. A third objection was that a "strong juror" would have more sway in a smaller jury. These objections were considered in relation to the need to keep up with increased caseloads and to keep the courts up to date in terms of desirable modern trends.

Proposed further study

Study of the proposed amendment has led the committee to conclude that the subject deserves further consideration. One specific suggestion is that the Legislature take steps to have the State Bar cooperate in a poll of the attitudes of lawyers and judges around the state.

Summary of points raised at committee hearing

The committee held hearings on ACA 7 (1963) on December 4, 1963. Those who testified included judges of the superior and municipal courts, defense and plaintiffs' attorneys and law professors. The following summary of the main points covered at the hearing is included as part of this report:

1. Small Jury by Stipulation

Code of Civil Procedure Section 194 permits parties to stipulate to a smaller jury.

Several of the witnesses were asked whether a jury of less than 12 had been used:

Judge McRoberts: Not to my knowledge.

Mr. John Foran: No. I have never seen it happen.

Mr. Ira Price: . . . there have been very few occasions when the parties and the counsel have stipulated to a jury of less than 12.

Judge Dalsimer: On several occasions I have had counsel so stipulate. I have tried several cases with eight and nine jurors. The results insofar as I am concerned are not different than those cases which were tried with the customary complement of 12.

Mr. Don Bercu: I had . . . three or four experiences on criminal cases . . . by stipulation . . . I could detect no difference in the re-

sults of a smaller number . . . The verdicts appeared to me to be no different . . . It wouldn't bother me in the slightest on a civil case particularly to try the typical case in front of a jury of 8 rather than 12.

2. *General Reactions*

Some witnesses were asked what they thought the general reactions to a smaller jury would be:

Mr. Foran: . . . we found that in the states in which they are known . . . that these are acceptable to judges as well as the citizens . . . [But] from the viewpoint of the insurance industry, we would want the present setup . . . On a 12-man jury we have to get 4 jurors, from the defense viewpoint; that is, one-third of 12 or $33\frac{1}{3}$ percent. On an eight-man jury we have to get three to hang a jury; that is, three-eighths or 40 percent. So $33\frac{1}{3}$ percent to 40 percent, that is $6\frac{2}{3}$ percent, which again increases the odds in favor of the plaintiff and against the defendant.

Judge Dalsimer: . . . I have found that by and large defense counsel in personal injury cases are the ones who want the jury . . . usually the plaintiff's counsel is willing to go along.

Professor Hazard: . . . I rather suspect that the public . . . will probably be generally indifferent . . . judges are hep today on reform . . . the lawyers . . . they'll scream.

Comment

All six of the states polled by the committee staff found that their smaller jury is satisfactory to lawyers, judges and citizens.

3. *History and Tradition*

Professor Hazard: . . . It is perfectly obvious that the number varied over time. Sometimes they were using 16. I have read some cases where it is obvious that the parties are agreeing on a particular number, 11 or 13 or 7 . . . The selection of 12 . . . is simply an historical accident . . . The fact is that convention gets established in such casual ways . . . It seems that there is no lesson from history here except that it sometimes has no lesson.

Mr. Henry Schultz: . . . While the number 12 . . . is not a magic number, still it has been the size of juries from time immemorial almost . . .

A litigant comes into court and it is a strange place to him. This is a new experience for most of them, but they do see one thing that is familiar to them and that is 12 jurors sitting there.

Mr. Price: I suppose the first reason that led the State Bar Association Committee on the Administration of Justice to oppose ACA 7 might be called "flag waving." But in any event, we were cognizant of the history and the tradition in favor of a 12-man jury . . .

Judge Dalsimer: . . . we have just allowed ourselves to become hidebound by tradition. Perhaps when society moved at a slower pace there was no pressing reason to have less than 12 . . . [but now that we have]—this constant increase in caseload . . . we must take every step that we can possibly take to reduce the time spent in litigation.

4. *Cross Section*

Mr. Foran: . . . I think that if you cut a jury down from 12 to 8 you are reducing the base. By so doing, you are exposing yourself to the possibility of not getting a fair cross section of the society in which we live.

Mr. Schultz: . . . [W]hen we are faced with a decision or problem where we have to decide, we like to talk to as many people as possible, to get as many viewpoints as possible . . . [T]he more people you can get together to talk over a problem to make a decision, I think, frankly, will aid in the administration of justice.

Chairman Willson: Would you be in favor of increasing the size of the jury say from 12 to 14?

Mr. Schultz: I had not given it any thought . . . my thinking in preparation for today was solely with respect to the bill which is proposed here.

Comment

Legal writers tend to discount objections to the reduction of the size of the jury based on arguments that the cross section is reduced. They argue that realism would indicate that jurors are a product of the adversary system. Few attorneys seek a real cross section, but rather, jurors who are favorable to their side of the case. They argue that the accuracy of the cross section depends not upon the size of the jury but rather upon the scope of the exclusions from jury duty.

5. *Strong Juror*

Judge McRoberts: The more you narrow the base, the more possibility there is that in jury deliberations one person or two persons might well be able to carry the jury along with their thinking.

Mr. Price: . . . if you have a strong dominating type of individual . . . he has a great effect upon the thinking of the jury and many times in the verdict that the jury reaches, and if a jury is reduced from 12 persons to 8 . . . it would seem logical that the influence that the strong juror would have upon the jury would be enhanced.

Professor Hazard: . . . my conjecture would be that you would tend to polarize . . . [A] very strong personality . . . might . . . feel very strongly that the plaintiff ought to win . . . I think that there would be a tendency . . . to adhere to his views; if . . . he feels that it ought to be a defense verdict there will be a tendency to compromise and have a lower plaintiff's verdict . . .

6. *Savings in Time and Costs*

Judge Whelan: . . . reducing the number of trial jurors . . . will be a saving also to the taxpayer in that it will not be necessary to summon to court for the trial of any case as large a number of prospective jurors as are presently called for.

Chairman Willson: The reduction in the overall time of selecting jurors . . . is an additional possible savings?

Mr. Leach: Absolutely!

Judge Dalsimer: . . . [I]f you have a lesser number then . . . there is less work involved in selecting the names, drawing the names . . . it speeds up the *voir dire* part . . .

Professor Hazard: . . . [W]hen you get to the *voir dire* stage you have an apparent saving of a substantial magnitude, but I would like to suggest that this has to be diminished somewhat if you look at it carefully. You would think that if you had 8 jurors rather than 12 that you would cut down by one-third the amount of *voir dire* questioning, but . . . it is . . . not going to be anywhere near 30 percent because . . . *voir dire* is only half questioning—most of it is lecturing. The lawyer is selling himself.

There is no question that . . . [you will] save money. To the parties of course you have the reduced jury fee; to the public it is a simple question of mathematics. Most counties, if you are going to pick a 12-man jury, will send out 24 to 30 jurors . . . if you are going to have an 8-man jury . . . you draw . . . 14 to 20 people to pick a panel, and this is about a 30-percent reduction in the number of people that have to be paid . . .

Comment

According to the figures of the Auditor of the County of Los Angeles, an eight-man jury would have saved litigants \$184,000 in Los Angeles County in 1962-63 and the county itself would have saved \$142,000.

7. Increased Use of Juries

Mr. Stevens: . . . [I]f we reduce the number of jurors from 12 to 8 . . . this might result in an increase of the use of juries in civil actions and therefore might offset the cost savings . . .

Judge Sprankle: Yes, it very well could happen . . . It effects all the benefits that you are gaining—if you are talking only in dollars and cents.

Judge Whelan: I think so far as the superior court in San Diego County is concerned, that would be a negligible effect because a jury is asked for in nearly every negligence case . . . and nearly every condemnation case . . .

Judge Dalsimer: I concur with Judge Whelan . . . [I]t is my experience that . . . in . . . the great bulk of negligence actions . . . maybe as high as 97 or 98 percent . . . the defense demands the jury and posts the fees and will not give up the jury.

8. Peremptory Challenges

Chairman Willson: . . . [S]ince the law now requires that before pretrial a request may be made for eight peremptories, has experience shown whether that is being exercised?

Judge McRoberts: More and more . . . and I would say at the present time that at least three-fourth of the cases I pretry now, one side of it will request eight peremptories.

Professor Hazard: I feel very strongly . . . about . . . raising [the number of peremptory challenges] from six to eight. That strikes me as a mistake . . . Six already in California is more than most states have. Most states have three.

Judge Sprankle: . . . the size of the jury and the peremptories [should] be reduced on a pro rata basis.

Judge Whelan: The number of challenges might well be reduced.

Mr. Goodwin: The recommendation of the special study commission [appointed by the Los Angeles County Board of Supervisors] was to reduce the number of peremptory challenges—if you reduce the number of jurors . . . that is.

Judge McRoberts: . . . you must necessarily reduce the number of peremptories. It follows like night follows day.

9. Conclusion

Mr. Bercu: I don't think that the number particularly has any significance. It would be neither a plus nor a minus as far as I am concerned.

Mr. Foran: . . . [T]he present system that we have in California works beautifully as far as I am concerned; I know of no reason to upset it; I feel as a trial attorney that we are playing with fire here; that this is just a short cut.

We are doing away with a trial by jury and, gentlemen, when you do that we are going to run into a commission system here so fast that we won't know what hit us and at that point the trial attorneys are going to disappear.

Professor Hazard: I think one ought to face the plain fact, and I don't say this with any hostility, it is simply a question of fact, that the bar takes a very conservative view toward procedural reform, and the reason is very simple.

This is the way that these fellows make their living, and any change in the techniques of the trade are disruptive of their routine. I think that it is as simple, as uncomplicated as that.

I think that any of these objections, and particularly objections founded on dire predictions, ought to be taken with at least two grains of salt, and rather seriously discounted. I don't think that the record would support these fears.

Assemblyman Foran: . . . [W]hat your basic position comes down to with respect to California is that the devil you know is better than the devil you don't know . . .

Mr. Foran: That is exactly it.

Professor Hazard: No improvement, no reform in the administration of justice is going to have any great significance . . . This cuts two ways though. It means that no single reform can achieve very much. It means also that nothing very much can be achieved without a great many small reforms . . . [N]othing in this complex field will make *much* difference. It will all make *some* difference.

10. Proposals

The proposed methods by which the civil jury could be reduced are:

(1) Mandatory reduction

(A) ACA 7—reduce the number of civil jurors from 12 to 8 by constitutional amendment.

(2) Voluntary reduction

(A) Encourage stipulations for a smaller civil jury

Ira Price: [I]t would seem to me that it might be possible for the presiding judge to launch a little educational project . . . to try to get lawyers to stipulate to juries of eight . . . so that we have a period when we can judge the results of a smaller jury . . . We wouldn't be saddled with a constitutional provision that would make it mandatory . . .

(B) The first eight jurors are free of any charge to the litigants. Any party can request 12. However, the per diem charge for the additional four is to be \$60.

(i) The \$60 per diem charge for the additional four is not recoverable as costs.

(C) The first eight jurors costs the same as they do now. Any party can request 12. However, the charge for the additional four is to be \$60 per diem.

(i) Neither the charge for the first eight nor the charge for the additional four is recoverable as costs.

(ii) The charge for the first eight is recoverable as costs but the charge for the additional four is not.

APPENDIX

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

Assembly Constitutional Amendment No. 7

Introduced by Mr. Willson

January 28, 1963

REFERRED TO COMMITTEE ON JUDICIARY

Assembly Constitutional Amendment No. 7—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 7 of Article I thereof, relating to trial by jury.

- 1 *Resolved by the Assembly, the Senate concurring, That the*
2 *Legislature of the State of California at its 1963 Regular*
3 *Session commencing on the seventh day of January, 1963,*
4 *two-thirds of the members elected to each of the two houses*
5 *of the Legislature voting therefor, hereby proposes to the*
6 *people of the State of California that the Constitution of the*
7 *State be amended by amending Section 7 of Article I thereof,*
8 *to read:*
9 *SEC. 7. The right of trial by jury shall be secured to all,*
10 *and remain inviolate; but in civil actions three-fourths of the*
11 *jury may render a verdict. A trial by jury may be waived in*
12 *all criminal cases, by the consent of both parties, expressed in*
13 *open court by the defendant and his counsel, and in civil*
14 *actions by the consent of the parties, signified in such manner*
15 *as may be prescribed by law. In civil action and cases of mis-*
16 *demeanor, the jury may consist of 12, or of any number less*
17 *than 12 upon which the parties may agree in open court. In*
18 *civil actions the jury shall consist of eight, or of any number*
19 *less than eight upon which the parties may agree in open*
20 *court.*

LEGISLATIVE COUNSEL'S DIGEST

A.C.A. 7, as introduced, Willson (Jud.). Trial by jury.

Amends Art. I, Sec. 7, Const.

Provides that in civil actions jury shall consist of 8, rather than 12, or such lesser number as agreed upon by parties in open court.

GUEST STATUTE

Present law

The present guest statute provides that a gratuitous vehicle passenger has no right of action against the driver of that vehicle unless the proximate cause of the passenger's injury or death was the driver's intoxication or willful misconduct. (*Veh. Code* 17158.)

Proposal

AB 2727 would repeal the guest statute. A guest would then be able to recover against the driver of the vehicle in which he was riding for ordinary negligence.

Arguments against the proposal

1. The repeal of the guest statute will open the door to fraudulent and collusive suits by one member of the family or friend against another. If the passenger is a good friend of the driver, who is insured, the driver may not make a very vigorous defense if sued by the passenger since it is the driver's insurance company which will satisfy any judgment against driver. The insurance companies allege that such collusive suits are almost impossible to defend.

2. A driver who is not being paid for his services should not be subject to the same liability as one who does receive compensation. If the statute is repealed, drivers will no longer be protected from suits by ingrates who are provided with free transportation. Also, the potential liability will cause a driver to resist carrying a full load of passengers during peak commuting hours, and he will hesitate to "assist the weary traveler."

3. If the statute is repealed the potential liability of insurance carriers will be broadened. More causes of action will be created and premiums will be forced up.

Arguments for the proposal

1. The arguments of the insurance carriers skirt the real issue: Who should pay for the injuries of a vehicle passenger caused by the negligence of the driver? Should the passenger, who incidentally is free from any fault whatsoever, bear the entire burden of paying large medical bills? Or should the driver's insurance company, representing the negligent party, be asked to assume some responsibility for the injuries caused by its insured? Adopting the first alternative makes the passenger twice cursed. Completely free from any negligence, the passenger has suffered injuries. And in addition, he is now denied all relief against the driver and must search his own shallow pocket for the money to pay his medical bills. Adopting the second alternative lifts this unjust burden from the injured passenger and places it on the insurance carrier for the negligent party. The loss then is distributed among a wide class of people through the premiums charged by the insurance companies. The principle of loss distribution is, after all, the social justification for insurance companies.

2. Dragging in the specter of fraudulent and collusive suits is misleading. It is misleading because the insurance companies would have

you believe they are at the mercy of their crafty and avaricious clients. The insurance companies have the full protection of court procedure, including cross-examination. If fraud was used to obtain the judgment, it can be set aside. In addition the carrier can either cancel or increase the premiums on their insured's policy. Finally, we hear no complaints from insurance companies about other areas where fraud, always a possibility, may also be present. A small businessman whose store is covered by a personal liability insurance policy has just as much "incentive" to encourage a collusive personal injury suit by a friendly patron as an auto driver by his passenger. The fact that such insurance is written suggests that the number of fraudulent suits is not staggering.

3. Finally, whether one is paid for performing a service should have no bearing on whether he be held accountable for his wrongful acts which cause injury to others.

Conclusions and recommendations

The committee has concluded that the driver of a vehicle should be under a duty of reasonable care for the safety of his passengers. The guest statute relieves the driver of this legal duty by insulating him from suits by gratuitous passengers. The committee believes that this encroachment on the general duty of care is not justified by the alleged dangers of collusive suits and increased insurance costs, or by the argued difference between compensated and uncompensated drivers. The committee notes that there are other safeguards against collusion and fraud in our courts. It believes that the duty of care and attendant tort liability should be reinstated in the case of the driver who carries a gratuitous passenger. It is recommended that the guest statute be repealed for a period of four years and that at the end of that period there be a determination of whether the guest statute should be repealed permanently.

APPENDIX

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 2727

Introduced by Messrs. Zenovich, Young, Powers, Burton, Beilenson, Booth, Deukmejian, Dymally, Henson, Johnson, Knox, Lunardi, Marks, Miliias, Moreno, Petris, Song, Stanton, Stevens, and Warren

April 25, 1963

REFERRED TO COMMITTEE ON JUDICIARY

*An act to repeal Section 17158 of the Vehicle Code,
relating to automobile guest statute.*

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17158 of the Vehicle Code is repealed.
- 2 17158. No person riding in or occupying a vehicle owned
- 3 by him and driven by another person with his permission and
- 4 no person who as a guest accepts a ride in any vehicle upon a
- 5 highway without giving compensation for such ride, nor any
- 6 other person, has any right of action for civil damages against
- 7 the driver of the vehicle or against any other person legally
- 8 liable for the conduct of the driver on account of personal in-
- 9 jury to or the death of the owner or guest during the ride,
- 10 unless the plaintiff in any such action establishes that the in-
- 11 jury or death proximately resulted from the intoxication or
- 12 willful misconduct of the driver.

LEGISLATIVE COUNSEL'S DIGEST

A.B. 2727, as introduced, Zenovich (Jud.). Automobile guest statute.

Repeals Sec. 17158, Veh.C.

Repeals provision that precludes recovery by guest or person riding in vehicle owned by him for damages in civil action unless he can establish intoxication or willful misconduct of driver.

COURT CONSOLIDATION

LOS ANGELES COUNTY MUNICIPAL AND JUSTICE COURTS

Over the last eight years there have been a considerable number of studies and reports made on the subject of municipal and justice court consolidation in Los Angeles County.¹ This one is another in the long series of comments and remarks about that situation.

Before discussing the arguments set forth on the merits of any reorganization, it is necessary to establish the constitutional and statutory framework in which the courts there are now organized.

Constitutional and statutory provisions

Certain strict requirements and limitations are expressed in California Constitution, Article IV, Section 11 regarding municipal and inferior courts. This controlling section of the constitution specifies, among other things;²

- (a) A county shall be divided into judicial districts as prescribed by the Legislature but in no case can there be an incorporated city or city and county within two districts.
- (b) In any district with a population less than 40,000 there shall be a justice court; wherever the district population exceeds 40,000 there *shall* be a municipal court district.
- (c) That the judges for each such court shall be elected "by qualified electors of the *district*." (Emphasis added.)
- (d) The Legislature must provide for these courts as well as the powers, duties and responsibilities of such courts and judges by general law, and
- (e) The Legislature shall prescribe the manner, time, and terms which judges, officers and attachés shall be appointed, elected, and further for the number, qualifications, and compensation of judges of these courts.

The constitution expressly provides that the Legislature shall prescribe the manner in which judicial districts are to be set up within a county,³ as well as for complete regulation of the courts⁴ and its personnel⁵ by general law.

The constitutional limitations are part of the agony of reform particularly as to the question of district lines and election of judges. This will be discussed later in relation to the arguments of the proponents and opponents of consolidation.

Government Code Section 71040⁶ is the fulfillment of the constitu-

¹ *A Survey of Metropolitan Trial Courts, Los Angeles Area*, James G. Holbrook, University of Southern California Press, 1956; Chief Administrative Office, Los Angeles County Reports, December 14, 1959, February 25, 1961, April 5, 1963, May 5, 1963, and October 30, 1963; Second Partial Report of Joint Judiciary Committee on Administration of Justice, California State Legislature, 1959; Judicial Council Report, December 1, 1959; Los Angeles County Municipal Court Judges' Association, 1959 and 1962.

² California Constitution, Article VI, Section 11.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ As public convenience requires, the board of supervisors shall divide the county into judicial districts for the purpose of electing judges and other officers of municipal and justice courts, and may change district boundaries and create other districts. No city or city and county shall be divided so as to lie within more than one district.

tional mandate that the Legislature shall prescribe manner in which county should be divided into districts. The county board of supervisors is responsible for this districting and this shall be done "as public convenience requires."⁷ Thus as to any change in the districting within Los Angeles County it must be accomplished by both the local board of supervisors and the Legislature.⁸

Because of this dual relationship between the county and the state, joint action is essential to any reorganization of these courts. The interests of the county are not only to provide for efficient functioning of the courts but also to care for the costs in running the municipal and inferior courts and the payment of salaries.⁹ It is the county that sustains the financial burden¹⁰ while the State Legislature has the control over the number and compensation of judges, officers and attachés of each municipal court.¹¹

Prior studies made

As pointed out by the Joint Judiciary Committee on Administration of Justice in its second partial report,¹² the balkanization of Los Angeles County has caused many significant problems. Although the characterization there was only in terms of two major problem areas¹³ the inefficiencies and problems are in fact far greater.

The expression of concern that many problems exist is easily seen by the number of studies made of the Los Angeles situation.

Holbrook Report. The first major study of recent years was the Holbrook Report.¹⁴ That study was made for the purpose of analyzing the methods and procedures of metropolitan area courts as a part of an overall program by the American Bar Association section on Judicial Administration. The report was comprehensive indeed, employing such methods as research of statutes, ordinances, court rules and records, personal interviews with various attorneys and officials, personal observation of courts in session, and questionnaires.

This often cited study has gained substantial recognition and is considered a basic research tool in understanding the structure and problems of the metropolitan trial courts in Los Angeles.

Los Angeles County Studies. The Los Angeles County Board of Supervisors has been active in calling for administrative studies to be made of the municipal court problems of congestion. On March 25, 1958, the board of supervisors instructed the chief administrative officer to study the problem and submit a report. On March 10, 1959, the chief administrative officer was ordered to submit a report regarding the redistricting of the municipal courts. On March 17, 1959 the board requested the State Judicial Council to study the same problem.

⁷ *Ibid.*

⁸ Because existing law requires staffing and salary control of local courts to be prescribed by the Legislature and the change of districts to be accomplished by the local board of supervisors the joint relationship is set up.

⁹ California Constitution, Article VI, Section 11; Government Code, Title 8, Chapter 1-2, 6-11.

¹⁰ Except for small contribution to the Judges' Retirement Fund by the state. Also see Government Code Section 71002, 71220.

¹¹ See Government Code Section 72000. The Legislature has provided, however, that such control as to justice courts are to be in the local board of supervisors. See Government Code Section 71600.

¹² Joint Judiciary Committee on Administration of Justice (2nd partial report, 1959) at p. 34.

¹³ Disparity of workload among judges and gross delay in getting a jury trial.

¹⁴ *Supra*, n. 1.

And finally on December 1, 1959, the board ordered a detailed report be submitted by the chief administrative officer.

In addition to these basic reports, the chief administrative officer¹⁵ has presented his findings to various legislative committees several times.

Legislative Studies. The Joint Judiciary Committee on Administration of Justice¹⁶ as a part of a broad survey on the operation of courts in California devoted its efforts partly to the problems of the Los Angeles County Municipal Courts. That study quoted at length from the Holbrook Report¹⁷ and from Chief Justice Phil S. Gibson.¹⁸

During the last general session there were two Assembly bills introduced which attempted to reorganize the municipal court structure within Los Angeles County.¹⁹ The first of these measures²⁰ called for a reduction of the 23 municipal and three justice court districts to a total of 9. The second bill²¹ sought to maintain the existing districts but superimpose over the existing county structure a new administrative organization. The plan envisioned an administrative judge with authority to appoint staff and an executive officer who would have power to do certain specific tasks.²² However, AB 3085 expressly excluded the Los Angeles Municipal Court District, which challenged the credibility of the plan.

Both of these measures were sent to this committee for interim study for the purpose of trying to explore the conflicts and aid in the resolution of any local differences in order to arrive at a clear understanding of what is really needed. Thus hearings have been held and this report seeks to now provide a record of what the present state of affairs is.

All of the reports submitted and studies made have recommended some form of reorganization. The Holbrook Report suggested that "for administrative purposes all municipal courts of Los Angeles County should be integrated into one Los Angeles County Municipal Court" . . . And that "this consolidation should make for more effective use of all municipal court judges in the county".²³ Yet the report went on to suggest that notwithstanding such recommendation for integration of municipal courts for purposes of administration, it "does not contemplate disturbing existing municipal court districts."²⁴

Holbrook regards integration as desirable although only in terms of administrative reorganization. But there are considerable hurdles which must be met before even this can be done, such as election of judges, assignment of cases, transfer of judges, power to make uniform rules.

¹⁵ Most recently to the Assembly Interim Committee on Judiciary on October 30-31, 1963 and December 3, 1963.

¹⁶ Senate Concurrent Resolution 34 (1957 Regular Session).

¹⁷ *Supra* n. 1, at pp. 36-38.

¹⁸ *Id.*, at 34.

¹⁹ AB 2659—Willson; AB 3085—Flournoy.

²⁰ AB 2659.

²¹ AB 3085.

²² (1) Expedite judicial business.

(2) Assign judges temporarily to adjust to caseload with a 30-day limit during any six-month period.

(3) Establish procedure for transfer of cases within such district.

(4) To establish a central prior traffic offense record for the district in cooperation with Los Angeles Judicial District.

(5) To provide for appropriate number of jury commissioners in district to assist clerks.

²³ *Supra* n. 1, at 278.

²⁴ *Id.*, see also pp. 281-285.

The report of the Judicial Council called for a single district with various regional administrative areas.

The reports of the chief administrative officer for Los Angeles County recommended a reduction of existing districts and a thorough reorganization variously from nine districts to a single district for the entire county.

Both reports submitted by the Los Angeles County Judges' Association favored a change in the present county municipal and inferior court structure.²⁵

Present Status

Three public hearings were held on this matter by this committee during the interim period.²⁶ An attempt was made to locate these hearings in order to make it convenient for all areas of the county affected to attend. Nine individual cities, their bar associations, and judges from seven judicial districts testified. Many letters were received from cities not presenting oral testimony.²⁷ Furthermore, lengthy testimony was taken from representatives of the chief administrative office, the League of California Cities (Committee on Municipal Court Consolidation—Los Angeles Division), and the Los Angeles County Judges' Association.

The committee posed several questions to the witnesses before the hearings in order to elicit a response. The statements presented here are representative; were taken both from oral testimony and written statements submitted by each person.²⁸

What would be achieved by consolidation?

Cities. There was a flat denial that anything would be accomplished. Alleging that those things sought to be accomplished by way of consolidation could be done by other means of reform without upsetting present court structure.

County. Four specific benefits are suggested:

1. Maximum utilization of judicial manpower.
2. More effective use of clerical manpower.
3. Uniform court procedures and rules.
4. Greater auxiliary administrative benefits.

What are the comparative merits of a single court consolidation plan and some other lesser consolidation (e.g., nine-court) plan?

Cities. No merits of either is suggested. In fact the danger of consolidation to lessen the number of districts would begin eventual movement toward complete consolidation, not only of districts but also of municipal and superior courts. This position points to rationale which was suggested by proponents of consolidation based on efficiency and savings.

²⁵ 1959 vote of the judges favored a single court plan. 1961 vote of the judges favored a nine-court plan.

²⁶ October 30, 1963, at Huntington Park; October 31, 1963, at Beverly Hills; and December 3, 1963, at El Monte.

²⁷ See respective transcripts on file in Assembly Judiciary Committee office, Sacramento.

²⁸ The testimony attributed to cities was presented by Mr. Leonard Horwin, Mayor pro tem, Beverly Hills, and Chairman of the Committee on Municipal Court Consolidation, Los Angeles Division of California Cities. The testimony attributed to the county was presented by Mr. John R. Leach, Assistant Chief Administrative Officer, Los Angeles County.

Specific objections to consolidation :

1. Cases would be transferred to centralized courts and existing outlying facilities would cease to operate as "people's courts."
2. Courts under consolidation would be less accessible to litigants, witnesses, jurors and lawyers, thereby offsetting any alleged savings.
3. Jurists would be unfamiliar with local environment.
4. No presentation of facts to substantiate the assertion of increased efficiency.
5. Proposed plans would not solve administrative problems.

County. As to the single court plan, the county position is:

1. It would permit a single administrative or executive officer to supervise and administer the clerical and housekeeping.
2. It would permit maximum benefits and services with greatest savings to county.
3. Permit absolute uniform procedures for the county.
4. Avoid necessity of adjusting district boundaries each time a new incorporation where such incorporation crosses more than one district boundary.

With respect to the nine-court plan, their position is:

1. Alleges that it is less desirable than the single-court plan.
2. The existing problems of 23 districts would be reduced to a multiple of whatever number lesser districts would be determined, that is, the same problems would exist only on a smaller scale.

What would be the effect on local autonomy?

Cities. The cities feel that their local autonomy would be infringed upon by any change in the districting. The specific objections raised were:

1. Great inconvenience to parties, counsel, witnesses and police departments.
2. That local election of judges would be affected in that the districts would be larger and that there would be a loss of responsiveness by the bench to the electorate.
3. The fear that physical location of the courts would be changed.
4. Loss of close administrative control by centralization.

County. The county position takes a little different approach to the question of effect on local autonomy.

1. There is a denial that there is any relation of the arm of the state court system as a committed integral part of the local government scene.
2. An admission that there certainly would be a loss of local administrative control over certain court procedures and personnel.
3. Denial of validity of familiarity of local environment as an argument to sustain autonomy position.
4. Cites statistics of traffic court to dispel fiction that majority of those experiencing court involvement are residents within that court jurisdictional district.

What are the local needs that would not be served if a consolidation became effective? Would a plan work a hardship on litigants, attorneys or police departments because of consolidation?

Cities

1. There would be a loss of closeness to the people who should be served as well as possible loss of physical location.
2. Populace would be less familiar with judge since district would be larger and, therefore, would not be able to vote with as much knowledge of his performance.
3. Also would be a lessening of identification of the judge to the district.
4. More costly to local city police departments, litigants, witnesses who must travel to facility farther away.

County

1. Categorical denial of above objections.
2. If there would be a single court plan, subareas could be organized on same geographical basis as superior court districts.
3. Would be a change in election of judges because of change in size of the district, but analogized to the election of superior court judges.
4. No hardship on police departments because county sheriff comes to local court after arraignments and provides the transportation for prisoners.
5. There is no physical movement of court facilities contemplated under any consolidation proposal.
6. As to hardship on litigants, most cases involve traffic matters and statistics supplied from a recent sampling show over half are not residents within judicial districts where cited.

Is there now proper and efficient use of judicial and clerical manpower? What would be the effect of some form of consolidation plan on the use of such personnel?

Cities

1. Agree better use might be possible but need not consolidate to accomplish such result.
2. Admit uniformity of rules and procedures is desirable.

County

1. Reiteration of position under first question.
2. Alleges that same people would be doing greater amount of work.

Would there be an increase in savings or costs to the county local districts by implementation of a consolidation plan?

Cities. The cities allege that there is no supporting data or evidence either way as to savings or increase in costs. However, they present the position that consolidation would create more administrative costs.

County. The county has supplied figures which seek to support their position that costs would decrease by approximately \$410,000 annually by consolidation to at least a nine-court plan. This figure

is based on projected use of judges and clerical personnel and court-room space.

General comments from representative cities is illustrative of the attitudes on the local level by various municipal entities and their officers.²⁹

"The location and number of these courts should be based on convenience to people and convenience to local police . . ." F. W. Sharp, administrative officer, Pomona.

"Any form of consolidation would reduce local autonomy . . . The electorate from a local community or area has some chance of being so informed; this is not true when judges are elected on a countywide basis". Robert D. Ogle, assistant city attorney, Santa Monica

"Convenience in terms of distance . . . is a very important factor for the proper administration of justice . . . I mean people called for jury duty should not be required to travel any great distance to fulfill this function." Lyle W. Alberg, city coordinator, Montebello

"As to whether we should or should not adopt a court consolidation plan, it would appear to us that the following three questions must be resolved: (1) Does consolidation improve the cause or ends of justice? (2) Will consolidation provide greater efficiency in the handling of justice? and (3) Would court district consolidation be more economical to the people? The City Council and I believe the answer to all three questions would be 'no' ". Gifford W. Miller, city manager, Monrovia

The written statement to the committee presented by Mr. Leonard Horwin, chairman of the Court Consolidation Committee of the Los Angeles Division of the League of California Cities offered nine specific considerations to be made by an independent study of the court problem. Most of these were subjects of the Holbrook Report, which was an independent study. All of these matters were items considered by both this Committee and a special local Los Angeles County conference committee.

SPECIAL LOCAL, LOS ANGELES COUNTY COMMITTEE³⁰

In addition to the public hearings, a small conference group³¹ met a number of times in an effort to discuss the allegations made by both proponents and opponents to consolidation. It was the purpose of this group to sit down and amicably and intelligently discuss the areas of conflict in an effort to understand the situation, and to present some agreed upon change of existing court organization and procedures. Such task is a noble endeavor and vital to any change from the system which now exists.

²⁹ Excerpts from written testimony addressed to committee from Mr. Leonard Horwin.

³⁰ The individuals who formed this committee at the beginning were: Hon. Joseph A. Sprinkle, Judge, Pasadena Judicial District, and Chairman of the Municipal Court Judges' Association, Los Angeles County, Mr. John R. Leach, Assistant Chief Administrative Officer, Los Angeles County, Mr. Leonard Horwin, Mayor pro Tem, Beverly Hills, and Chairman of the Committee on Municipal Court Consolidation, Los Angeles Division of California Cities, Mr. Eugene Didak, Attorney, Administrative Office of the Courts, Mr. Jay Michael, Assistant to the Director, League of California Cities, and Mr. Bernard B. Nebenzahl, Consultant, Assembly Interim Committee on Judiciary.

³¹ *Ibid.*

Diligence and dedication are the hallmark of that special group. Each view was well represented. Although no organizational or municipal approach has been reached at this writing of those items discussed, it is worthwhile to point out areas that were identified as those which the group felt were basic to the municipal court problems in Los Angeles:

1. Maintenance of existing physical location wherever possible. Retention of the existing number and boundary of districts except from time to time, as circumstances require (population, caseload) to permit a change upon the approval of majority of municipal judges in county including those within the area affected where there is also consent of city government affected. The board of supervisors shall decide where there would be less than unanimous consent of cities affected by greater than two-thirds consent was obtained.

2. Desirability of countywide uniformity where needed.

- a. Court rules.
- b. Uniform bail schedule.
- c. Personnel rules.
- d. Mutual traffic indexing system.
- e. Jury selection and instructions.
- f. Indexing and recordkeeping.

Areawide transferability of,

- a. Contested cases of long duration.
- b. Judges to adjust to judicial surplus time.

The areas of tentative exploration also set forth the manner for possible implementation of changes:

1. Obligatory effect of uniform rules changes as set out in 2 above, upon agreement of majority of judges.

2. Selection of a presiding judge to so implement with sufficient staff.

3. Desirability of making areas in which transfers of cases and judges can be made coextensive with superior court branches.

4. Suggestion of presiding judge for areas who could transfer within area where appropriate to gain prompt trial and full use of judicial manpower, assignment of judge to other court within same areas.

It should be pointed out that there were several points of basic conflict. The representatives of the cities insisted that the constitutional provision requiring election of judges from the district would be diluted and ineffective if the district became coextensive with the county. The fear expressed was that the judge would not then be as responsive to public reaction as he would in smaller districts, and that in effect it would be almost guaranteeing an incumbent lifelong tenure.

Another concern was there would be too great a centralization and too extensive a control exercised over judges and cases. Such centralization would promote inefficiency and reduce the quality of justice. These objections are value judgments and do not necessarily seem to be supported by factual evidence presented.

Conclusion and Recommendation

This committee, while recognizing its responsibility pursuant to the California Constitution and appropriate statutes requiring the Legislature to set salaries, qualifications, and determine the number of judges, officers and attachés, also recognizes the statutory responsibility placed on the boards of supervisors to determine the districting for municipal court purposes within the respective counties, and further, that it is the county that must sustain the financial burden of operation of these courts and payment of the personnel who operate them including the judicial staff.

Thus, with an appreciation for the dual relationship that exists between the county and the State Legislature, it is the recommendation of this committee that it defer any specific suggestion of change of the local municipal and justice court structure of Los Angeles County until there has been a firm recommendation by the Los Angeles County Board of Supervisors based upon public hearings and conferences held by this committee and a local working committee with a clear indication that it is within the judgment of the board that the courts should be reorganized in order to achieve maximum efficiency in the county administration of justice.

ATTACHMENTS, GARNISHMENTS AND EXEMPTIONS

Introduction

House Resolution 268 (1963) called for study of the existing California laws exempting personal property from attachment and execution of judgment, and for a study of the changes in California's population and credit structure which may have a bearing on revision of the law.

Credit simply allows people to acquire and use items before they make full payment. As is the case with everything else, credit can be used and abused. Extension of credit in the United States and California has expanded tremendously in the past two decades. According to the Federal Reserve Bulletin, the total consumer credit outstanding in 1962 was 16.6 percent of the total disposable income, while in 1940, the figure was only 10.9 percent. Increase of personal or consumer bankruptcies in the United States indicates that the extended use of credit is accompanied by abuse. The Consumer Counsel of California, Mrs. Helen Nelson, has noted that between 1946 and 1963 the total number of all bankruptcies in the United States rose from 10,000 to 147,780, and that 9 out of 10 of the 1963 bankruptcies were family bankruptcies. Mrs. Nelson cited the following five factors as contributing to the bankruptcy problem: (1) Consumers try to live beyond their means. (2) Merchants are extending too much credit because of their desire to sell. (3) Finance companies make loans without full investigation of the applicant. (4) Manufacturers are forcing dealers to accept low down payments. (5) Credit extenders use some misleading practices when granting credit and loans.

A change in the law of exemptions cannot be a comprehensive program to deal with the factors named by Mrs. Nelson. However, exemption law can be tailored to accomplish three things:

1. Adequately protect the debtor from sinking to an even more hopeless financial position because of seizures of his property and wages.

2. Encourage the creditor to be more careful in selection of his credit risks.

3. Aid the debtor to work out a financial program which will liquidate his present debts.

Summary of suggestions and proposals submitted

The committee held a hearing in June 1964, and in addition it received comments through the mail and reviewed recent articles and studies on credit problems. Some people feel that the primary need is simply to modernize the code by eliminating many of the "horse and buggy" specific exemptions. Others believe that a modernization should be accompanied by increases in the protections given to the debtor. On the other hand there have been some statements that even the present protections are too great. It was suggested that the basic procedures of attachment should be modified to require that the creditor give the debtor more adequate notice of his exemption rights, and that the overextended debtor be given simplified means

of declaring his existing debts and obtaining protection as he attempts to liquidate them.

The following 14 proposals were received and considered by the committee:

1. A comprehensive revision of the exemption law which would give all persons the same basic exemptions in place of the numerous specific exemptions under the present code. Each person would be granted a basic exemption of \$4,000 property plus half of his earnings. This exemption would *increase to \$20,000 property plus all earnings* if he files a debt liquidation plan with a court. No creditor could avail himself of attachment, execution or garnishment remedies unless he has notified the debtor of his rights.

2. Exempt *all* earnings of a judgment debtor. (Assemblyman Foran, AB 2332, 1963, and Assemblyman Ferrell, AB 2808, 1963.)

3. Exempt *75 percent of a debtor's earnings*. (Assemblyman Foran, AB 2278.)

4. Exempt the *minimum wage* from attachment and garnishment. (Vincent Thorpe, Assistant Attorney General in charge of consumer frauds.)

5. *Limit* the creditor's attachment of wages to 10 percent of debtor's wages every month, with the provision that there will be automatic reattachment every month until debt is paid. This is similar to New York law. (Assemblyman Willson, hearing June 23, 1964.)

6. *Limit successive attachments* to once every 30 days. (Robert C. Kopriva, Associated Credit Bureaus of California, at hearing on June 23.)

7. *Exempt all wages if required for necessities* regardless of the type of the previous debt, including those cases where the debts are for common necessities of life. (Amend Civil Code 690.11, 2nd paragraph, suggested by Elwood M. Rich, Municipal Court Judge, Riverside, in a letter to the committee.)

8. *Exempt a straight \$5,000* worth of property rather than specific exemptions. (Mr. Kopriva, June 23.)

9. Enact some *legal prohibition* against the employer's *firing* of the employee because of wage garnishment. (Assemblyman Marks, June 23.)

10. *Repeal the savings and loan exemption* (Code of Civil Procedures 690.21). (Mr. Kopriva, June 23, and Assemblyman Thelin, AB 1458, 1963.)

11. *Prohibit garnishment of wages* or make it substantially more difficult. (George Brunn of the Association of California Consumers.)

12. *Repeal the special exemption for seaman's wages* and make it part of Section 690.11. (Sherman, Weissman and Meyers, counsel.)

13. Establish a *dollar* rather than a percentage exemption in Code of Civil Procedures 690.11. (Richard Don Agay, attorney.)

14. Establish a way for the creditor to be able to reach expensive leased automobiles. (Richard Don Agay.)

Arguments favoring and opposing greater protection to debtors

The committee discovered a definite conflict of views on whether the debtor's protections by way of exemptions and notice requirements should be increased.

One of the arguments in favor of great protection is that the debtor who is liable to have his assets reached is usually in bad shape financially and that to take what he has will make his financial condition worse. This is particularly true with respect to wages, where the debtor's ability to continue to support himself and his family is cut back by attachments or garnishments. Attachment of wages presents a special problem, and that is loss of employment. The California Labor Federation research director, Don Vial, stated, "... it is common knowledge that attachment (of wages) frequently leads to discharge of employment and loss of ability to pay debt. The fear of this consequence of attachment is a real factor that causes a debtor to take the course of bankruptcy . . ." Creditor organizations are aware of the problem, also. Robert C. Kopriva of the Associated Credit Bureaus of California stated, "I certainly agree that I don't think you should push the poor debtor against the wall and just keep hitting him, all the time. I would say you might want to consider whether or not an attachment on wages should be limited to, say, once every 30 days or once every 45 days or once every 20 days."

Present law gives the debtor's wages some protection, but in most cases only 50 percent of the wages are exempt. California law does not protect the debtor against the dire consequence of loss of job because of garnishment, although a recent amendment to the Code of Civil Procedure 690.11 does give the debtor some help in that it at least requires notice to him prior to a filing for garnishment.

Another argument in favor of greater protection is that it will encourage the creditors to be more careful in selection of credit risks. If the creditor knows that he will not be able to apply extreme pressures to the overextended debtor, he will be more careful to select debtors who are not liable to become overextended.

An argument against establishing greater protections by way of exemptions is that this will cut back on the ability to grant credit. Mr. Kopriva stated his view that "no doubt the consumer credit economy is one of the things that makes California one of the greatest states, and it is (because of) the laws that enable creditors to safely grant credit that we have a real surging economy in this state. I feel that if we make more exemptions in our laws, what would actually happen is that the people that are entitled to credit would be unable to get it because the credit grantor . . . is not going to be able to grant credit."

Closely tied in with this argument is the second one which emphasizes the increase in bad debt losses which the creditor will suffer with increased exemptions. Commercial credit grantors and incidental credit grantors such as small businesses and professionals both express concern that they will not be able to collect their bills. A San Diego dentist stated in a letter, "Debtors' wages are not attached indiscriminately, but only after considerable time and effort has been expended attempting to collect by other means. The bad debt rate in California is extremely high and I feel that action such as this (increasing exemptions) would certainly accelerate it."

Equal exemption protection and notice to debtors of their rights

Two other problems were of particular concern. One was the lack of equality and uniformity in the present exemption law. The Code of Civil Procedure presently contains a list of specific exemptions which sprawls over 10 pages. A look at the code section headings reveals the following exemptions as examples of the present approach: household furniture, farm equipment, mechanical equipment, prosthetic appliances, fisherman's equipment, poultry, seamen's wages, nautical instruments, arms and uniforms, and so forth. The specific exemptions do not guarantee everyone a certain minimum which will be protected, but only protect persons depending upon what type of items they own. This scheme protects in varying measures rather than equally.

The second problem is apprising debtors of their rights. A member of the Attorney General's office pointed out that many debtors do not know what rights they presently have. In some cases this can be attributed to lack of education, but the more fundamental reason which would apply in almost every case is that the laws are complex and difficult to understand. Thus the committee has received suggestions that the procedures for obtaining exemption protection be simplified and that improved means for giving notice of rights be established. One suggestion was that the debtor be allowed to file a very simplified claim of exemption with the clerk of the court rather than file an affidavit specifying code sections with the levying officer, as is presently required. It has also been suggested that the creditor be required to give the debtor notice of his exemption rights prior to commencing any action involving attachment, garnishment, or execution.

Conclusion. The committee concludes that a revision of the law which will increase the debtor's protection by way of exemption and which will make that protection more modern and equal will be of benefit to both debtors and creditors. This conclusion reflects the underlying fact that neither debtor nor creditor benefits when the debtor is financially crippled. A more powerful exemption law will help keep the debtor from sinking further into a financial abyss and losing his job. At the same time it will protect the creditors to the extent that it allows the debtor to keep going and to avoid bankruptcy. Incidental credit grantors such as doctors, lawyers and small businessmen lose when a small loan company garnishes wages and causes the debtor to be fired or run for bankruptcy. A law with more exemption protection will encourage the commercial credit grantors to be more careful in choosing their credit risks. If the creditor will do this, he will reduce his bad debt losses. This induced care may result in some reduction of overall credit granted, but the reduction will probably be small and will be justified by the decrease in human misery caused by extreme credit problems. Finally, an exemption law can be tailored to encourage the debtor to find a program which will help him to find his way out of a bad financial situation and into a better one.

Recommendation. The committee recommends that the proposals contained in this report and any additional proposals which come to light be studied carefully in order to arrive at a suitable revision of the exemption laws.

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ASSEMBLY INTERIM COMMITTEE REPORTS 1963-1965

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FINAL REPORT OF THE ASSEMBLY INTERIM COMMITTEE ON JUDICIARY RELATING TO DOMESTIC RELATIONS

(January 11, 1965)

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GEORGE A. WILLSON, *Chairman*

HARVEY JOHNSON, *Vice Chairman*

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GEORGE E. DANIELSON

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OF THE STATE OF CALIFORNIA

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HON. ROBERT MONAGAN
Minority Floor Leader

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Chief Clerk

LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE on JUDICIARY

GEORGE A. WILLSON, *Chairman*

January 11, 1965

HON. JESSE M. UNRUH
Speaker of the Assembly and
Members of the Assembly
Assembly Chamber, State Capitol
Sacramento, California

Gentlemen:

Pursuant to House Resolution No. 500 of the 1963 Regular Legislative Session, the Assembly Interim Committee on Judiciary submits herewith its final report on Domestic Relations.

To all those who contributed to its deliberations, the committee wishes to express its gratitude.

Respectfully submitted,

GEORGE A. WILLSON, *Chairman*
HARVEY JOHNSON, *Vice Chairman*

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HOUSE RESOLUTION NO. 500

(Assembly Journal, June 11, 1963, page 5232)

Relative to constituting certain standing committees
of the Assembly as interim committees

Resolved by the Assembly of the State of California as follows:

1. The following standing committees of the Assembly are hereby constituted Assembly interim committees and are authorized and directed to ascertain, study and analyze all facts relating to (1) the subjects and matters assigned to them by this resolution; (2) any subjects or matters referred to them by the Assembly; (3) any subjects or matters related to (1) or (2) which the Committee on Rules shall assign to them upon request of the Assembly or upon its own initiative:

(1) The Committee on Judiciary is assigned the subject matter in the Civil Code, the Code of Civil Procedure and the Probate Code, uncodified laws relating to civil matters, and other matters relating to the civil law and procedure of the State.

PREFACE

In the preparation of this final report on domestic relations an attempt has been made, in each of the several parts down to the section entitled *Findings and Recommendations*, to reflect accurately not only the testimony presented to the committee but also the basis for many of the positions taken by the witnesses in their testimony. Thus in several of the parts of this report, data and viewpoints referred to by the witnesses have been included in order to more adequately support and explain their position. The views advanced by the various witnesses or the background support referred to do not necessarily reflect the position of the committee. Footnote documentation has been utilized as much as possible to permit the reader to extend his study in the various areas considered in the hearings. The committee was fortunate to have appear before it many leading authorities on matters pertaining to family life and law. On occasion some of their statements appear without documentary support, relying on their source as adequate support.

The following members have expressed reservations or dissents from certain aspects of this final report as follows:

Mr. Johnson does not concur in the proposal for a certificate of divorce registry.

Mr. Johnson and Mr. Marks do not agree with the proposal for a waiting period for youthful applicants for marriage licenses, and Mr. Foran has expressed his reservation.

Mr. Dannemeyer does not concur in the proposal for encouraging family life education in the public schools.

Mr. Z'berg has expressed his reservation and Mr. Stevens his objection to the proposed amendment of the statutory rape law designed to reduce the coercive effect of that statute toward the contracting of undesirable marriages.

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Part 1

DIVORCE REGISTRY CERTIFICATE *

I. INTRODUCTION

Adequate, accurate and accessible information about divorces, annulments, and legal separations¹ is of vital importance to the persons involved, legislators who must make important decisions relating thereto, and scholars and researchers attempting to aid the solution of marriage and divorce problems through collection and analysis of relevant data. Beyond the legal importance of information for individual cases, there has been and continues to be a growing demand from many professional fields, including the law, for statistical information on the trends and general characteristics of marriage and divorce in this country and in California. Unfortunately, both the United States in general, and California in particular, have less adequate marriage and divorce statistics than most other countries of the western world to aid in obtaining objective facts about trends and problems related to marriage and divorce, and to measure the effects of changes in matrimonial laws upon the family.

Two systems of filing divorce records are used in the United States.² In all states, the basic documents pertaining to divorces are kept in the dockets of the court by which the decree was granted. In approximately 15 states, the local system of filing divorce records is the only source of information. In the other states the law requires a "statistical record" of each divorce, which may contain basic identifying information relating to the decree, to the marriage being dissolved and to the parties concerned. This record is preserved in central files maintained by the state in the state office of vital statistics, as are central files of birth, death and marriage records.

As against a system of local filing of divorce records, a system of statewide files has several important advantages. First, it provides either a central reference service for persons who need documentary evidence of the decree from the county in which it occurred or it permits a single agency to certify to the fact of a divorce. Secondly, it makes statistical information from the public divorce records more readily available to public and private agencies, groups and individuals who are in need of such information for policy formulation, legislation and scientific research.

For these reasons the National Office of Vital Statistics in recent years initiated a comprehensive program aimed at the improvement of

* This part of the final report is based on testimony presented to the Assembly Interim Committee on Judiciary in its hearings on domestic relations in Sacramento, August 13, 14, 1964.

¹ Hereafter divorces, annulments and legal separations will all be referred to as divorces.

² Much of this information was taken from Rheinstein and Plateris: "The Importance of Central Files of Divorce Records," *American Bar Associated Journal*, December 1960.

national divorce statistics. Beginning in January 1958 a Divorce Registration Area (DRA) was inaugurated, along the same basic lines previously developed for Birth, Death and Marriage Registration Areas. The maintenance of statewide central files of divorce records, however, lags markedly behind that of records of other vital events, resulting in inconvenience, delay, and unnecessary expense to the legal profession and the public in verifying the occurrence of a divorce. Today the Birth and Death Registration Areas include all states, the Marriage Registration Area includes most states, and the Divorce Registration Area includes approximately 18 states. In October 1961 the Board of Governors of the American Bar Association adopted a resolution, at the recommendation of its family law section, (1) endorsing the establishment and maintenance of state files of marriage and divorce records in all states, (2) urging all states to take steps to qualify for participation in the Marriage and Divorce Registration Areas, and (3) supporting the adoption in all states of necessary legislation to accomplish these purposes.³

II. PRESENT CALIFORNIA SITUATION

Although the vital statistics registration of births, deaths and marriages has been in effect in California since 1905, the void of substantive information relative to divorcees is conspicuous by its absence. While the majority of states have procedures for the central registry of divorcees, the State of California *does not have* basic vital statistics information relative to divorce actions occurring within the state. The present reporting system in California gives little more than a total count of final decrees entered for each county. It does not serve effectively *either* the purpose of a statewide index or to furnish basic vital statistics data relative to this important event in our society. From the standpoint of national vital statistics reporting, California is one of several states which is not considered to have adequate basic vital statistics information relative to divorcees so as to permit its participation in the National Office of Vital Statistics Divorce Registration Program.

In order to be included in the National Divorce Registration Area, each state must meet certain established criteria concerning the records and the reporting of divorce decrees. These criteria are:

1. A state must maintain central files of divorce records.
2. All local areas within the state must report regularly to the central state office.
3. A record form containing a specified minimum set of statistical items must be employed.⁴
4. An agreement between the state office and the National Office of Vital Statistics in joint testing of registration completeness and accuracy.

³ Proceedings of the Board of Governors, American Bar Association, October 19, 20, 1961, p. 18 and Exhibit H.

⁴ The items required were developed by the Public Health Conference on Records and Statistics, a cooperative conference of the Public Health Service and the several state departments of health.

While approximately 35 states maintain central state files of divorces, California is one of those states which does not have an acceptable report form, as required by the third criterion. A glance at California's present reporting form⁵ clearly indicates its inadequacy. Seven items only are solicited: (1) the name of the husband, (2) the maiden name of the wife, (3) the date the decree was entered, (4) the case number, (5) the county, (6) the date of the report, and (7) the name of the county clerk and the deputy who executed and filed the form. Execution of this form is performed by the county clerks, based on the information contained in the various documents filed by the parties to a divorce action. The maiden name of the wife is seldom obtained in these documents and hence cannot be inserted by the clerks. The bound volumes prepared from these forms by the Bureau of Vital Statistics and distributed to each county, listing all final divorce decrees granted each year, are therefore unable to record this information.

Some additional items are required to be set forth in the complaint, according to Section 426a of the Code of Civil Procedure, "for the statistics required to be collected by the State Bureau of Vital Statistics" but these items of information remain in the files in the county clerk's office and are not transmitted to the Bureau of Vital Statistics. These latter items are six in number: (1) the state or county in which the parties were married; (2) the date of marriage; (3) the date of separation; (4) the number of years from marriage to separation; (5) the number of children of the marriage, if any, and if none a statement of that fact; and (6) the ages of the minor children.

III. INADEQUACIES OF PRESENT PROCEDURES

Testimony received by the committee in its interim studies of marriage and divorce problems indicated there is a *minimal* number of things which can be said about divorce in California. Among these are the statements first, that we have a high divorce rate, and second, that we know practically nothing about it. The second statement is illustrated with reference to the first. Although we know we have a high divorce rate, which we share with the other western states, we don't know exactly how high it is. We don't know the rate exactly because a divorce rate is a complicated matter. Measuring the number of divorces granted against the number of marriages which occurred in the same time interval among a group with the characteristics of the California population is a perilous undertaking. So is any attempt to compare such a ratio to another state for it must be noted that California's population is comprised of a large influx of people already married and a substantial but temporary efflux of residents migrating to sister states for the purpose of marriage. While we presumably know the number of divorces granted in this state, we do not know how many of these are resident here only for the minimal period required for jurisdictional purposes,⁶ nor how many Californians get divorces else-

⁵ State of California Department of Public Health, Form VS-243.

⁶ "A divorce must not be granted unless the plaintiff has been a resident of the state one year, and of the county in which the action is brought three months, next preceding the commencement of the action . . ." Civil Code Sec. 128.

where, such as in Mexico and Nevada. Divorce rates must be calculated against the population exposed to the risk of getting a divorce—namely the married population—not against the total population, which includes many single and widowed or divorced persons. The rate, then, should include those divorces obtained by Californians who temporarily sojourn to neighboring states or countries for the purpose of obtaining a divorce.

If the sheer rate itself is difficult to know from the information we presently have, most other things about divorce in this state are either extremely difficult or impossible to know accurately. We do not know, for example, with scientific, statistical accuracy, to what extent those getting divorces have been divorced before, the number of cases contested, the ages of the parties, what economic groups they represent, what part of the country they have come to California from, how long they have been in California, etc. We have no information about those individuals who file for a divorce and then do not proceed any further, nor about those who obtain an interlocutory decree and then do not return to obtain the final decree. In short, we do not have even the most elementary knowledge of divorce in California, although the civil status of the population and its regulation is an important part of the state government. The fundamental difficulty is that our information machinery does not match our jurisdictional powers and responsibility. Since the state governments have jurisdiction over marriage and divorce, it is their duty, if they are to carry out their responsibilities in this matter effectively and fairly, to see that basic information is obtained on marriages and divorces as these occur in the state.

In a recent study of marriage and divorce in San Francisco during 1963⁷ only four variables were available to the sociologist: place and duration of marriage and number and age of children. Even from this limited data, however, a number of useful, though tenuous, conclusions could be drawn. When considering the effects of hasty migratory marriage on domestic divorce problems, legislators are aided by even the limited data revealed by the San Francisco study. This research indicated that there was a 13 percent greater chance of divorce within one year if the marriage was contracted in Reno (as compared to all of the marriages terminated in San Francisco during 1963) and a 10 percent greater chance of divorce within one year if the marriage was contracted in Reno as compared to those marriages which were contracted in San Francisco.⁸ It can be hypothesized that most of the Reno marriages which ended in divorce in San Francisco were contracted by San Franciscans, who sojourned briefly in that city for the purpose of marriage, as opposed to the view that the parties involved were Reno residents who later migrated to San Francisco. The data on stability of Reno marriages, then, supports the contention that marriages contracted in a hasty fashion, with little or no serious preparation, do not involve a substantial commitment to the marriage by the parties and hence are highly unstable.

While 7,000 marriage licenses were issued in San Francisco in 1963 and 3,000 divorce actions filed, it is clear that 3,000 of 7,000 San Francisco marriages do not end in divorce. But as the data situation exists

⁷ See Appendix A.

⁸ See Appendix A, Table IX.

now, we have no way of knowing exactly how many San Francisco marriages do end in divorce, at what ages they occur, in general, what kind of population is involved. Not only is such information vital for those in the social sciences who are trying to understand social problems of this nature, but any attempts to reform divorce laws, to take preventive measures before marriages come to the courts or to provide conciliation services once they have reached the courts can only be successful if we know for *whom* such measures need to be tailored. Faced with a problem as complex as marriage and divorce, legislators need much additional information than is presently available from our existing forms and procedures. A single additional item, such as "age at marriage" would permit the sociologist to readily document and summarize the extent of the "teenage marriage" problem.

Our present system of recording information about divorce in this state also denies California the benefit of scholarly research on a comparative basis. Testimony was received about a noted anthropologist who came to California for a year's study of divorce in the American culture. Beginning his work by perusing the official records which we keep at county and state levels, he found the data so sketchy he soon gave up this part of his research and went directly to the field for personal interviews. Had our records been more complete, he may have been able to establish a broad foundation of solid information about the entire state on which to build his more intensive analysis. As it is, his work is proceeding much more slowly than anticipated and is thus far more limited than had been anticipated.

Most special studies, aiming to answer some specific question or set of questions about divorce, need information which could be readily obtained wholly or in part from the registration statistics, if these were available. For example, a four-year study of the impact of early marriage upon college achievement and occupational preparation of youth is just beginning at one of our northern California colleges. Seeking to test the hypothesis that the earlier the marriage the less chance there is for talented youth to move through a full and complete college career and on to their anticipated occupational goals, and hypothesizing that the relationship between early marriage and college will vary by social class, size of town and high school, and the character of the kinship families, this study will need a broad base of statewide information against which to make meaningful comparisons and projections. In essence, any study needs to know the extent to which it reflects the statewide population or differs from it. It needs to know the extent to which its highly selected sample is representative of the state as a whole. A "bench mark" is needed for every study, either for the purposes of selecting a representative sample or comparing the sample population actually used with the statewide population.

In addition, if basic data is available through more adequate registration procedures it would be possible to match the divorce, the marriage, and the birth records. One could in this way obtain information, for example, on the question whether premarital pregnancy is a predisposing condition of divorce, whether the presence of children is or is not a deterrent, and whether the place and circumstances of marriages are related to marital disruption. In short, without basic data on divorce, little research is possible. With such data, a great deal is pos-

sible. Avenues are opened up to getting much more information on causes and trends, both in terms of government, university and private research which would enable legislation with respect to divorce to be much more enlightened and hence much more effective.

IV. PROPOSED ALTERNATIVE PROCEDURE

A. *Information to Be Obtained*

The California Department of Public Health, Bureau of Vital Statistics, working in conjunction with the committee's special consultant on domestic relations, the California State Bar Family Law Committee, and the California Association of County Clerks, has proposed that the following basic vital statistics information relative to divorce be obtained:

1. *Case identification*
 - a. Type of complaint
 - b. County of filing
 - c. Date filed
 - d. Case number
2. *Husband and wife*
 - a. Full name (maiden name of wife)
 - b. Date of birth (age)
 - c. Present address
 - d. Length of stay in California (in years)
 - e. Birthplace (state or foreign country)
 - f. Social Security number
 - g. Occupation—industry
 - h. Highest school grade completed
 - i. Color or race
 - j. Religious denomination
 - k. Number of previous marriages dissolved by death, divorce, or annulment
3. *The marriage*
 - a. Place and date of marriage
 - b. Names, birthplaces, and birthdates of living children of this marriage (born or adopted)
 - c. Usual residence at time of separation
 - d. Date of separation
4. *Legal grounds on which complaint filed*
5. *Certification of above facts (2, 3 and 4) by plaintiff*
6. *Name and address of attorney for plaintiff*
7. *Information relative to decree (to be completed by county clerk)*
 - a. Type of decree or other disposition
 - b. Date entered
 - c. To whom decree granted
 - d. Action contested (yes or no)
 - e. If divorce decree, date interlocutory decree granted
 - f. Certification of court action by county clerk

The format and content of the proposed forms is included in Appendix B. Drafts of the enabling legislation are set forth in Appendix C.

B. Reporting Methodology

The methodology to be used in this reporting system is a modification of that presently being used effectively in other aspects of California's vital statistics registration system, i.e., in the reporting relative to adoptions and marriages.

The information is furnished by the individuals involved at the time of filing the original complaint (together with the required fee) in a three-part document (original and two carbons):

Original—Certificate of Registry of Final Decree of Divorce, or Final Decree of Annulment or Separate Maintenance

Duplicate—Clerk of Court's Record

Triplicate—Preliminary Report of Filing of Complaint for Divorce, Annulment or Separate Maintenance

The above three-part record is to be completed in Sections 1 through 6 above, i.e., case identification, information relative to the husband and wife, the marriage, the legal grounds on which complaint is filed, the certification of above facts by plaintiff, and the name and address of attorney for plaintiff, utilizing information furnished by the plaintiff to the attorney prior to the filing of the action.

This three-part record is to be required to be filed at the time of the filing of the original complaint, upon record forms required to be prescribed and furnished by the State Registrar of Vital Statistics.

The *Preliminary Report of Filing of Complaint for Divorce, Annulment or Separate Maintenance* (triplicate copy) would be transmitted currently by the county clerk to the State Registrar of Vital Statistics to serve as current information on the characteristics of actions filed.

The *Certificate of Registry of Final Decree of Divorce, or Decree of Annulment or Separate Maintenance* (original copy) is to be completed by the county clerk at the time the final decree or dismissal, if any, is entered and transmitted to the Bureau of Vital Statistics, and would serve as the permanent legal record of the action.

The *Clerk of Court's Record* (duplicate copy) would serve as the local record.

In addition, the county clerk will forward monthly to the Bureau of Vital Statistics, a listing of all interlocutory decrees entered in that county the prior month. Thus inquiry to the Bureau of Vital Statistics would reveal the existence of any interlocutory or final decree entered anywhere in the state, a matter to which the bureau could certify based on the information contained in their records. A similar certification, of course, could be obtained from the local county clerk's office.

In any event, certifications would exclude information relative to occupation, highest school grade completed, color or race, religious denomination, previous marriages, and children and provision is made that none of these records will be open to public inspection. Maintaining this degree of confidentiality of the information reported on the certifi-

icate was considered essential to the acquisition of complete, accurate information. The records and the information contained on the certificates will be accessible to qualified persons with a valid educational or scientific research interest upon approval of the State Registrar of Vital Statistics and without cost to the state or local offices concerned.

C. Costs

Examination of the costs of financing this proposal by both the Department of Public Health, Bureau of Vital Statistics and the California County Clerks' Association indicates that an increase of \$1 in the present \$1 filing costs for a final decree would cover the administrative costs connected with this proposal. County clerks and members of the bar are presently having considerable difficulty resulting from omissions of the \$1 filing fee for final decrees. The county clerks cannot file such final decrees until the \$1 fee is obtained and handling costs and inconvenience to attorneys and the public in the many cases where the filing fee is omitted exceeds the monetary amount involved. Hence it is proposed that the new \$2 filing fee be paid at the time of filing the initial complaint, under the new reporting procedure which is applicable to those cases in which the initial complaint is filed after January 1, 1966, and that the \$1 fee and the old reporting procedures remain as is for cases in which the initial complaint action was filed prior to January 1, 1966, and on which final decrees may eventually be entered. When a request to enter the final decree is subsequently made, both the county clerks and the bar will be spared the inconvenience of tendering the modest fee required at that time as is now required under the present law.

It is recognized that a substantial number of cases do not proceed to the entering of the final decree or dismissal. This group of individuals is of especial interest to those concerned with marriage and divorce problems and the filing methodology outlined above will permit identification of this group, determination of its size and will facilitate research designed to ascertain the factors involved in the change of direction which occurred subsequent to the original filing for divorce.

V. BENEFITS TO BE REALIZED BY PROPOSAL

A complete understanding of the causes of and cures for marital discord will not be forthcoming from acquisition of the basic, vital statistics information to be gathered pursuant to this proposal. However, the professional opinions voiced at its hearings indicated to the committee that not even a beginning can be made along the road to such understanding unless systematic data is collected about the people experiencing marital problems in California. With relation to such other vital events in the lives of our citizens as birth, marriage, adoption, and death we are already collecting in this state, as in most states of the United States, much more extensive information which has provided the basis for very significant social research and judicious legislation. The information requested, none of which represents an innovation in data collection at the federal, state or local level will enhance immeasurably the value of studies in the area of divorce.

The data requested is unequivocal in a legal or demographic sense. It will enable comparison of California trends, characteristics and developments with other states, which cannot be done now. But, in addition, this basic system of judicial and vital statistical reporting will give much more understanding of California trends and cases in themselves. It will permit ascertaining the extent to which divorce is chronic; whether the popularized Hollywood divorce practices are typical; to what extent different occupational, educational and social groups have different proclivities for divorce; to identify and obtain a profile of these individuals who start divorce actions but do not carry them through to an interlocutory or final decree. Such information will permit assessment of the role of the small town and rural environment on marital success as compared with the larger city and metropolitan area. Occupation and educational data will permit comparative analysis of the relation of social class to divorce. Marital age data will permit documentation of the effects of youthful marriage on marital stability. An effective central index will permit economical proof of divorces granted within the state, a necessary fact in establishing freedom to remarry, and a frequent important item in determining succession of property, pension rights, insurance claims, social security benefits, wrongful death awards, and numerous tax considerations. Business organizations, chambers of commerce and institutions for marketing research constitute a large percentage of the users of marriage and divorce statistics in order to make estimates of the future demand for various types of merchandise requiring information about the number and characteristics of families and married couples.

A study of the persons engaged in research using divorce statistics, reported in the American Bar Association *Journal*,⁹ indicated the largest percentage were affiliated with colleges or universities, on the faculties teaching sociology, law, political science, business, psychology, economics, social work and home economics. The largest group among the college and university teachers were sociologists; the second largest, teachers of law. The same study indicated that divorce statistics are used in at least seven different categories of research. These include jurisprudence and sociology of law; development of legislative proposals; the combined field of demography and sociology encompassing studies on demographic trends in family formation and dissolution, and in the number of households and families, demographic and social factors associated with divorce trends, characteristics of the divorced population, children affected by family dissolution, participation of women in the labor force, and composition of households and families. Another substantial group was involved in sociopsychological research dealing with attitudes or detailed personal problems associated with family dissolution. Others use divorce statistics in training and teaching programs, studies concerning administrative policy, program needs, projections of program loads, community service needs, judicial and court programs, family counseling, and child welfare programs.

⁹ See footnote 2, *supra*.

VI. FINDINGS AND RECOMMENDATION

Findings:

1. Present reporting procedures for divorce, annulments, separate maintenance are wholly inadequate to serve the basic needs of the individuals concerned, legislators, scholars and researchers who require accurate, accessible information.
2. The absence of a proper reporting process precludes obtaining adequate insight into the many ramifications of our marriage and divorce problems and results in excessive costs to the legal profession and their clients.

Recommendation:

1. The committee recommends that legislation be enacted which will obtain the necessary information in an economical and efficient manner, through the utilization of a certificate of divorce registry which is similar to the certificates which elicit vital information about other important events in life such as birth, marriage, adoption, and death.

The reporting procedure recommended by the committee has been worked out in conjunction with the State Bar Family Law Committee and the Bureau of Vital Statistics. The increased cost of administering this program will be offset by a \$1 increase in the filing fee for a final divorce decree, raising the current cost from \$1 to \$2. These funds will also cover the cost of the Bureau of Vital Statistics preparing various reports reflecting the data collected.

In order to insure a review of the utilization which is made of this document, the committee recommends an initial adoption period of four years.

Part 1

Appendix A

DIVORCE IN SAN FRANCISCO: 1963

By: Dr. Ralph Lane

Chairman: Department of Sociology
University of San Francisco

During the year 1963 approximately 3,000 cases of divorce, separate maintenance and annulment were brought to the courts of the City and County of San Francisco. In that same year 7,022 marriage licenses were issued. As the accompanying tables indicate, not all the cases suing for divorce, separation or annulment were brought by those married in San Francisco, but it might very well be inferred that a minimum of one out of seven marriages between San Franciscans is likely to end in divorce. And, if one makes certain assumptions about the number of San Franciscans who go to Reno to be married, the number of potential marriage failures might be significantly higher. Suffice it to say that the size of the divorce "problem" is of a large enough order to warrant systematic investigation of the conditions under which it occurs.

The tables which serve as an appendix to these remarks present data on 664 (20 percent) of the divorce, separation and annulment cases selected at random from the files of the county clerk's office.¹ The purpose of the study was to establish, on the basis of the limited data available,² some kind of a profile of the population which ends up in the courts with a view to termination of marriage. It is hoped that the findings presented will be of value to those in the domestic relations department in whatever preventive program they may be able to undertake.

THE FINDINGS

It can be seen from Table I that there are two significant populations about whom some further assertions should be made, that is, those married in San Francisco (31.0 percent) and those married in Reno (22.0 percent). Now Table II indicates that those married less than one year (20.0 percent) are greater terminating risks, and similarly those married over two but less than five years (20 percent), than those married for other periods of time. One might add the 15.0 percent married over five but less than eight years to the latter category to dramatize the importance of some kind of adjustment which apparently takes place between the third and ninth years of marriage.

¹ The data was collected by Miss Mary Bischoff and Miss Mary Judge under the supervision of Dr. Jack Curtis and Dr. Ralph Lane, Department of Sociology, University of San Francisco. Thanks are due to Mr. Lewis Ohleyer, Domestic Relations Commissioner, for his assistance and to the county clerk's office for their cooperation.

² As with all official records, the items for study which are available are limited to the legal purposes for which they are collected and are not intended to provide the sociologist with a readymade laboratory, as desirable as that state of affairs might be.

Table III adds another dimension to the profile, for here we see that childless marriages are poor risks since they account for 48 percent of the cases. Adding those with one or two children, it appears that the overwhelming number of cases (82 percent) are associated with low fertility populations to begin with.

Now turning to the case of the duration of San Francisco marriages, it appears from Table IV that the first year is slightly less stable (23.2 percent) than the average and similarly the two- to five- and five- to eight-year marriages are less stable. But as is seen in Table V the instability of the first year of marriage is even more striking in the case of those who are married in Reno, 33.0 percent as opposed to the average of 20.0 percent for all the cases. See Table IX for a recapitulation comparing San Francisco and Reno marriages with the data for all marriages computed together. On the other hand, once the Reno marriages have gone beyond the first year, unlike those from San Francisco, the risk of termination seems to be about the same or slightly less than those married elsewhere.

With regard to the third to eighth year of marriage it has been hypothesized that childlessness might be a more crucial factor here, but Table VIII indicates that in the over two years and under five years neither the San Francisco nor the Reno marriages are characterized by lower fertility.

Finally, if one looks at Table VI it can be seen that San Francisco marriages ending up in court are roughly as childless as those from other localities. Table VII indicates that Reno marriages among these cases have much lower fertility but that is a function, of course, of so many marriages terminating in the first year.

What remains to be said, then, in summation is that considerably more needs to be known about the crucial period from over two years to less than eight years. Why this should be a time of particular adjustment cannot be inferred from the data at hand. One suspects that childlessness might have a significant influence but it is obviously not the sole force since childlessness all throughout married life seems to be very highly correlated with termination action. If one believes Reno marriages are contracted in a hasty fashion, with little or no serious preparation, then this is apparently borne out by the data, and one suspects that this same hastiness accounts for so much of the termination in the first year for all marriages. Other studies have indicated that teenage marriages have a high termination rate in the first year for this very reason.

It is hoped that much more data than that which is contained in legal briefs can be made available to investigators so that more than these tenuous generalizations might be drawn from them.

Table I
DISTRIBUTION OF DIVORCES BY PLACE OF MARRIAGE

<i>Place</i>	<i>Total</i>	<i>Percentage</i>
Total	664	100.0
San Francisco	209	31.0
California	77	11.6
Reno	146	22.0
Nevada	47	7.0
Western United States, including, Washington, Oregon, Idaho, Montana, Utah, Wyoming, Colorado, Hawaii	29	4.0
Remaining United States	100	15.0
Foreign	53	8.0
Information not given	3	0.4

Table II
DURATION OF MARRIAGE

<i>Length</i>	<i>Total</i>	<i>Percentage</i>
Total	664	100.0
0- 5.9 months	80	12.0
6-11.9 months	52	8.0
12-17.9 months	47	7.0
18-23.9 months	25	4.0
2- 4.9 years	133	20.0
5- 7.9 years	96	15.0
8-11.9 years	60	9.0
12-14.9 years	62	9.0
15-19.9 years	53	8.0
20-24.9 years	29	4.0
25-29.9 years	7	1.0
30-34.9 years	7	1.0
35-39.9 years	2	0.3
40-51.0 years	1	0.2
Information not given	10	1.5

Table III
OCCURRENCE OF CHILDREN IN MARRIAGES

<i>Number of children</i>	<i>Number of marriages</i>	<i>Percentage</i>
Total	664	100.0
0	318	48.0
1	125	19.0
2	95	15.0
3	56	8.2
4	17	3.0
5	14	2.0
6	8	1.0
7	3	0.4
8	1	0.2
9	1	0.2
Information not given	22	3.0

Table IV
DURATION OF SAN FRANCISCO MARRIAGES

<i>Length</i>	<i>Total</i>	<i>Percentage</i>
0- 5.9 months	35	16.0
6-11.9 months	15	7.2
12-17.9 months	20	9.6
18-23.9 months	6	2.8
2- 4.9 years	50	24.0
5- 7.9 years	25	12.0
8-11.9 years	10	5.0
12-14.9 years	13	6.2
15-19.9 years	19	9.1
20-24.9 years	8	4.0
25-29.9 years	2	0.9
30-34.9 years	2	0.9
35-39.9 years	1	0.4
40-51.0 years	1	0.4
Information not given	2	0.9
Total	209	100.0

Table V
DURATION OF RENO MARRIAGES

<i>Length</i>	<i>Total</i>	<i>Percentage</i>
0- 5.9 months	39	27.0
6-11.9 months	9	6.0
12-17.9 months	8	6.0
18-23.9 months	7	5.0
2- 4.9 years	27	18.0
5- 7.9 years	20	14.0
8-11.9 years	13	9.0
12-14.9 years	13	9.0
15-19.9 years	3	2.0
20-24.9 years	2	1.0
25-29.9 years	-	-
30-34.9 years	-	-
35-39.9 years	-	-
40-51.0 years	-	-
Information not given	5	3.0
Total	146	100.0

Table VI
OCCURRENCE OF CHILDREN IN SAN FRANCISCO MARRIAGES

<i>Number of children</i>	<i>Number of marriages</i>	<i>Percentage</i>
Total	209	100.0
0	95	45.0
1	47	22.0
2	22	10.0
3	21	10.0
4	6	3.0
5	8	4.0
6	3	2.0
7	1	0.5
8	1	0.5
9	-	-
Information not given	5	2.0

Table VII
OCCURRENCE OF CHILDREN IN RENO MARRIAGES

<i>Number of children</i>	<i>Number of marriages</i>	<i>Percentage</i>
Total	146	100.0
0	83	57.0
1	26	18.0
2	19	13.0
3	6	4.3
4	1	0.7
5	2	1.0
6	—	—
7	—	—
8	—	—
9	—	—
Information not given	9	6.0

Table VIII
OCCURRENCE OF CHILDREN IN RENO AND SAN FRANCISCO MARRIAGES
WHICH TERMINATED BETWEEN 2 AND 4.9 YEARS

<i>Number of children</i>	<i>San Francisco marriages</i>	<i>Reno marriages</i>
0	25	17
1	13	6
2	6	3
3	6	2
4	—	—
5	1	—
6	1	—
7	—	—
8	—	—
9	—	—
Information not given	1	1
Total	53	29

Table IX
DURATION OF ALL MARRIAGES AND THOSE CONTRACTED IN SAN
FRANCISCO AND RENO, AS INDICATED BY THE
PERCENT OF THOSE DISSOLVED *

<i>Length</i>	<i>All marriages</i>	<i>San Francisco marriages</i>	<i>Reno marriages</i>
0-1 year	20%	23%	33%
1-2 years	(+ 11%) = 31%	(+ 13%) = 36%	(+ 11%) = 44%
2-5 years	(+ 20%) = 51%	(+ 24%) = 60%	(+ 18%) = 52%
5-8 years	(+ 15%) = 66%	(+ 12%) = 72%	(+ 14%) = 66%

* There is an insignificant variance with the figures in prior tables due to rounding off decimals.

Part 1 Appendix B

Appendix B
Page 1

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Appropriate Instructions and
Excerpts From Codes Involved

STATE FILE NUMBER		CERTIFICATE OF REGISTRY OF FINAL DECREE OF DIVORCE OR DECREE OF ANNULMENT OR SEPARATE MAINTENANCE				TO BE COMPLETED BY COUNTY CLERK	
		1. TYPE OF COMPLAINT (SPECIFY DIVORCE, ANNULMENT OR SEPARATE MAINTENANCE)		2. COUNTY IN WHICH ACTION FILED		3. CASE NUMBER	
		4. DATE COMPLAINT FILED—MONTH DAY YEAR					
HUSBAND PERSONAL DATA	5a. NAME OF HUSBAND—FIRST NAME		5b. MIDDLE NAME	5c. LAST NAME		6. DATE OF BIRTH—MONTH DAY YEAR	
	7a. PRESENT ADDRESS—STREET AND NUMBER		7b. CITY OR TOWN	7c. COUNTY (IF OUTSIDE CALIFORNIA, GIVE STATE)		7d. LENGTH OF STAY IN CALIFORNIA YEARS	
	8. BIRTHPLACE (STATE OR FOREIGN COUNTRY)	9. SOCIAL SECURITY NUMBER		10a. PRESENT OR LAST OCCUPATION		10b. KIND OF BUSINESS OR INDUSTRY	
	11. HIGHEST SCHOOL GRADE COMPLETED	12. COLOR OR RACE		13. RELIGIOUS DENOMINATION		14. NUMBER OF PREVIOUS MARRIAGES DISSOLVED BY ANNUL DIVORCE WEDD	
WIFE PERSONAL DATA	15a. MAIDEN NAME OF WIFE—FIRST NAME		15b. MIDDLE NAME	15c. LAST NAME		16. DATE OF BIRTH—MONTH DAY YEAR	
	17a. PRESENT ADDRESS—STREET AND NUMBER		17b. CITY OR TOWN	17c. COUNTY (IF OUTSIDE CALIFORNIA, GIVE STATE)		17d. LENGTH OF STAY IN CALIFORNIA YEARS	
	18. BIRTHPLACE (STATE OR FOREIGN COUNTRY)	19. SOCIAL SECURITY NUMBER		20a. PRESENT OR LAST OCCUPATION		20b. KIND OF BUSINESS OR INDUSTRY	
	21. HIGHEST SCHOOL GRADE COMPLETED	22. COLOR OR RACE		23. RELIGIOUS DENOMINATION		24. NUMBER OF PREVIOUS MARRIAGES DISSOLVED BY ANNUL DIVORCE WEDD	
PLACE AND DATE OF MARRIAGE		25a. PLACE OF MARRIAGE—CITY OR TOWN		25b. COUNTY (IF OUTSIDE CALIFORNIA, GIVE STATE)		26. DATE OF MARRIAGE—MONTH DAY YEAR	
LIVING CHILDREN OF THIS MARRIAGE		27. NAMES BIRTHPLACES AND BIRTHDATES OF LIVING CHILDREN OF THIS MARRIAGE (BORN OR ADOPTED)					
		FIRST NAME AND MIDDLE INITIAL		PLACE OF BIRTH STATE OR FOREIGN COUNTRY	DATE OF BIRTH MONTH DAY YEAR		FIRST NAME AND MIDDLE INITIAL
SEPARATION		28a. RESIDENCE AT TIME OF SEPARATION—CITY OR TOWN		28b. COUNTY (IF OUTSIDE CALIFORNIA, GIVE STATE)		29. DATE OF SEPARATION—MONTH DAY YEAR	
LEGAL GROUNDS FOR COMPLAINT		30. LEGAL GROUNDS ON WHICH COMPLAINT FILED					
CERTIFICATION OF PLAINTIFF		I have reviewed the above stated information and hereby certify that it is true and correct to the best of my knowl- edge and belief		31a. SIGNATURE OF PLAINTIFF		31b. DATE OF SIGNATURE	
ATTORNEY FOR PLAINTIFF		32. NAME OF ATTORNEY FOR PLAINTIFF		33. ADDRESS—STREET AND NUMBER		CITY STATE	
CERTIFICATION OF COURT ACTION BY COUNTY CLERK		34a. TYPE OF DECREE OR OTHER DISPOSITION SPECIFY FINAL DIVORCE ANNULMENT SEPARATE MAINTENANCE OR DISMISSED		34b. DATE ENTERED		34c. DECREE GRANTED TO SPECIFY HUSBAND WIFE OR BOTH	
		35. ACTION CONTESTED? SPECIFY YES OR NO		36. IF DIVORCE ACTION DATE INTERDICTORY DECREE ENTERED		37. COUNTY CLERK	
		I hereby certify that a judgment has been entered granting the type of decree specified in item 34.		38		DEPUTY	
				BY			

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH

PROPOSED FORM NO. 100-221

(Carbon Paper Attached To Top Tear-Off Margin)

Appendix B
Page 2

(2nd Page)

(Size of Form After Top Margin Torn Off: 8 1/2" x 11")

Date of initial hearing:	
Month Form VS-243c forwarded to State Registrar:	By ▶
Month Form VS-243a forwarded to State Registrar:	By ▶

CLERK-OF-COURT'S RECORD OF DIVORCE, ANNULMENT OR SEPARATE MAINTENANCE ACTION				(IF PL. OFFICER OF CIVIL & CRIM. JUSTICE)	
STATE FILE NUMBER	1 TYPE OF COMPLAINT (SPECIFY DIVORCE, ANNULMENT OR SEPARATE MAINTENANCE)	2 COUNTY IN WHICH ACTION FILED	3 CASE NUMBER	4 DATE COMPLAINT FILED—MONTH DAY YEAR	
HUSBAND PERSONAL DATA	5a NAME OF HUSBAND—FIRST NAME	5b MIDDLE NAME	5c LAST NAME	6 DATE OF BIRTH—MONTH DAY YEAR	
	7a PRESENT ADDRESS—STREET AND NUMBER	7b CITY OR TOWN	7c COUNTY (IF OUTSIDE CALIFORNIA, GIVE STATE)	7d LENGTH OF STAY IN CALIFORNIA	YEARS
	8 BIRTHPLACE (STATE OR FOREIGN COUNTRY)	9 SOCIAL SECURITY NUMBER	10a PRESENT OR LAST OCCUPATION	10b KIND OF BUSINESS OR INDUSTRY	
	11 HIGHEST SCHOOL GRADE COMPLETED	12 COLOR OR RACE	13 RELIGIOUS DENOMINATION	14 NUMBER OF PREVIOUS MARRIAGES DISSOLVED BY DEATH _____ DIVORCE _____ MENT _____	
	15a MAIDEN NAME OF WIFE—FIRST NAME	15b MIDDLE NAME	15c LAST NAME	16 DATE OF BIRTH—MONTH DAY YEAR	
WIFE PERSONAL DATA	17a PRESENT ADDRESS—STREET AND NUMBER	17b CITY OR TOWN	17c COUNTY (IF OUTSIDE CALIFORNIA, GIVE STATE)	17d LENGTH OF STAY IN CALIFORNIA	YEARS
	18 BIRTHPLACE (STATE OR FOREIGN COUNTRY)	19 SOCIAL SECURITY NUMBER	20a PRESENT OR LAST OCCUPATION	20b KIND OF BUSINESS OR INDUSTRY	
	21 HIGHEST SCHOOL GRADE COMPLETED	22 COLOR OR RACE	23 RELIGIOUS DENOMINATION	24 NUMBER OF PREVIOUS MARRIAGES DISSOLVED BY DEATH _____ DIVORCE _____ MENT _____	
PLACE AND DATE OF MARRIAGE	25a PLACE OF MARRIAGE—CITY OR TOWN	25b COUNTY (IF OUTSIDE CALIFORNIA, GIVE STATE)		26 DATE OF MARRIAGE—MONTH DAY YEAR	
LIVING CHILDREN OF THIS MARRIAGE	27 NAMES, BIRTHPLACES AND BIRTHDATES OF LIVING CHILDREN OF THIS MARRIAGE (BORN OR ADOPTED)				
	FIRST NAME AND MIDDLE INITIAL	PLACE OF BIRTH (STATE OR FOREIGN COUNTRY)	DATE OF BIRTH MONTH DAY YEAR	FIRST NAME AND MIDDLE INITIAL	PLACE OF BIRTH (STATE OR FOREIGN COUNTRY)
SEPARATION	28a RESIDENCE AT TIME OF SEPARATION—CITY OR TOWN	28b COUNTY (IF OUTSIDE CALIFORNIA, GIVE STATE)		29 DATE OF SEPARATION—MONTH DAY YEAR	
LEGAL GROUNDS FOR COMPLAINT	30 LEGAL GROUNDS ON WHICH COMPLAINT FILED				
CERTIFICATION OF PLAINTIFF	I have reviewed the above stated information and hereby certify that it is true and correct to the best of my knowledge and belief.		31a SIGNATURE OF PLAINTIFF		31b DATE OF SIGNATURE
ATTORNEY FOR PLAINTIFF	32 NAME OF ATTORNEY FOR PLAINTIFF	33 ADDRESS—STREET AND NUMBER		CITY	STATE
CERTIFICATION OF COURT ACTION BY COUNTY CLERK	34a TYPE OF DECREE OR OTHER DISPOSITION (SPECIFY FINAL DIVORCE, ANNULMENT, SEPARATE MAINTENANCE OR OTHERWISE)		34b DATE ENTERED		34c DECREE GRANTED TO (SPECIFY HUSBAND, WIFE OR BOTH)
	35 ACTION CONTESTED? (SPECIFY YES OR NO)		36 IF DIVORCE ACTION, DATE INTERLOCUTORY DECREE ENTERED		37 COUNTY CLERK
	I hereby certify that a judgment has been entered granting the type of decree specified in item 34.				38 BY ▶ DEPUTY

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH

PROPOSED FORM 100-243

(Carbon Paper Attached To Top Tear-Off Margin)

(3rd Page)

(Size of Form After Top Margin Torn Off: 8½" x 11")

Appropriate Instructions and
Excerpts From Codes Involved

STATE FILE NUMBER		PRELIMINARY REPORT OF FILING OF COMPLAINT FOR DIVORCE, ANNULMENT OR SEPARATE MAINTENANCE				JUDICIAL DISTRICT COURT, COUNTY	
		1. TYPE OF COMPLAINT (SPECIFY DIVORCE, ANNULMENT OR SEPARATE MAINTENANCE)		2. COUNTY IN WHICH ACTION FILED		3. CASE NUMBER	
HUSBAND PERSONAL DATA	5A. NAME OF HUSBAND—FIRST NAME	5B. MIDDLE NAME	5C. LAST NAME	8. DATE OF BIRTH—MONTH DAY YEAR			
	7A. PRESENT ADDRESS—STREET AND NUMBER	7B. CITY OR TOWN	7C. COUNTY (IF OUTSIDE CALIFORNIA, GIVE STATE)	7D. LENGTH OF STAY IN CALIFORNIA	YEARS		
	8. BIRTHPLACE (STATE OR FOREIGN COUNTRY)	9. SOCIAL SECURITY NUMBER	10A. PRESENT OR LAST OCCUPATION	10B. KIND OF BUSINESS OR INDUSTRY			
	11. HIGHEST SCHOOL GRADE COMPLETED	12. COLOR OR RACE	13. RELIGIOUS DENOMINATION	14. NUMBER OF PREVIOUS MARRIAGES DISSOLVED BY ANNULMENT DIVORCE MISTAKE			
	15A. MAIDEN NAME OF WIFE—FIRST NAME	15B. MIDDLE NAME	15C. LAST NAME	16. DATE OF BIRTH—MONTH DAY YEAR			
WIFE PERSONAL DATA	17A. PRESENT ADDRESS—STREET AND NUMBER	17B. CITY OR TOWN	17C. COUNTY (IF OUTSIDE CALIFORNIA, GIVE STATE)	17D. LENGTH OF STAY IN CALIFORNIA	YEARS		
	18. BIRTHPLACE (STATE OR FOREIGN COUNTRY)	19. SOCIAL SECURITY NUMBER	20A. PRESENT OR LAST OCCUPATION	20B. KIND OF BUSINESS OR INDUSTRY			
	21. HIGHEST SCHOOL GRADE COMPLETED	22. COLOR OR RACE	23. RELIGIOUS DENOMINATION	24. NUMBER OF PREVIOUS MARRIAGES DISSOLVED BY ANNULMENT DIVORCE MISTAKE			
	25A. PLACE OF MARRIAGE—CITY OR TOWN	25B. COUNTY (IF OUTSIDE CALIFORNIA, GIVE STATE)	26. DATE OF MARRIAGE—MONTH DAY YEAR				
PLACE AND DATE OF MARRIAGE	27. NAMES, BIRTHPLACES AND BIRTHDATES OF LIVING CHILDREN OF THIS MARRIAGE (BORN OR ADOPTED)						
LIVING CHILDREN OF THIS MARRIAGE	FIRST NAME		PLACE OF BIRTH	DATE OF BIRTH			
	LAST NAME INITIAL		STATE OR FOREIGN COUNTRY	MONTH DAY YEAR			
SEPARATION	28A. RESIDENCE AT TIME OF SEPARATION—CITY OR TOWN	28B. COUNTY (IF OUTSIDE CALIFORNIA, GIVE STATE)	29. DATE OF SEPARATION—MONTH DAY YEAR				
LEGAL GROUNDS FOR COMPLAINT	30. LEGAL GROUNDS ON WHICH COMPLAINT FILED						
CERTIFICATION OF PLAINTIFF	I have reviewed the above stated information and hereby certify that it is true and correct to the best of my knowledge and belief.			31A. SIGNATURE OF PLAINTIFF		31B. DATE OF SIGNATURE	
ATTORNEY FOR PLAINTIFF	32. NAME OF ATTORNEY FOR PLAINTIFF		33. ADDRESS—STREET AND NUMBER		CITY	STATE	
CERTIFICATION BY COUNTY CLERK	I hereby certify that this is a true copy of the information filed with the complaint under the above identified case on the date specified.			34. COUNTY CLERK		35. BY	DEPUTY
STATE REGISTRAR							

BANK OF AMERICA NATIONAL ASSOCIATION

PROPOSED FOR JUDICIAL

Appendix B
Page 4Appropriate Instructions and
Excerpts From Codes Involved

ATTORNEY'S RECORD OF DIVORCE, ANNULMENT OR SEPARATE MAINTENANCE INFORMATION						3 CASE NUMBER
1 TYPE OF COMPLAINT (SPECIFY DIVORCE, ANNULMENT OR SEPARATE MAINTENANCE)					4 DATE COMPLAINT FILED—MONTH DAY YEAR	
HUSBAND PERSONAL DATA	5A NAME OF HUSBAND—FIRST NAME		5B MIDDLE NAME	5C LAST NAME	6 DATE OF BIRTH—MONTH DAY YEAR	
	7A PRESENT ADDRESS—STREET AND NUMBER		7B CITY OR TOWN		7C COUNTY (IF OUTSIDE CALIFORNIA, GIVE STATE)	
	8 BIRTHPLACE (STATE OR FOREIGN COUNTRY)	9 SOCIAL SECURITY NUMBER		10A PRESENT OR LAST OCCUPATION	10B KIND OF BUSINESS OR INDUSTRY	
	11 HIGHEST SCHOOL GRADE COMPLETED	12 COLOR OR RACE		13 RELIGIOUS DENOMINATION		14 NUMBER OF PREVIOUS MARRIAGES DISSOLVED BY DEATH DIVORCE ANNUL MENT YEARS
WIFE PERSONAL DATA	15A MAIDEN NAME OF WIFE—FIRST NAME		15B MIDDLE NAME	15C LAST NAME	16 DATE OF BIRTH—MONTH DAY YEAR	
	17A PRESENT ADDRESS—STREET AND NUMBER		17B CITY OR TOWN		17C COUNTY (IF OUTSIDE CALIFORNIA, GIVE STATE)	
	18 BIRTHPLACE (STATE OR FOREIGN COUNTRY)	19 SOCIAL SECURITY NUMBER		20A PRESENT OR LAST OCCUPATION	20B KIND OF BUSINESS OR INDUSTRY	
	21 HIGHEST SCHOOL GRADE COMPLETED	22 COLOR OR RACE		23 RELIGIOUS DENOMINATION		24 NUMBER OF PREVIOUS MARRIAGES DISSOLVED BY DEATH DIVORCE ANNUL MENT YEARS
PLACE AND DATE OF MARRIAGE	25A PLACE OF MARRIAGE—CITY OR TOWN		25B COUNTY (IF OUTSIDE CALIFORNIA, GIVE STATE)		26 DATE OF MARRIAGE—MONTH DAY YEAR	
LIVING CHILDREN OF THIS MARRIAGE	27 NAMES, BIRTHPLACES, AND BIRTHDATES OF LIVING CHILDREN OF THIS MARRIAGE (BORN OR ADOPTED)					
	FIRST NAME AND MIDDLE INITIAL	PLACE OF BIRTH STATE OR FOREIGN COUNTRY	DATE OF BIRTH MONTH DAY YEAR	FIRST NAME AND MIDDLE INITIAL	PLACE OF BIRTH STATE OR FOREIGN COUNTRY	DATE OF BIRTH MONTH DAY YEAR
SEPARATION	28A RESIDENCE AT TIME OF SEPARATION—CITY OR TOWN		28B COUNTY (IF OUTSIDE CALIFORNIA, GIVE STATE)		29 DATE OF SEPARATION—MONTH DAY YEAR	
LEGAL GROUNDS FOR COMPLAINT	30 LEGAL GROUNDS ON WHICH COMPLAINT FILED					
CERTIFICATION OF PLAINTIFF	I have reviewed the above stated information and hereby certify that it is true and correct to the best of my knowledge and belief			31a SIGNATURE OF PLAINTIFF		31b DATE OF SIGNATURE
ATTORNEY'S NOTES						

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH

PROCESSING DIVISION

Part 1
Appendix C

SUMMARY OF BILL FORM DRAFT—DECEMBER 7, 1964

An act . . . relating to divorce, annulment and separate maintenance reports.

Sec. 1 provides that effective date is January 1, 1966.

Sec. 2, Sec. 4, and Sec. 6 provide that the old reporting procedure is limited to actions in which initial complaints were filed prior to January 1, 1966, and makes other minor revisions.

Sec. 3 amends Code of Civil Procedure to provide authority for revised reporting procedures, which will apply to actions in which the initial complaint is filed on and after January 1, 1966.

Sec. 5, Sec. 7, and Sec. 12 provide that the filing fee under the revised reporting procedure is \$2 and that it is legislative intent for this to substantially cover the costs of administration of this program in state and local offices and clarifies related matters.

Sec. 8 and Sec. 9 provide for minor revisions in present code sections.

Sec. 10 provides authority for disposition of preliminary reports after they have served their purpose.

Sec. 11 provides that certain items are excluded from certified copies or other certifications.

Sec. 13 provides basic outline for revised reporting procedures.

Article 1 covers general provisions and more specifically:

- a. Provides that the records are not open to public inspection;
- b. Provides that such records and all the information thereon are to be made available under stated conditions to appropriate educational and scientific research interests;
- c. Describes the general program of the office of the State Registrar of Vital Statistics in this field.

Article 2 covers duty of furnishing information.

Article 3 sets forth information to be reported.

Article 4 covers reporting procedures from the local offices to the office of the State Registrar of Vital Statistics.

BILL FORM DRAFT—DECEMBER 7, 1964

An act . . . relating to divorce, annulment and separate maintenance reports.

The people of the State of California do enact as follows:

SECTION 1. This act shall be effective January 1, 1966.

SEC. 2. Sections 89 and 134 of the Civil Code are amended to read:
89. No final judgment of annulment shall be entered after January 1, 1962, for cases in which the initial complaint was originally filed

prior to January 1, 1966, unless or until the party seeking the entry of the judgment has paid to the county clerk a fee of one dollar (\$1) for services of the clerk and the State Registrar of Vital Statistics in connection with the reports of annulments pursuant to Section ~~10360~~ 10372 of the Health and Safety Code.

134. No final judgment of divorce shall be entered after January 1, 1962, for cases in which the initial complaint was originally filed prior to January 1, 1966, unless and until the party seeking the entry of the judgment has paid to the county clerk a fee of one dollar (\$1) for services of the clerk and the State Registrar of Vital Statistics in connection with the reports of divorces pursuant to Section ~~10360~~ 10372 of the Health and Safety Code.

SEC. 3. Section 426a of the Code of Civil Procedure is amended to read:

426a. ~~(Statement of statistical facts in divorce complaint.)~~ In an action for divorce, annulment or separate maintenance, there shall be furnished by the plaintiff at the time of filing of the initial complaint, or within 10 days thereafter and before the date of the first hearing, that information ~~the complaint must set forth for the statistics~~ required to be collected by the ~~s~~ State ~~bureau~~ Registrar of ~~v~~ Vital ~~s~~ Statistics in the manner and as specified in Division 6 of the Health and Safety Code. If the required information is not furnished by the plaintiff, the defendant may instead furnish such information. The court may decline to hear any matter encompassed within the action or order that judgment not be entered therein, if such information has not been furnished and good cause for such failure has not been shown. Such report and the contents thereof shall not be admissible in evidence and shall not be inquired into in any action. ~~Among other matters as near as can be ascertained the following facts:~~

- (1) The state or country in which the parties were married.
- (2) The date of marriage.
- (3) The date of separation.
- (4) The number of years from marriage to separation.
- (5) The number of children of the marriage, if any, and if none a statement of that fact.
- (6) The ages of the minor children.

SEC. 4. Section 26859 of the Government Code is amended to read:

26859. Upon the payment of a fee of one dollar (\$1) the county clerk shall issue a receipt to any party in an action for divorce or annulment stating that such party has paid to him the fee of one dollar (\$1) for his services and the services of the State Registrar of Vital Statistics in connection with the reports of divorce or annulment pursuant to Section ~~10360~~ 10372 of the Health and Safety Code.

The county clerk by the 10th day of each month shall pay to the State Registrar of Vital Statistics ~~for deposit in the General Fund~~, one-half of all such fees collected during the immediately preceding month.

SEC. 5. Section 26860 of said code is added, to read:

26860. The fee for the filing of the vital statistics information required to be collected by Division 9 of the Health and Safety Code is two dollars (\$2) and shall be paid at the time of filing of each initial complaint action for divorce, annulment or separate maintenance.

The county clerk by the 10th day of each month shall pay to the State Registrar of Vital Statistics one-half of all such fees collected during the immediately preceding month.

SEC. 6. Section 10360 of the Health and Safety Code is renumbered and amended to read:

~~10360~~ 10372. The county clerk of each county shall make a report monthly to the State Registrar of every final decree of divorce or annulment which is filed with him after January 1, 1962, *for decrees in which the initial complaint was filed prior to January 1, 1966*. The report shall contain the names of the parties and the date the decree was entered.

SEC. 7. Section 10613 of said code is added, to read:

10613. *It is the intention of the Legislature that the amounts received under authority of Sections 26859 and 26860 of the Government Code shall substantially cover the costs of administering the requirements of Chapter 6.5 of this division by the offices of the State Registrar and the county clerks and that this matter be periodically reviewed in order that such adjustments as may be indicated can be made by the Legislature.*

SEC. 8. Section 10000 of said code is amended to read:

10000. Each live birth, fetal death, death, and marriage which occurs in the state shall be registered as provided in this ~~& D~~ division on the prescribed certificate forms. ~~In addition, a report of every final divorce or annulment decree shall be filed with the State Registrar, as provided in this division.~~

SEC. 9. Section 10000.1 is added to said code, to read:

10000.1. *In connection with each action for divorce, annulment or separate maintenance, there shall be filed with the State Registrar those reports and information as provided for in this division.*

SEC. 10. Section 10038 is added to said code, to read:

10038. *Notwithstanding any other provision of law relating to retention of public records, the State Registrar may cause the preliminary reports required to be reported under Chapter 6.5 of this division to be disposed of after five years from the date of filing of the initial complaint providing the final decree of divorce or decree of annulment or separate maintenance or dismissal has been filed as required.*

SEC. 11. Section 10584 is added to said code, to read:

10584. *Certified copies or certification of abstract information required to be filed under authority of Chapter 6.5 of this division in the offices of the State Registrar and county clerks shall not include information relative to occupation, highest school grade completed, color or race, religious denomination, previous marriages ended by death, divorce or annulment, and children.*

SEC. 12. Section 10601.1 is added to said code, to read:

10601.1. *The amounts received by the State Registrar relative to divorce, annulment and separate maintenance actions as provided under Sections 26859 and 26860 of the Government Code shall be deposited with the State Treasurer and shall be used to reimburse the support appropriation for the State Department of Public Health for costs of administering the requirements of Chapter 6.5 of this division.*

SEC. 13. The title of Chapter 6.5 of said code is amended to read:

CHAPTER 6.5. DIVORCE ~~AND~~, ANNULMENT AND SEPARATE
MAINTENANCE REPORTS

SEC. 14. Sections 10360, 10631, 10362, 10363, 10364, 10365, 10366, 10367, 10368, 10369, 10370, 10371 are added to said code, to read:

Article 1. General Provisions

10360. Preliminary reports of filing of complaint action for divorce, annulment or separate maintenance, information relative to interlocutory divorce decrees entered, and certificates of registry of final decrees of divorce and decrees of annulment and separate maintenance or dismissal shall be reported to the State Registrar upon forms prescribed and furnished by the State Registrar and in the manner prescribed in this division.

10361. The information required to be filed under this chapter in divorce, annulment, or separate maintenance actions, shall not be open to public inspection in the offices of the State Registrar or the county clerk. Nothing in this section shall be construed to preclude qualified persons with a valid educational, legislative or scientific research interest from having access to the records and the information included thereon, upon approval of the Office of the State Registrar of Vital Statistics and without cost to the state or local offices concerned.

10362. In addition to the general requirements of this division, the State Registrar shall prepare and publish such reports and information, conduct and cooperate in conducting such research and study as is necessary to appropriately report the facts as are required to be furnished under authority of this division and chapter relative to the subject of divorce, annulment and separate maintenance actions.

Article 2. Duty of Furnishing Information

10363. It shall be the duty of the plaintiff in any such action to furnish the required information in the prescribed manner to the county clerk at the time of filing the initial complaint action, or within 10 days thereafter and before the date of the first hearing.

Article 3. Information

10364. The preliminary report shall contain insofar as can be determined and ascertained the following and such other items as the State Registrar may designate:

(a) Type of complaint, county in which action filed, case number and date complaint filed;

(b) For husband and wife—full name (maiden name of wife), date of birth, present address, length of stay in California, birthplace, social security number, occupation, highest school grade completed, color or race, religious denomination, number of previous marriages dissolved by death, divorce or annulment;

(c) Place and date of marriage;

(d) Names, birthplaces and dates of birth of living children (born or adopted) of this marriage;

- (e) *Place and date of separation;*
- (f) *Legal grounds on which complaint is filed;*
- (g) *Certification of above facts by plaintiff;*
- (h) *Name and address of attorney for plaintiff; and*
- (i) *Certification of the county clerk.*

10365. *The information on interlocutory divorce decrees shall include the county in which complaint filed, case number, last name of husband, date initial complaint filed, and date interlocutory decree entered.*

10366. *The clerk-of-court's record and the certificate of registry of final decree of divorce, or the decree of annulment, separate maintenance or dismissal shall include, in addition to information specified in Section 10364, the type of decree, date decree entered, to whom decree granted, whether action was contested, date interlocutory decree entered if divorce action.*

10367. *In cases where more complete or accurate information required by this chapter becomes available to the plaintiff subsequent to the filing of initial complaint, complete revised information shall be filed with the county clerk. Such reports shall be handled in the same manner as had the information been furnished correctly as initially required.*

Article 4. Reporting to State Registrar

10368. *The county clerk shall transmit to the State Registrar on or before the fifth day of each month the preliminary reports of divorce, annulment or separate maintenance complaints accepted for filing by him during the previous month.*

10369. *The county clerk shall transmit to the State Registrar on or before the fifth day of each month the certificates of registry of final decrees of divorce, decrees of annulment, separate maintenance or dismissal on all such actions entered by him the previous month.*

10370. *The county clerk shall transmit to the State Registrar on or before the fifth day of each month that information as required for interlocutory divorce decrees entered during the previous month.*

10371. *In cases where a judgment of final decree of divorce or decree of annulment is vacated, the county clerk shall complete a report to this effect to the State Registrar, who shall file this report with the final decree of divorce or decree of annulment.*

Part 2

YOUTHFUL MARRIAGE AND PARENTHOOD: A THREAT TO FAMILY STABILITY *

I. INTRODUCTION

The family is a basic institution in our society. During the 19th century the family derived its strength from the multitude of functions that it performed for its individual members—economic, social, and cultural. In the last half-century many of these familial functions have disappeared entirely or have been seriously curtailed. The whole drift of a modern technological society appears at times to be away from the family as a fundamental social unit.

At the same time, it would seem that no other social unit or social organization is able to assume the most important function of the family, the nurture of the young. It is to this institution we entrust the most important responsibilities of life. Reliance is placed on the family to perform the functions of production, preparation, and guidance of our future generations, to establish the necessary and proper moral, social, and interpersonal framework for our society. The home and the family is the first social organization into which a child is brought. The sanctity, serenity, freedom, and organization of that unit will have a marked effect upon the personality and development of the child and upon his ability to become an effective and operative part of the community. A child first learns who he is through his relationship to his family. His mental and moral growth thereafter depends upon the stability of personal relationships, which only the family, at the present time, seems able to provide. To the extent that the family fails and degenerates, so shall our society, as we have known it, fail and degenerate.

From the present perspective, however, we seem to be witnessing the rapid dissolution of an institution which is yet indispensable. The seriousness of the problem is reflected in the many centers for the study of the family and in the many groups professionally concerned with sustaining it. But no social institution so complex as the family can be a matter for professionals only. In the last quarter-century much has been learned by professional investigators of familial problems, and much has been accomplished. But society as a whole must decide how it proposes to act upon the knowledge that modern research makes available. Knowledge cannot be automatically applied. It can only clarify the choices that must be made. Ultimately, the future of the family depends upon our ability to articulate, in some collective sort of way, our wishes in regard to it, in the light of the best knowledge available.

* This part of the final report is based on testimony presented before the Assembly Interim Committee on Judiciary in its hearings on domestic relations in Sacramento, August 13 and 14, 1964, and upon a report on education and counseling by a CORO Foundation Intern in Public Affairs.

Such decisions must be made with concern for the generations of the future and with the bearing that choices made today will have upon these generations.

II. THE PROBLEM

The family in today's world of complexity, mobility, urbanization, and confusion is definitely in need of assistance to assure that its proper role in the functioning of a free society be maintained. Its problems are many and its stability is constantly being threatened. The 1960 White House Conference on Children and Youth recognized that "in our complex society no family can be entirely responsible for its own destiny, and that marriage is a joint career requiring preparation to achieve success."¹

(A) Divorce Rates

One criteria of family success or failure is found in the rate at which the family unit is disrupted by divorce.² Our country has the highest divorce rate in the world—six times that of Canada, five times that of Great Britain, and four times that of France.³ Nationwide one out of every four marriages ends in divorce.⁴ In California there is one divorce for every two marriages,⁵ while in Sacramento County there are more than 6 divorces for every 10 marriages⁶ and in Napa County the divorce rate is more than 7 for every 10 marriages.⁷ If divorce *filings* are utilized as the indicia of family disorganization the rate for the entire State of California rises to 81 percent.⁸ For qualification of all of these figures see the discussion in Part I of this report. While it is true that many people migrate to California and then divorce, the resultant amelioration of our divorce rate does not diminish the magnitude of the problem which this state faces. If people who have failed in marriage migrate to California the task and the challenge becomes even more important because of the propensity toward divorce upon subsequent generations, i.e., upon the increased probability of divorce by the children of divorced parents.⁹

(B) Youthful Marriage and Premarital Pregnancies

Studies of census data show that the family is going through the family life cycle earlier today than ever before. Examination of the family life cycle—birth, courtship, marriage, the birth of children, children leaving home, grandparenthood—reveals that each stage of the cycle has been moved to an earlier age.¹⁰ People are marrying at younger and younger ages throughout the country.¹¹ The marriage rate has gone up for each age group, that is, the number of married 15-year-

¹ For the recommendations of the 1960 White House Conference on Children and Youth, see Appendix A.

² Annulment and separate maintenance is included within the term of divorce as indicative of family disruption.

³ *United Nations Demographic Yearbook, 1962*, pp. 604-8.

⁴ See Appendix B.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ See discussion below, Section C.

¹⁰ Paul C. Glick, "The Life Cycle of the Family," *Marriage and Family Living*, Vol. XVII, (February 1955), pp. 3-9.

¹¹ See Appendix C.

old girls has risen, the number of married 16-year-olds has risen, and so forth.¹²

The speeding-up of the life cycle has far-reaching implications for those interested in strengthening family life. The census data reveal that on an average women who divorce were married two years younger than women who do not divorce.¹³ That would mean that the typical divorcee first married at the age of 18. The highest divorce rate is in the age group married at 15 to 19. The divorce rate is three to four times higher among those married in their teens than among those married at later ages.^{13A} According to our measures of personality and family adjustment, teenagers who marry are more apt to reflect greater emotional instability than teenagers who do not marry. It is clear that teenage marriages tend to be the unstable marriages.¹⁴

Teenage marriages are also the most fertile marriages.¹⁵ With child marriages there is the problem of child parenthood. In 1962 57,500 babies were born to "child" mothers 12-19 years old in California.¹⁶ A substantial percentage of California marriages between two high school students involved premarital pregnancy. Studies place the incidence of premarital pregnancy among teenage brides from 30 to 50 percent. Pregnancy and marriage constitute a substantial cause of school drop-outs.

A generation ago two-thirds of divorcing couples in the United States had no children because having children was postponed for a few years after marriage. Today almost two-thirds of divorcing couples have children.¹⁷ The fact that more families are breaking up through divorce when the wife is between the ages of 20 and 25 than at any other 5-year period in life¹⁸ is evidence that young people are marrying and having children too soon and at such young ages they cannot cope with the responsibilities involved.

Nearly 300,000 children are being supported by the AFDC (formerly ANC) program in California and the majority of these are under 12 years of age.¹⁹ Of these families, three-fourths of the parents were estranged. Only one-twentieth (5 percent) of the families on ANC was due to death of the father. Of the disrupted families on ANC due to

¹² Lee G. Burchinal, "Research on Young Marriages: Implications for Family Life Education," *The Family Life Coordinator*, IX: 1-2 (September-December 1960), p. 9.

¹³ Bureau of the Census, *Current Population Reports, Population Characteristics*, Series P-20, No. 67 (May 2, 1956), p. 3.

^{13A} Landis and Landis: *Personal Adjustment: Marriage and Family Living*: page 151; Trends in Divorce and Family Disruption, August 1963, Health, Education and Welfare: Indicators: National Vital Statistics, Public Health Service. See Also Appendix D.

¹⁴ Judson T. and Mary G. Landis, *Building a Successful Marriage*, 4th Ed., Englewood Cliffs, N.J.: Prentice Hall, 1963. Also, Paul C. Glick, *American Families*, New York: John Wiley & Sons, Inc., 1957, chapter on "Stability of Marriage in Relation to Age at Marriage."

¹⁵ Metropolitan Life Insurance Company, *Statistical Bulletin*, 40, (June 1959) p. 5.

¹⁶ State of California, Department of Public Health, *Birth Records*, 1962 Approximately 600,000 babies were born to "child" mothers in the United States during 1962. The total number of births in California during 1962 was 361,198.

¹⁷ Paul Jacobsen, *American Marriage and Divorce*, New York: Holt, Rinehart and Winston, Inc., 1959.

¹⁸ Vital Statistics Of The United States, 1959, *Detailed Divorce and Annulment Statistics for the Divorce Registration Area*, Table 17, p. 85.

¹⁹ California Department of Social Welfare *Monthly Statistical Report*, September 1964.

estrangement, slightly more than 50 percent were due to divorce, separation, and desertion. Slightly less than 50 percent had never married.²⁰

(C) *Divorce Foredooms Divorce and Failure*

All studies of the growth and development of children and of the functioning of adults in society show a close relationship between the individual's functioning in society and the quality of the relationships within his family. Statistical studies of delinquency, crime, suicide and mental illness show that all these indices of personal failure that create problems for society are closely associated with the damaging relationships in failing families. Similarly, studies reveal those who are able to develop competence in coping with their personal problems and to handle their own crises in life are more likely to come from successful families.

According to all reliable research, those who have failed in one marriage are much more likely to fail in a second marriage, and if two people marry who have both been married two or more times before, close to 100 percent of these couples will fail in that third or fourth marriage. Not only do couples who fail in one marriage tend to fail in the second, but failing couples tend to condition their children in such a way that their children are more likely than others to fail in marriage.²¹

Evidence of the fact that families pass on success and failure is found in the history of divorce in families. Family histories of 2,000 students at the University of California, Berkeley, were collected, obtaining the marital histories of the grandparents, parents and aunts and uncles. The study revealed that if neither set of grandparents had divorced, 15 percent of their children had divorced; if one set of grandparents had divorced, 24 percent of their children had divorced; but if both sets of grandparents had divorced, 38 percent of their children had divorced.²² Other studies have shown a very close relationship between the failure of parents in marriage and failure of their children in marriage.

While divorce is not a very accurate measure of the success or failure of families, it is used because it is one objective criterion that does give some light in studying families. Another recent study emphasizes this point. In studying the maturation of 3,000 students, it was found that those youths from unhappy homes had received about the same adverse conditioning as had those from divorced homes.²³ In some respects those who had been reared in unhappy but unbroken homes had received more handicaps. Considering all the evidence, the conclusion is unassailable that unhappy homes and divorce predispose the offspring of the marriage to divorce and failure.

²⁰ State of California, Department of Social Welfare, *Characteristics of Recipients of Aid to Needy Children*, July 1962. The figure for 1962 was 249,318 children being supported by ANC; by October 1963 there were 268,540 children; the figure of 300,000 is the author's estimate for 1964.

²¹ Thomas P. Monahan, "The Changing Nature and Instability of Remarriages," *Eugenic Quarterly*, 5 (June 1958), pp. 73-85.

²² Judson T. Landis, "The Pattern of Divorce in Three Generations," *Social Forces*, 34 (3), (March 1956), pp. 213-216.

²³ Judson T. Landis, "Dating Maturation of Children from Happy and Unhappy Marriages," *Marriage and Family Living*, 25, (August 1963), pp. 351-353; and "A Comparison of Children from Divorced and Nondivorced Unhappy Marriages," *The Family Life Coordinator*, 11, (July 1962), p. 61-65.

(D) Costs of Family Failure

The committee received testimony that 75 percent of California families on AFDC are families that have failed and that it will cost the taxpayers over \$234,000,000 to support these families this year alone!²⁴ This expense can be expected to snowball because problem families repeat the pattern generation after generation. In 1950 and again in 1960 the University of North Carolina studied families who were recipients of the ANC program nationally. The researchers found that the majority of the recipients of ANC had grown up in families which had also received public assistance.²⁵ It was suggested that even a state with as many resources as California cannot afford this expenditure of human and economic wealth.

Certainly the state must consider the human values as well as monetary costs. A very substantial number of youth and adult delinquents who come into contact with the law enforcement agencies, before the judiciary, and to our correctional agencies come from broken homes. While the suffering inflicted by marital disintegration cannot be measured neatly in dollars and cents, the emotional cost is great. The economic cost to the state is staggering when measured in terms of the costs of the many services which are furnished to the fragmented members of a family which has failed. A four-year prison term, for example, costs the taxpayer three times more than it costs to educate a child completely through four years of high school.²⁶

III. PROPOSED SOLUTIONS

(A) Long-term Solutions

1. INCREASED EMPHASIS ON EDUCATIONAL COURSES ON MARRIAGE AND FAMILY LIVING

In considering solutions to the vast divorce problem confronting this state, the committee was fortunate to have suggestions submitted to it which were based on several decades of research and study of the factors associated with successful marriage and parenthood. Testimony was received during the course of the committee's hearings that if the only approach to marriage problems is one of remedial efforts such as the conciliation courts, fine as that may be, the state will be fighting a losing battle. Whether the illness is physical or marital the time to confront that illness most successfully is before it occurs. But examination of the existing programs which are presently being carried out in the State of California in both private and public institutions, such as the church, family service agencies, conciliation courts, juvenile courts, Department of Social Welfare, schools, interested organizations, commissions and conferences leads to the generalization that all are extremely limited by one of several means: lack of time, insufficient use, insufficient funds, insufficient staff, insufficient interest, lack of emphasis or just outright ignorance of the problems involved.

²⁴ State of California, Department of Social Welfare, *Characteristics of Recipients of Aid to Needy Children*, July 1962, p. 20. The costs during July 1962 were \$14,000,000 or \$161.40 per family per month. In October 1963 the costs were \$15,000,000 per month or \$180,000,000 per year (note Statistical Series, PA3-49).

²⁵ M. Elaine Burgess and Daniel O. Price, *An American Dependency Challenge*, Durham, North Carolina: Seeman Printing, 1963, p. 235.

²⁶ 1961-1962: It costs on the average of \$536 for a student in high school for a year, or \$2,144 for four years (Research Division, Department of Education). It costs on the average of \$1,717 a year for a ward in the prisons, or \$6,868 for four years. (Department of Corrections, Fiscal Officer.)

As a positive approach to building better marriages it was asserted that one of the greatest needs today is education which will delay youth in their rush to pseudomaturity, marriage and parenthood before they are old enough to cope with either. It was suggested that California launch upon a program designed to aid youth in making successful marriages and in becoming intelligent parents, on the basis that the greatest hope lies in prevention through a program of education rather than in rehabilitation after a marital relationship has degenerated. The view taken was that in considering programs to strengthen family life in California, especially when considering long-term programs, emphasis should be placed on the goal of helping our people build better marriages since it is the unhappy home which destroys children. Whether these unhappy marriages are ended by divorce or continue is not the key consideration. Divorce reform, conciliation courts, AFDC programs, homes for delinquents, etc., are necessary to take care of the end product of unhappy and divorced families. But if more stable and wholesome marriages could be obtained many of the rehabilitative and supportive efforts could be reduced or eliminated. Since disintegration of the family becomes a serious social problem, society can no longer rest content to allow each family the sole privilege of preparing its children for the complexities of marriage.

(a) *Primary Responsibility*

Primary responsibility for educating youth about those factors which are related to more successful marriages without question lies with the parents. But all research confirms the common knowledge that a great void exists in communication between parent and child in this important area. The closeness of the relation and the sensitive nature of the subject seem to effectively preclude transmission of whatever knowledge and experience is possessed by one generation to their offspring. The problem has been compared to the abortive efforts of a husband attempting to teach his wife how to drive, compounded many times over. It may well be that education of one's children in this area is best accomplished by competently trained strangers. It was also noted that the nuclear family is already required by law to discharge its obligation to educate its children in other areas by sending them to state-approved schools.

(b) *Secondary Approach*

The second line of defense would normally be the churches. The clergy has long been relied upon to assist and counsel families and individuals in need. And many clergymen offer premarital counseling services of one sort or another. But a fundamental problem lies in the fact that many of our residents do not have any church affiliation, a situation which we share with the other western states. And of those with church affiliations, many do not attend regularly or contact their minister or rabbi concerning problems in this area. Unfortunately, also, is the fact that many clergy are untrained and inexperienced in offering effective family counseling. In too many cases a premarital conference amounts to nothing more than a rehearsal of the wedding procedures. The clergy in recent years has recognized its own shortcomings in this regard and much hope

can be placed in the fact that recent seminary graduates are required in their educational curriculum to participate in some clinical or other internship programs in pastoral counseling. And many religious groups are instituting comprehensive family life education programs such as the Catholic Cana and pre-Cana conferences designed for married and engaged couples.

Family service agencies offer a variety of services to the community in the area of marriage and family counseling, but while most of these agencies provide premarital counseling, few individuals utilize this service. The major portion of the staff time is spent in postmarital counseling, psychotherapy, child guidance, etc., although they make speakers available for schools and clubs.

(c) *Tertiary Approach*

The result of the existing situation, then, is that the third line of defense appears to be the only effective method of meeting the problem. This is our schools, which have a regular, structured relationship with youth over an extended period of time. It was on this foundation that it was recommended to the committee that a major step in coping with California's family failure problems is more adequate family life education for young people and adults in our school system. Adequate preparation for marriage and parenthood was deemed essential in a state characterized by high family failure. The available evidence suggested that the only way to educate the entire society for more successful marriage and parenthood is through a consistent, widespread program in the schools. This was grounded on the fact that even good homes often prove inadequate and a failing home cannot educate *against* its own failure, but unfortunately, educates its children *for* future failure.

2. THE SCHOOLS

* (a) *Past and Present Programs*

Within the public school system can be found a wide variety of approaches and reactions to family life education. Several years ago its popularity was extensive and many schools incorporated a unit on family life in a required senior problems course. However, more recently with increased attention to "pure" academics and the separation of academic disciplines brought about by the Casey Bill in 1961, many of these programs have either disappeared or diminished in emphasis.

(b) *Junior and Senior High Schools*

Continuing programs at the junior and senior high school level, however, can be found in various districts under many names in a numerous variety of departments. Some schools have retained some aspects of the senior problems course (social science department) with a brief unit on the family. In other schools one can find some sex education being offered in physical education or science courses, some money and home management in home economics courses, some concern for the total area in health education courses, and some consumer economics in business or social science

curriculums. Also there are a few senior homemaking courses which are offered coeducationally and deal with the total area. Furthermore, a few schools offer orientation courses to freshmen which include discussions of personal and family problems. Often the inclusion of any family life education is dependent upon the individual teacher and/or school administrator. (Parochial schools require four years of family life education for girls and a course for boys at the senior year as part of a religion course.)

In the October 1963 report of the Department of Education, a survey showed that in 1,061 junior and senior high schools, with a total of 1,014,316 students in attendance, only 42,575 students were exposed to courses in family life education in various areas of the social sciences.²⁷

(c) *Grammar Schools*

At the grammar school level there has been some development of family life education included in parts of the curriculum by use of more subliminal or subtle approaches. Some schools use play houses, animals, films, and comparative culture information to teach family life to this age group. Some have teaching guides which offer a problem solving approach for discussion at the elementary level (Alameda has such a program).

Some districts utilize films for parents and children in the area of sex education. A few districts emphasize the importance of parent, student, and teacher counseling in this area. The Berkeley school district offers a summer course to senior girls entitled "Philosophy for Senior Girls," which utilizes lectures and discussions. Part of this course touches upon the area of family life education under the general headings of "Choices, Inevitabilities, and Sources of Inner Strength." In many schools the P.T.A. is the sole moving force to sponsor family life programs.

(d) *Special Projects*

Special projects in the school system have given some attention to the counseling of youth in personal and family problem areas. One such project in San Bernardino involves special school counseling services for married students. Some schools employ trained social workers to assist in general noncurricular counseling matters. Such employment at present is extremely limited, however.²⁸

An interesting pilot project was recently done in Oregon to involve several school districts in a comprehensive family life education program. This project made use of special consultants from the staff of Dr. Lester Kirkendall of Oregon State University's Department of Family Life and Home Administration to assist teachers and communities in establishing family life education programs. In 1949, the California State Department of Education had on its staff a consultant in parent education, Dr. Ralph Eckert, who prepared a suggested program for family life education. Little, however, was done in terms of implementation.

²⁷ See Appendix E.

²⁸ The results of a survey in April 1964 of 11 school districts concerning programs in family life education, defined as referring primarily to the psychological, sociological, and economic aspect of family living as opposed to merely sex education is reported in Appendix F.

(e) *Present Problems*

In the area of family life education there are many problems at present, problems not only in terms of a lack of emphasis but also in terms of practical implementation. Materials and teaching aids are frequently lacking in depth and are often unrealistic in content. Most teachers are not sufficiently prepared to teach a family life program. Home economics teachers and candidates for pupil personnel and guidance credentials are the only ones required by law to include family life courses in their college curriculum, although some state colleges require this for elementary teachers also.²⁹ When courses are offered in home economics, the number of students reached is quite small and comprised almost entirely of girls. Curricula are crowded with required courses—no room for “frills.” Many communities do not understand or support family life programs. To complicate this there are many different definitions of family life education with differing views on appropriate content. With the present emphasis in education on “pure” academics, so that our youth are prepared to compete in a world of Sputniks and satellites, the importance of education for adequate living in a competitive society of individuals in which interpersonal relationships are vital for effectiveness seems to be neglected.

i. *Diminishing Emphasis*

Testimony presented to the committee was of the view that it is a disturbing fact that during the very time when California problems associated with failures in marriage and family living have been increasing at an alarming rate, the California schools have been decreasing their teaching in preparation for marriage and parenthood. In March 1964 a study done 10 years ago³⁰ of student marriages in high schools in California, and of the teaching of marriage and family living courses in the schools, was repeated.³¹ A questionnaire was sent to all 590 public senior high schools in the state. Of the 321 schools reporting, all but 35 had had one or more student marriages from September 1963 to mid-March of 1964. By March 1964 1,773 girls and 228 boys (in grades 9–12) had married. Many of these marriages were forced by pregnancy.³² Of the marriages, 314 were 9th- and 10th-grade girls and 12 were 9th- or 10th-grade boys. By mid-March 1,584 boys and girls had dropped out of school because of marriage. Thirty-three percent of the schools reported an increase in premarital pregnancies during the past 10 years and only 9 percent reported a decrease. Only 166 schools were able to furnish data on student pregnancies, and these reported 393 premarital pregnancies among girls who did not marry, and 436 premarital pregnancies among girls who did marry.

Although the problem of teenage marriages has intensified during the past 10 years the survey revealed a decreasing emphasis on family life education in the high schools of California. Of the

²⁹ See Appendix G.

³⁰ Judson T. Landis, “Attitudes and Policies Concerning Marriages Among High School Students,” *Marriage and Family Living*, Vol. XVIII, No. 2 (May 1956).

³¹ See Appendix H.

³² Data from unpublished study. Complete report forthcoming from Dr. Landis, University of California, Berkeley, in *Journal of Marriage and Family Living*.

235 schools that have in the past offered or do now offer courses in family living, 77 schools, or 33 percent, have reduced courses in family living, and 33 schools have discontinued their course offerings altogether. The reason given by 60 percent of the schools for decreasing their emphasis on family living was the new state requirement (the Casey Bill) necessitating a reorganization of the social studies program. Only 56 schools, or 24 percent, had increased their emphasis on family life education and this increased emphasis was most likely to be in home economics departments where the courses usually have small enrollments and are directed to girls.³³ The committee was advised that if courses are to meet the needs of youth they must be taught in the social studies departments where both boys and girls will register for them, for boys probably have a greater need for education for marriage and parenthood than do girls.

ii. *Popular Misconceptions*

The committee was advised that many people do not distinguish between what is deemed in the popular vernacular as "sex education" and what the professional educator means when he talks about education for marriage and family living. The educator's concept embraces the entire role of the spouse, of which the purely sexual aspects comprise but one segment of the spectrum. Certainly the spectrum would not be complete without the sexual aspects. But certainly, too, it is equally incomplete with only the sexual aspects. Hence the educators are speaking in terms of the sociology of marriage, the psychology of marriage, and the economics of marriage, as well as the biology of marriage. They are referring to the interpersonal relationship which exists between any two people who regularly come into contact with each other but which differs by virtue of the relationship between them, differing whether that relationship is one of friend to friend, employer to employee, teacher to pupil, husband to wife, or parent to child.

The educators noted that many parents are resistant to family life courses because of this erroneous view of them as "sex courses," and they point out that even if the local school has no "sex education courses" formally designated as such, sex education is going on every day in every school in the state. It is going on in the locker rooms, in the hallways, in the lunchroom. But when restricted to such circumstances it is never carried on in a scientific, accurate way as it would be if done by trained teachers. It is sex "miseducation" wherein the errors and mistakes of one youth are conveyed to another without a stable testing board in the form of a competent teacher to use in making proper appraisals and evaluations.

One of the marriage counselors who testified before the committee indicated a very serious problem area in marriage is economics. He felt there was a great need for education in consumer practices, specifically installment buying and interest costs. A

³³ For the national age distribution of illegitimate births in 1959 and the percentage increase in illegitimate births compared to total deliveries in one county in California see Appendix I.

substantial number of couples who came to him for aid got themselves into serious difficulty time after time because they simply didn't know what they were signing; how to interpret it; what the actual costs really were. It was indicated how difficult it is to be really understanding of marital problems when the couple hardly has beans for the table. His experience revealed that financial problems were one of the great contributing causes to divorce and that many are directly brought on by the practices of some people in the business community who exploit ignorance, conceal interest rates, etc.

3. SPECIFIC PROPOSALS

It was proposed to this committee that a realistic program in family life education would require a comprehensive approach. That is, from kindergarten through 12th grade, during which time family life would be stressed in appropriate courses and at appropriate age levels, dependent upon the maturity of the child and the readiness for certain information. What is an appropriate age level for what kind of information would be determined by the expert professional personnel in the schools and the Department of Education. Particularizing such a program, it was suggested that in terms of sex education, a course be given in the eighth or ninth grade for boys and girls separately, so that it could be taught frankly and without embarrassment. The experience of other educators indicates this type of information can be imparted equally as well in mixed classes. In either event, the course would lay a basis for moral decision making and not teach morals as such. It would consider the emotional aspects of sex education whereas the reproductive aspects would have been touched upon at the grammar school levels.

A coeducational course in the 11th or 12th grade was recommended which would deal with family responsibility, the social, the psychological, the financial and the interpersonal aspects of married life. This course would expose children to existing community agencies, agencies which are available for assistance to married couples, and would also expose them to divorce and divorce problems, and what a divorce means to a family and to the children of any family. It would also tie together some of the previous bits and pieces of information which have been sort of filtered into various appropriate courses throughout the curriculum.

Testimony recommended that the Department of Education, with the assistance of sociologists, doctors, marriage counselors, and social welfare personnel, develop a comprehensive curriculum guide. This would include, within its text, an outline of teaching aids and teaching materials and how they might be utilized in the course approach.

This comprehensive approach was based on investigation which found that many teachers are really not prepared to teach in this area. They have nothing but their own experience and in some cases, a bad experience, to draw upon. Most do not have anything in their formal training which prepares them for this kind of education opportunity. In conjunction with this observation it was suggested that teacher workshops be conducted in preschool and inservice training programs to assist teachers in feeling more comfortable with the subject matter.

It was proposed that encouragement should also be given to colleges and universities to offer required teacher training in this area and to develop closer cooperation between the school personnel and the Social Welfare Department for the purpose of considering problem children and total family counseling. Very frequently the Social Welfare Department can give a realistic approach to certain socioeconomic levels which cannot be ascertained in a total classroom picture in which there are mixed socioeconomic levels and mixed problems.

The committee was informed that much of what our young people believe about marriage is fiction. Rather than being cautious about marrying they tend to think that marriage can be an escape from personal or parental problems. Without courses in school, young people get their marriage education from teenage songs, movies and newsstand magazines, which mislead them, and from the example of failure in their own families. Good family life education in the schools creates realistic attitudes. It includes discussions of danger signals in courtship which should warn youth against making marriages which cannot possibly work. It considers the difficulties of continuing an education while married, the economic aspects of married living, the maturity necessary to make the many adjustments required in marriage, and the physical and emotional energy needed to be a good parent. Adequate courses in family living create in students some caution about marrying hastily. Young people who get a realistic understanding of what marriage means realize that it is not a quick and easy escape from problems in life. The well-prepared young person will be more inclined to take a longer look before he goes into a very youthful marriage.

Adequate preparation for marriage also should improve the student's chances for success when he does marry. If he gains some conception of the responsibilities and obligations that marriage involves he should become better able to assess and improve his ability to meet the requirements for building a good marriage. Experience in working with high school and university students convinced the witnesses appearing before this committee that our greatest hope in building stronger family life is in educating people before they marry or become parents and before they are confronted with problems and frustrations which may block their learning processes. In fact, they testified, the education must come before they are involved in choosing a mate. Regarding courses in preparation for marriage, concern was expressed about the students' children who are not yet born, on the basis that they must necessarily be the long-range goal of any legislation dealing with families in California. Helping the family achieve a higher level of success and cutting down the social wastage from family failure is not a short-term project.

Recognition was also given to the fact that proposals such as these concerning educational courses in the school systems are also properly the subject matter of study and investigation by the Education Committee of the Assembly. Testimony was received on these issues by the Judiciary Committee on the basis that it is properly charged with the responsibility of regulating the circumstances surrounding marriage and divorce. Such proposals go to the essence of that responsibility since they are concerned with improving the quality and duration of marriages in California and reducing the disruptive effects of divorce which is a matter of vital concern to the state.

(B) Short Term Solutions**1. WAITING PERIODS FOR YOUTHFUL APPLICANTS:**

Since it was recognized that educational programs are long-term solutions to marriage and divorce problems, it was suggested that for an immediate response this committee consider a 30-day waiting period before the "child marriages" of boys and girls who wish to marry before they are 18 or 21 years of age.

The view was advanced that anything which slows down, delays or postpones the all too often hasty and unconsidered youthful plunge into matrimony would be a positive step in the right direction. Such a preventive program would emphasize making it more difficult to get married.³⁴

In regard to waiting periods it should be noted that California is in the minority group of approximately 19 states which do not require some type of waiting period.³⁵ Three states vary the waiting requirements if minors are involved. In Georgia if one of the parties is under 21 the waiting period is three days unless the female is pregnant. If both parties are under 21 the waiting period is five days unless the parents consent to the marriage. Oklahoma, which has no waiting period generally, imposes a three-day delay if either applicant to marry is a minor. And Tennessee, which also does not have a general waiting period, imposes a three-day delay if either party is under 21. Among those states utilizing a waiting period, one state imposes a one-day delay; one state a two-day wait; 15 jurisdictions require a three-day wait; two states a four-day delay; six states require a five-day reflection period and one state a seven-day wait.

Any restrictions of this nature which California might impose on its youthful citizens seeking to marry could be circumvented by an evasatory marriage in a neighboring state or country.³⁶ The committee was advised that if it felt the imposition of such a delay was a reasonable restriction on youth in their best interests, as well as for the society in which they live, the committee should recommend the delay notwithstanding the possibility of evasion, and ground that recommendation on the basis that it is the right and correct thing to do in the circumstances. It was pointed out that probably most youths and their parents, confronted with this expression of legislative interest and concern for their well being, would acquiesce in that judgment.

In addition, there are several practical considerations. Many youths and their parents want to have the marriage in their own local church or community. Parents, relatives and friends, whose attendance at this important event is usually desired, will normally travel great distances if necessary to attend a ceremony in the home community of the couple or the bride, but are reluctant to travel the same distance to another state to attend an evasatory marriage. Since research documents a greater stability in those marriages where there is a greater commitment to the marriage, as indicated in part by the ceremony being performed in a church or before other responsible officials in the presence

³⁴ For the statement of a nationally recognized authority on marriage and family life education, directed to this and several other sections of this part of the final report see Appendix J.

³⁵ See Appendix K.

³⁶ For a positive reaction to this fact see the discussion and proposal in Part VII of this report.

of family, relatives and friends, the committee was advised not to impose an excessive restraint on youthful marriage to the point where evasatory action would be encouraged. It was suggested, however, that the proposed 30-day waiting period would not be excessive, even in those cases where a premarital pregnancy is involved.

a. *Waiver*

Another consideration in regard to the suggested delay in youthful marriages is a provision for waiver of the 30-day waiting period upon application to the presiding judge of the conciliation court, if one exists in the county, and if not, to the presiding judge of the juvenile court, which exists in every county. In either event, waiver could be granted only upon the showing of such necessity as to warrant the dispensation in the discretion of the judge. It should be noted that females under 16 and males under 18 already must obtain judicial consent to marry.

b. *Restriction on Judicial Consent*

In this latter regard, it has been suggested that the granting of such consent should be restricted to the presiding judge of the conciliation court, if one is located in the county, and if not the presiding judge of the juvenile court. The reason advanced for localizing responsibility to one judge rather than having it spread among the entire superior court bench in a county is to concentrate such cases before a jurist who, by virtue of his present assignment, is most sensitive to the best contemporary methods of handling the needs and problems of youth.

2. PREMARITAL CONFERENCES

After an extensive study in which the views and suggestions of a large number of knowledgeable individuals were elicited concerning the problem of family stability, especially as it relates to our youth, the proposal was advanced that as a stopgap measure, pending the time when a larger portion of our youth are more adequately prepared for marriage, something additional be done than merely marking time for the 30 days of a waiting period. It was suggested this period be used as one in which the young people be required to have a session or two with a qualified marriage counselor. This would be to discuss the implications of their anticipated entrance into the marriage relation, the basis for their decision, the alternatives which are available to the couple, the problems which are likely to be encountered, the ways in which many other people have successfully dealt with those problems, and the various resources which are available in the community to aid any couple, and especially the youthful couple, to work out problems which are part of marriage and parenthood.³⁷ If a premarital pregnancy is involved, the goal would be to see whether there is any basis for a good marriage and if not, to encourage the couple not to marry. A divorce cannot follow a bad marriage which doesn't occur in the first instance.

There already is a legal and professional structure by which a program of premarital counseling can practically be executed. Since there is already a substantial segment of our youthful population which

³⁷ See footnote 34, *supra*.

must obtain judicial consent to marry, it was suggested that a beginning or pilot program of premarital counseling be commenced with this group: boys under 18 and girls under 16. If the proposal is enacted and proves successful it could later be expanded to include youths under higher age limits.

(a) *Benefits*

Some of the benefits which could be realized from such a conference were suggested in testimony presented to the committee. These include:

- i. Couples in situations in which a marriage would seem inadvisable could be helped to rethink their decision.
 - a. The couple itself—through concrete evaluation of potential adjustments.
 - b. Discussion with parents or guardians.
 - c. The judge—more basic information upon which to make his decision. It is essential to avoid becoming quasijudicial.
- ii. Where the marriage is brought about by pregnancy—the real motive could be established.
 - a. Where the boy is marrying the girl as the honorable thing to do.
 - b. Where parental insistence is involved.
 - c. Where infatuation is mistaken for love.
- iii. Those couples who have thought through their position and approach marriage in positive manner may be helped to avoid pitfalls, establish communications and advance toward a wholesome relationship.
- iv. A relationship could be established with a marriage counselor which would make it possible for the couple to return early enough to be helped at any future time of friction.
- v. It would provide an unbiased third party to help them meet realistically their situation apart from the prejudices of friends and relatives.

(b) *Organizational Location*

Where conciliation courts already exist in a county, it was suggested that they be responsible for such premarital counseling for several reasons:

- i. Their close proximity and relationship to the superior court.
- ii. Their ability to see such parties on a preference basis and avoid a five- to six-week wait.
- iii. A governmental agency whose longevity could insure a permanent supportive role to the marriage.
- iv. A referral source for both reputable private and public marriage counseling and their adjunct services for those couples whose problems were either more specialized or complex than could be handled in a short-term setting.
- v. For educational services that could be provided to the community through the experience of the court.
 - a. Youth want to be prepared for marriage.
 - b. Youth want to speak with competent, understanding adults.

- vi. Control over the competence of the counselors. Not everyone authorized by California state law to do marriage counseling is fully qualified to work in the area of premarital counseling.

It was suggested that in those counties which do not have conciliation courts the best location for control and supervision of the premarital counseling would be the juvenile court because of their extensive contact with young people and their experience in working with them in the resolution of their problems. Under present California law, any judge of the superior court may grant consent to marry to this age group, resulting in excessive disparity. In many counties most requests for consent are already directed to the presiding judge of the juvenile court who uses members of his staff to conduct a preliminary interview with the couple and advise him whether or not he should grant such consent. It was suggested that such a discussion with the couple, however brief, has much to commend it as compared to the pro forma consent which is granted with little or no evaluation in other counties.

(c) Recommendation to Judge

Under the operation of the premarital conference the counselor could inform the youthful applicants at the outset of their discussion that one function to be served by the conference is for him to formulate an evaluation to present to the judge whose consent is requested. In many cases of coerced applications for marriage licenses, where parents are placing unwarranted pressures on the children to marry, the intervention of these interested but uninvolved third parties may benefit the children who themselves may be reluctant to marry notwithstanding the fact of pregnancy. It was also suggested that counseling of parents should be included when a premarital pregnancy is involved which is known to the parents or which the couple is willing to have disclosed to them. This would present an opportunity for emotions to be released, for parents and children to understand the situation better, and for exploring other solutions to the situation which might be more desirable in particular cases than marriage.

(d) Limitations

Inquiry and study by those recommending the premarital conferences described above indicates the Legislature would have to establish some minimum and maximum limits in terms of the amount of time to be devoted to such counseling, permitting the counselor to use his discretion within such limits.

(e) Waiver

It was also suggested that in order to encourage local decisions to institute family life courses in the school systems, and to recognize their benefits, the requirement of a premarital conference be waived for those applicants who satisfactorily completed an accredited family life course in the high school level.

3. PREMARITAL PREGNANCIES, ALCOHOL AND AUTOMOBILES

Testimony was given to the committee to the effect that one area where much can be done by way of prevention of divorce is with regard to teenage marriages, particularly those which were founded on what was deemed the worst possible basis for a marriage beginning—a forced marriage to save the honor of the family name. Witnesses experienced in counseling couples having marital problems indicated that frequently the combination of alcohol and automobiles had contributed to the existence of a pregnancy which, in turn, caused a marriage which never should have taken place. The error of the marriage was often not ascertained, unfortunately, until after another child or two had been conceived. Testimony was received about the substantial number of premarital pregnancies which were associated with alcohol (20 percent). Of these it was asserted that 95 percent involved driving or intoxication or intoxicated driving at some point or another during the evening. It was suggested that the problem of drunk driving should be viewed more seriously than it is on the basis that the only thing worse than automobiles or worse than alcohol is the two in combination. It was also noted that conception did not occur in a fifth of whiskey—it takes place in the back seat of somebody's car. Thus it was felt that if greater control were exercised by parents over their children when they reach the age of using automobiles, inroads could be made on this problem.

As a countermeasure to the practice of practically emancipating the children as soon as they get a driver's license it was suggested that the parents of every juvenile who is in an automobile which is in any way involved in a law violation should be notified by mail that his child was at that particular place at that particular time. It was felt that parents should know every time any of their children are involved or present when a law violation occurs, even if they are with another family or in the presence of another adult. A tally of these notices could be maintained and when some arbitrary number was reached the parents could be called into the juvenile court for a discussion of the sorts of things their child had been involved in, that they appeared to be recurrent, and perhaps there was a problem with which the parents needed help.

4. STATUTORY RAPE STATUTES

Testimony presented to the committee indicated that it was not only parents who were coercing bad marriages into taking place. The tendency of some judges to make very strong suggestions to a defendant male that if he didn't want to serve a term for statutory rape, he had better get married occasions a good number of paper marriages which then turn up as paper divorces. They are deceptive, misleading and unfortunate affairs for all concerned but some judges feel they must do this to save the child the stigma of illegitimacy. Attempting to avoid the barbaric stigma of illegitimacy was seen as the cause of many poor marriages. It was suggested that the committee reexamine the age of statutory rape and its effect on coerced marriages. It was suggested the age of consent be lowered to 16 from the present 18 years of age. It was noted that anyone who has been observing 16-year-old girls lately

can tell that they are certainly mature. And it was observed that full control is given them at 16 of the most effective mass murder machine in history (the American automobile) but that they are denied the responsibility of taking care of their own bodies. So any boy who cooperated with them in what they obviously wanted to do was a rapist. This approach didn't make sense to the witness.

It was brought to the committee's attention that the real basis behind the statutory rape statutes was to punish abnormal sexual conduct, that is, the inducement into sexual relations of an immature female by a male of substantially older age.³⁸ This is reflected in the statutes of many other jurisdictions³⁹ which specify that statutory rape occurs only when the male is a specified number of years senior to the female, as relations between a girl under 18 by a male over 21. Voluntary sexual experimentation by parties of approximately the same age is not designated with the severity of present California law but is handled in more lenient ways, as for example, through the juvenile court. This removes the coercive effect presently being realized by the California statutory rape statute.

5. *Emancipation and Parental Consent to Marry*

The present California law permits marriage of a girl 18 years of age without her parents' consent,⁴⁰ resulting in her emancipation from their control. It was brought to the committee's attention that a number of undesirable marriages are brought about simply for the reason that the girl wants to get away from what she feels, and what might in fact be, an undesirable or impossible home situation. She cannot simply move out of the home and into the home of another or share an apartment with a girl friend, unless she has the consent of her parents. Consent in these circumstances is usually withheld, or there would be no problem. But she can effectuate a move out of the house through the agency of marriage. Such a marriage has little foundation or support and hence is found to collapse quite readily.

On the basis of these cases it was suggested to the committee that either the age of emancipation for females ought to be lowered to the present age at which they can marry without parent consent or the requirement of parental consent ought to be imposed until the female reaches age 21 at which age she is legally entitled to emancipation.

(C) *Implementation of Educational Program*

In order to implement the suggestions received concerning a broad scale approach to marriage and family problems through education the following attack was suggested.

Being realistic, and given the crowded status of the present curriculum, and also given the present outlook by many school districts and by some people in the Department of Education as to this matter, an approach which would allow the greatest amount of local autonomy and voluntary adoption of courses and content would be the most successful at this point, particularly regarding placement into the curriculum. A strong suggestion from the Department of Education to incorporate

³⁸ See Foster and Freed: Offenses Against the Family, 32 Kansas City Law Review 33, 35 (1964).

³⁹ Such as New York.

⁴⁰ Civil Code Section 56.

this into already existing subject matter would be very helpful. A demonstration project, if proven successful, could be expanded to other districts. Other means include a mandate from the State Legislature itself or a graduation requirement as stated from the State Board of Education, but these are secondary in terms of a realistic approach and were not advocated.

In essence, the approach advocated was one of the state offering every encouragement to the various local school boards and districts to voluntarily adopt an educational program embracing a rich and extended exposure to the problems of marriage and family living. It was suggested that the State Department of Education should by special contract or grant retain specialists to review curricula already prepared in family life education as well as aid in the preparation of new curricula; that establishment of pilot programs be undertaken in those school districts requesting them; and that financial aid be given those school districts which include family life courses in their curriculum, either by direct grant or by the furnishing of teachers and materials.

(D) Financing

In order to finance the additional costs which would be incurred by enactment of a requirement for premarital counseling and the other proposals relating to family life education, it was suggested that the ancient cost of a marriage license be increased from \$2 to \$5. A similar proposal was to increase the filing costs of divorce complaints in order to help finance studies of, or establishment of, conciliation courts in the various counties. In essence these proposals are grounded on payment for services by those likely to need them with premarital counseling analogous to preventive medicine programs and the establishment of conciliation courts similar to prepaid medical plans. A combination of these two proposals would be to increase both marriage license fees and divorce filing fees and use the money thereby realized for both preventive premarital counseling and education, as well as rehabilitative conciliation efforts.

As an example of financing on this basis, using Los Angeles County as the location and the figures for 1962, the following data was submitted: 44,922 marriage licenses were granted in 1962 in Los Angeles. Six percent of these involved individuals under the age of 17. This number is close enough to compute financing statistics. Utilizing the Los Angeles Conciliation Court statistics, salary and number of filings per month which can be handled, Los Angeles County would need three counselors to counsel the 5,391 individuals involved. Counselors at approximately \$8,000 a year would require \$24,000 in additional revenue. Where would this revenue come from? Two or three possible areas were suggested, all under the heading of fees. An increase in the marriage license fee of one dollar alone would yield \$44,922 in added revenue. The excess beyond the salary of the counselors could go to research as to how this program is being carried out, how effective it is and perhaps for teaching aids in the school program in family life education. Or, it is possible to increase marriage license fees, divorce and annulment filing fees by fifty cents to yield \$30,760. By increasing the divorce and annulment filing fee \$1.50, the yield would be \$31,708.⁴¹

⁴¹ A recapitulation of these figures is set forth in Appendix L.

Smaller counties which would not require the use of a full-time counselor might establish cooperative agreements with other counties whereby one counselor could serve two or three counties, or they might contract for the part time services of a community agency within the county.

IV. FINDINGS AND RECOMMENDATIONS

Findings:

1. The family, our basic social institution, exercises a critical influence on the type of individuals it develops for society. Inadequate families tend to seriously damage their offspring in their ability to establish and maintain satisfactory relationships.
2. Youthful marriages are a source of great trouble for our society because they are so unstable and yet so fertile. When they disintegrate they predispose the children involved to a much higher incidence of marital discord in their own lives, all at tremendous costs both in dollars and in human suffering.
3. Educational programs in our schools which are directed to solving the problems of marriage and family living appear to be a strong and reasonable means of attacking the critical problem of youthful marriage and parenthood.
4. Conciliation courts as an adjunct service to domestic relation courts have demonstrated their usefulness in rehabilitating many couples having marital difficulties, by short-term counseling or referral to community resources. Other couples, who have nevertheless proceeded to divorce, have been aided in understanding and adapting to the fact of divorce and its procedures, often to the great benefit of the children who are involved.
5. The highest incidence of divorce is found among those who marry at extremely young ages. Unfortunately, this is also a group which is highly fertile, producing many children who are adversely affected by the marital disruption of their youthful parents.
6. A brief waiting period before youthful applicants could be married appears to be a reasonable means of reducing the incidence of hasty, ill-advised youthful marriages.
7. The objective of statutory rape statutes is to restrain and punish sexual relations entered into by a more mature and knowledgeable male with a considerably younger, less mature female.
8. In many cases, as an alternative to a criminal prosecution for statutory rape, young men are being coerced into marriages which have little foundation for their being contracted. These marriages, many in name only, frequently result in divorce, all too often after children have been conceived or born which children would not have been involved had the coerced marriage not occurred.

Recommendations:

1. In order to encourage and help finance the voluntary development of marriage and family life programs in the schools, the committee recommends an increase in the cost of marriage licenses from \$2 to \$5 and a \$5 increase in divorce filing fees, with the funds

thereby realized to be utilized *in part* for developing curricula and materials and for implementing the institution of such courses in the public schools. Such development should include summer and inservice training programs to aid in teacher development for teaching in this area, and the utilization of consultants who are experienced in this field, to work on local curricula and other problems with local school administrators.

2. To encourage the development and strengthening of conciliation courts and their philosophy of utilizing the insight of the behavioral sciences to aid the resolution of marital conflict, the committee recommends that the *other portion* of the funds be utilized for the benefit of the various counties to study the feasibility of establishing, to aid in the initiation or strengthening of such a court, and for research relating to conciliation courts in this state.
3. The committee recommends that a waiting period be established for all youthful applicants seeking to marry. While making no specific proposal, the committee is thinking in terms of a 15- to 30-day delay for all youths under 21 with provision for judicial waiver upon a showing of necessity.
4. The committee recommends that the age of the male who is guilty of statutory rape be specified in the statute and that the age of such males be designated as 21 years of age or over.

Part 2

Appendix A

RECOMMENDATIONS FROM 1960 WHITE HOUSE CONFERENCE ON CHILDREN AND YOUTH

THE FAMILY

In General

That it be recognized that—

The family as the basic unit of our society has primary responsibility for developing values, freedom, initiative and self-discipline in children. (IV, VI, XIV)

The development of the child's potential is vitally affected by the nature and quality of family relationships. (IV)

The individuality of each family and each member of the family must be acknowledged and preserved. (IV)

Each family must ultimately determine solutions to its own problems in the light of its own goals and philosophy within the context of the community's goals and values. (IV)

That it be recognized that the absence of a strong sense of values in the individual, the home, and the community is a primary cause of many social problems that limit opportunities for children and youth; and that we must encourage the use of our resources to achieve long-term satisfactions, to build stability into family life, and to assure our children and youth of their full share of security and opportunities in the best American tradition. (V, III)

Family Life Education

That it be recognized that in our complex society no family can be entirely responsible for its own destiny, and that marriage is a joint career requiring preparation to achieve success. (III)

That family life courses, including preparation for marriage and parenthood, be instituted as an integral and major part of public education from elementary school through high school (IV, V, XI, XVIII); and that this formal education emphasizes the primary importance of family life and particularly the child-rearing role of the mother. (III)

That religious institutions and other community services, as well as the schools strengthen their family life education programs, with materials suitable to each age level from the early years and marriage preparation courses at the junior high level; and that these programs include counseling in personal relations, boy-girl relationships, problems and the sacred nature of marriage, and methods of nurturing in children moral, spiritual and ethical values. (IV)

That trained social workers be added to school staffs to provide counseling and guidance to families. (XVIII)

That existing facilities for parent education be expanded; and that family agency services include parent education beginning in the prenatal period and emphasized in well-baby clinics. (IV, XVIII)

That community planning councils collaborate with the medical profession to establish discussion groups, to which expectant couples would be referred, preferably by physicians, for intensive study of the physical and psychological aspects of childbirth, early child development and parent-child relationship. (XVII)

That schools take the initiative in broadening general educational opportunities for adults to enable them to help children and youth more effectively. (V)

That educational institutions and communities provide systematic training, with sound and practical materials, in the developmental changes and problems of early adolescence for all parents and future parents, as well as for physicians, teachers, and others who work with young people. (XI)

Counseling Services

That public and private marriage and family counseling services such as those of social agencies, mental health clinics, clergymen, and physicians—be instituted or expanded. (X, XI, XVIII)

That counseling services for the solution of domestic relations problems be available in the courts, and that hearings in such cases should be held in chambers. (XVII)

Community Resources

That each community create a body representative of all professions, organizations and agencies concerned with a family life to—

Coordinate programs and services;

Survey family needs;

Insure adequate education for marriage, parenthood, and family life, including counseling;

Stimulate professional growth and cooperation;

Develop a community atmosphere favorable to family life. (IV)

That all community resources for health, welfare, housing and recreation focus on the family as a unit. (V)

That religious and community agencies give increasing emphasis to family recreation and study the role of recreation in developing moral and spiritual values in family life. (VI)

That schools, religious institutions, youth-serving agencies, and all other community agencies cooperate to create a favorable atmosphere for understanding the dignity and sanctity of the role of sex in human relationships. (XVII)

That central referral services be set up so that families needing help in caring for children may be guided to the appropriate agency. (X)

Problem Families

That one community agency be responsible for working with multi-problem families and for bringing to bear on their treatment the resources of churches, schools, employment and vocational rehabilitation services, protective casework services, courts, mental health services, homemaker, day care and foster care services, home management counseling, premarriage and marriage counseling for early detection of problems; and that the services be expanded. (IV)

That caseloads in public agencies be substantially reduced, to the point where effective work with problem families is possible. (IV)

That the high costs involved in the rehabilitation of chronic problem families be recognized and interpreted to the public as an ultimate saving in human values. (IV)

Family Size

That planning for the size of families is desirable in order to relieve the deprivation of children, and that facilities and programs on a local, public, or private basis be available to married couples, providing medical advice and services for child spacing consistent with the creed and mores of the families being served. (Vote: 233-65.) (IV)

Minority report: “. . . the proposal would be acceptable if so worded as to be conditioned upon the necessity of first determining that planning the family size is desirable . . . by inserting the word ‘when’ in the opening phrase, so that it would read: ‘. . . that when planning. . . .’

“Also that facilities and programs for family planning should be outside the province of public bodies and kept within the exclusive province of private agencies, particularly church groups.” (IV)

That it be recognized that the function of the family is to carry out its responsibilities to children according to the primary obligation of marriage in accord with divine and natural law; and that, therefore, the size of the family and the age at which people marry are in themselves not the fundamental factors in successful family life. (Vote: 134-119; 47 abstaining; no minority report.) (IV)

Family Economic Conditions

That the income tax exemption for child dependents be increased to enable families to provide more adequately for their children's total needs. (Vote: 166-135; 28 abstaining.) (IV)

Minority report: “. . . the recommendation to increase the income tax exemption for children is unworthy of this conference. It represents a narrow view of the total demands

on our national budget and offers no assurance that the income thus remaining in the family would be used to the benefit of children and youth." (IV)

That a minimum annual wage be established for every worker as a means of strengthening family life. (Vote: 108-52.) (III)

That the possibilities of undergirding family life economically through a system of family allowances be studied. (III)

That a program of children's allowances be developed to offset the inverse relationship between income and size of family. (Vote: 125-35.) (III)

Minority report: "There is no showing that a system of child allowances is necessary if present social insurance and public assistance programs are improved . . .

"A child allowance system would drastically increase the involvement of government in family life with consequent threats to individual and family independence." (III)

Research

That appropriate government and/or voluntary agencies sponsor and conduct research in critical areas of family life; and that foundations, educational institutions, and government and private agencies develop better methods for interpreting, using, and coordinating the findings of completed research and make them readily available to the helping professions. (XIV)

That research be undertaken in the following areas:

The reasons for early marriage. (XI)

Family roles and relationships and their influence on members. (IV)

The adequacy of one-parent families to rear children from infancy through the teens. (XVIII)

The effects on children of all ages of a mother working outside the home (III) multiproblem and hard-to-reach families (early identification, prevalence, causation, treatment). (IV)

Methods of teaching family life education and of training teachers. (IV)

Curriculum content of family life education. (IV)

Methods of helping more parents gain valid concepts of family living and child rearing. (IV)

Attitudes, concerns and values of parents of various ethnic, social, economic, and religious groups—with assistance in research planning by qualified members of the groups studied. (IV)

Effective techniques of stimulating small group discussions at the neighborhood level to promote better relationships between preadolescent children and their parents. (X)

Part 2
Appendix B
MARRIAGE AND DIVORCE STATISTICS
VITAL STATISTICS

United States			
	<i>Population</i>	<i>Marriages</i>	<i>Divorces</i>
1920 -----	106,466,420	1,274,476	170,505
1940 -----	131,669,275	1,595,879	264,000
1960 -----	199,323,175	1,527,000	391,000

RATES PER 1,000 U.S. POPULATION

	<i>Marriages</i>	<i>Divorce and annulments</i>	<i>Rates of divorces to marriages</i>
1940 -----	12.1	2.0	2 in 12.1 or 16.5%
1960 -----	8.5	2.2	2.2 in 8.5 or 25.6%

California			
	<i>Population</i>	<i>Marriages</i>	<i>Divorces and annulments</i>
1940 -----	6,950,000	45,070	22,979
1960 -----	15,863,000	105,352	49,511

RATES PER 1,000 CALIFORNIA POPULATION

	<i>Marriages</i>	<i>Divorce and annulments</i>	<i>Rates of divorces to marriages</i>
1940 -----	6.5	3.3	3.3 in 6.5 or 51.0%
1960 -----	6.8	3.2	3.2 in 6.8 or 47.0%

Sacramento County			
	<i>Population</i>	<i>Marriages</i>	<i>Divorces and annulments</i>
1940 -----	170,333	810	508
1960 -----	502,778	2,492	1,721

RATES PER 1,000 SACRAMENTO COUNTY POPULATION

	<i>Marriages</i>	<i>Divorce and annulments</i>	<i>Rates of divorces to marriages</i>
1940 -----	4.7	2.9	2.9 in 4.7 or 62.7%
1960 -----	5.0	3.4	3.4 in 5.0 or 69.1%

Napa County			
	<i>Population</i>	<i>Marriages</i>	<i>Divorces and annulments</i>
1940 -----	2,869	132	168
1960 -----	66,400	281	206

RATES PER 1,000 NAPA COUNTY POPULATION

	<i>Marriages</i>	<i>Divorce and annulments</i>	<i>Rates of divorces to marriages</i>
1940 -----	4.6	5.9	5.9 in 4.6 or 127.3%
1960 -----	4.2	3.1	3.1 in 4.2 or 73.3%

SOURCE:

- (1) U.S. figures:
 - (a) The World Almanac and Book of Facts, 1963, p. 309.
 - (b) Marriage and Divorce Statistics, U.S. Department of Health, Education, and Welfare, 1959, p. 2-17.
- (2) California Statistics
 - (a) California Statistical Abstract, 1962, Table G-1, G-2, F-6.
 - (b) Annual Report, California Department of Public Health, 1950, 1948.

TOTAL DIVORCE—SEPARATE MAINTENANCE
ANNULMENT FILINGS

California:

Fiscal year

July 1, 1961–June 30, 1962 89,212

TOTAL MARRIAGES

Calendar year

1961 109,703

RATE OF FILINGS TO MARRIAGES

89 to 109 = .813 or 81.3%

SOURCE: Annual Report, Judicial Council, February 3, 1964, p. 77.
California Statistical Abstract—1962, Table G-1.

Part 2

Appendix C

YOUTHFUL MARRIAGES
MEDIAN AGE AT FIRST MARRIAGE

Year	Male	Female
1890	26.1	22.0
1900	25.0	21.9
1910	25.1	21.6
1920	24.6	21.2
1930	24.3	21.3
1940	24.3	21.6
1950	22.8	20.3
1955	22.7	20.2

SOURCE: Conrad and Irene Taeuber: The Changing Population of the United States, New York, 1958, p. 154.

MARRIAGES BY AGE OF BRIDE, GROOM
California—1961

Total marriages	109,699
Groom under 15 and bride under 15	1
Groom 15-19 total	15,606
of these brides under 15	156
of these brides under 15-19	14,209

SOURCE: State Department of Public Health Marriage Records.

Part 2

Appendix D

DIVORCE RATE
COMPARED TO AGE AT MARRIAGE

Age at marriage	Percent divorced
Both 20 and under	20.2
One under 20, other 21-22	14.2
One under 20, other 23 or over	12.5
Both 21-25	10.0
Both 26-30	8.7
Both 31 or over	7.4

SOURCE: Landis and Landis: Personal Adjustment: Marriage and Family Living, p. 151.

PERCENTAGE DISTRIBUTION OF SPOUSES MARRIED AND OF HUSBANDS AND
WIVES DIVORCED BY AGE AT MARRIAGE, 1960

Age	Males		Females	
	Grooms	Divorced husbands	Brides	Divorced wives
Total	100	100	100	100
Under 20	13.4	16.0	37.4	44.9
20-24	41.8	40.3	32.1	27.7
25-29	17.1	18.0	10.1	10.9
30-34	8.2	9.9	5.4	6.4
34-39	5.3	5.9	4.5	3.8
40 and over	14.2	9.9	10.5	6.3

SOURCE: Trends in Divorce and Family Disruption, August 1963, U.S. Department of Health, Education, and Welfare: Indicators: National Vital Statistics, Public Health Service.

Part 2

Appendix E

Use of Landis and Landis, *Building Your Life*:

41 schools use in the 9th grade reaching 10,973 students.

51 schools use in the 12th grade reaching 6,565 students.

Personal Adjustment, Marriage and Family Living by Landis and Landis:

Used in 4 schools at the 10th grade reaching 158 students.

Used in 62 schools at the 12th grade reaching 6,565 students.

Coe and Montgomery, *High School Sociology*:

Used by 2 schools at the 10th grade reaching 202 students.

1 school at the 11th grade reaching 25 students.

30 schools at the 12th grade reaching 2,380 students.

Hanna, *Facing Life's Problems*:

Used by 24 schools at the 12th grade reaching 5,948 students.

Gavien and Gregg, *Our Changing Social Order*:

Used by 10 schools in the 12th grade reaching 198 students.

Twelve other titles:

Used by 21 schools at the 9th grade reaching 5,833 students.

One school at the 11th grade reaching 50 students.

28 schools at the 12th grade reaching 3,678 students.

This use is based on a total of 1,061 junior and senior high schools in the state with 1,014,316 students in grades 9 through 12. The number of students exposed to all of the above classes totals 42,575.

SOURCE: Report of the Department of Education, October 1963.

Part 2

Appendix F

RESPONSES FROM SCHOOL DISTRICTS

Re: Programs in Family Life Education

<i>Schools</i>	<i>Department</i>	<i>Year</i>	<i>Required</i>
San Francisco Unified	Health and physical education	12	Required
	Homemaking	7	Required, girls
	Homemaking	8 & 9	Elective
	Homemaking	11 & 12	Elective, girls
	Home planning and decoration	11 & 12	Elective
	Child development	11 & 12	Elective
	Physiology	11 & 12	Elective
Los Angeles Unified	Social studies	12th	Elective, 95% take
Beverly Hills	Social science	12th	Required unit
	Home economics	11 & 12	Elective
	Girls physical education	--	Required unit

<i>Schools</i>	<i>Department</i>	<i>Year</i>	<i>Required</i>
Paradise	--	--	--
Oakland	Social science, home economics, science, physical education	Different parts Given different years	Some elective, some required
Riverside	Some emphasis throughout, very little, depends on teacher	Some part of elective and others required courses	

Inquiry on behalf of the Judiciary Committee was directed to the following individuals. Responses are tabulated in the accompanying chart.

MR. CARL H. WENNERBERG, *Superintendent*
Berkeley Unified School District
1414 Walnut Street, Berkeley

MR. KENNETH PETERS, *Superintendent*
Beverly Hills School District
255 South Lasky Drive, Beverly Hills

MR. ALFRED ARTUSO, *Superintendent*
Laguna Beach City School District
550 Belmont Avenue, Laguna Beach

MR. HAROLD SPEARS, *County Superintendent*
San Francisco Unified School District
135 Van Ness Avenue, San Francisco

MR. STUART S. PHILLIPS, *Superintendent*
Oakland Unified School District
1025 Second Avenue, Oakland

MR. W. ODIE WRIGHT, *Superintendent*
Long Beach Unified School District
701 Locust Avenue, Long Beach

MR. CECIL D. HARDESTY, PH.D., *County Superintendent*
San Diego School District
6401 Linda Vista Road, San Diego

MR. JACK P. CROWTHER, *Superintendent*
Los Angeles Unified School District
450 North Grand Avenue, Los Angeles

MR. DORAN TREGARTHEN, *Superintendent*
Paradise School District
P.O. Box 957, Paradise

MR. JAMES L. MERRIHEW, *Superintendent*
Richmond Unified School District
1108 Bissell Avenue, Richmond

DR. RALPH ECKERT, *Director Counseling and Guidance Services*
Riverside County Schools
P.O. Box 868, Riverside

Part 2

Appendix G

RESPONSES FROM STATE COLLEGE

Re: Teacher Preparation for Family Life Instruction

Schools	Required for whom					
	Offer family living course	Graduation	Elementary credential	Junior high or secondary credential	Home economics teachers	Pupil personal guidance credential
San Diego State	Yes	No	No	No	Yes	Yes
Stanislaus State	Yes	No	No	No	--	Yes
San Fernando Valley State	Yes	No	No	No	Yes	Yes
Calif. State at L. A.	(No)	No	No	No	--	No
San Jose State	Yes	No	No	No	--	No
Sacramento State	Yes	No	Yes	No	Yes	Yes
Fresno State	Yes	No	No	No	--	Yes
Sonoma State	No	--	--	--	--	†
Chico State	Yes	No	Yes	No	--	Yes
Humboldt State	Yes	Yes?	No	No	--	Yes
Long Beach State	Yes	No	No	No	Yes	Yes
California State Palos Verdes *	Yes	No	‡	‡	--	--
Orange State	--	No	No	No	No	Yes
California State Polytechnic	Yes	Yes	--	--	Yes	Yes

† Not offered.

* Plans to offer.

‡ Some in education course.

Part 2

Appendix H

The following study is appended to supplement the testimony of Professor Judson T. Landis.

A Study of High School Student Marriages, Pregnancies, and School Policy, by Judson T. Landis, Professor of Family Sociology and Research Associate, Institute of Human Development, University of California, Berkeley

Questionnaires were mailed to 590 California public senior high schools in March 1964. The questionnaire was addressed to the person responsible for receiving educational materials, usually the principal.

A letter accompanied the questionnaire explaining the purpose of the study. Anonymity of the respondents and the high schools was assured.

Usable questionnaires returned before May 18, 1964, are included in the following analysis. The number of usable questionnaires is 321, or 54.4 percent of the total mailed to schools.

To determine whether certain sampling biases are present, distributions of community size of high schools which received questionnaires and those which returned completed questionnaires are compared in Table I. Approximately the same percentage of questionnaires were returned from the three categories of cities under 50,000 in population size, but considerably fewer questionnaires were returned from cities of over 50,000.

Table I
Number of Questionnaires Mailed and Number Returned, by Size
of Community of Senior High School

<i>Size of community</i>	<i>Number of questionnaires</i>		<i>Percent returned</i>
	<i>Mailed</i>	<i>Returned</i>	
Town of less than 2,500; country; farm-----	140	90	64
2,500-10,000 -----	121	70	58
10,000-50,000 -----	165	102	61
Over 50,000 -----	153	59	39
No census figures available-----	11 *	—	—
	590	321	54

* Eleven communities receiving the questionnaire but not returning it were not included in the 1960 census. A superficial check indicates these communities to be rural, thus more likely to fall into the category "town of less than 2,500" than the other categories.

Table II
Number of Students in Each Grade (9-12) Who Have Married This Year
(September 1963-March 1964)

	<i>9th</i>	<i>10th</i>	<i>11th</i>	<i>12th</i>	<i>Total</i>
Girls -----	46	268	516	943	1,773
Boys -----	1	11	53	163	228
Totals -----	47	279	569	1,106	2,001 students from 265 schools

* Of the students who married, 2.3 percent were in the 9th grade, 14 percent in the 10th grade, 28 percent in the 11th grade, and 55.4 percent were in the 12th grade.

Table IIIa
Number of Schools in Which at Least One Student From 10th-12th Grades Has
Married Since September 1963 (As Reported During March 1964)

	<i>Schools</i>
Number of schools reporting one or more student marriages-----	265
Number of schools reporting no students have married since September 1963 (as of March 1964)-----	35
No information on number of student marriages since September 1963 (as of March 1964) *-----	21

* Schools which were unable to provide information on number of students married during this school year were more likely to be large city schools in which at least one student had married during the school year, but exact records as to how many were married were not available for the survey. Six of the 21 schools indicated directly that several students had married, but the exact number was unknown. The remaining 15 schools had an enrollment of over 500 students in the 10th to 12th grades, and indicated policies with regard to married students that would indicate they had had student marriages.

Table IIIb

Number of Married Students Who Have Dropped Out of School (Since September 1963)
Either Because They Were Asked to Leave or They Chose to

	9th	10th	11th	12th	Total
Girls -----	55	291	462	666	1,474
Boys -----	1	13	33	63	110
Totals -----	56	304	495	729	1,584 students

Table IV

Types of Action Taken by Schools When a Student Marries During the School Year

<i>Type of school action when a student marries</i>	<i>Number of schools taking action</i>	<i>Percent (319) *</i>
Student suspended or expelled from school-----	3	1
Student placed on probation (conduct, attendance, grades)-----	34	11
Student advised to transfer to adult evening school-----	38	12
Student advised to withdraw from school-----	16	5
Student brought in for special conference—school policy and expectations explained-----	140	44
Counseling provided in marriage and/or school adjustment-----	81	25
Student excluded from honors and/or student offices-----	14	4
Student excluded from extracurricular activities-----	19	6
Student encouraged to continue school for diploma-----	215	67
Other actions taken (i.e., if girl pregnant, advised to transfer, etc.)-----	63	20
No action taken at all-----	54	17

* Two schools did not provide data on school actions taken when a student marries.

NOTE: 27 percent of the schools made exceptions for married students, such as permitting student to attend part-time (if student was working, pregnant, or had too much housework) or providing exemption from certain classes, such as physical education for pregnant girl.

Table V

Ways in Which Married High School Students Are Reported to be a Problem in the School

<i>Problem in school created by student who is married</i>	<i>Number of schools reporting type of problem</i>	<i>Percent (317) *</i>
Irregular attendance -----	97	31
Sexual experience discussed with nonmarried students-----	26	8
Low interest in schoolwork-----	50	16
Parents of unmarried students criticize school for permit- ting married students to attend-----	37	12
Married students seem to encourage other students to marry-----	16	5
Extra administrative and counseling work caused by married students -----	30	9
Special privileges expected-----	23	7
Married students become discipline problems-----	6	2
Married students reported to be no problem in the school-----	205	64

* Four high schools did not provide data on problems created by married students.

Table VI

Trend of Premarital Pregnancies Among High School Girls During the Past
10 Years Per 100 Girls by Size of Community

Size of community	Number of premarital pregnancies has—						Total (286) *
	—increased (95 schools)		—decreased (26 schools)		—remained same (165 schools)		
	number of schools	percent	number of schools	percent	number of schools	percent	
Town less than 2,500; country; farm -----	14	18	10	13	55	70	79
2,500-10,000 -----	17	27	9	15	36	58	62
10,000-50,000 -----	39	42	4	4	50	54	93
Over 50,000 -----	25	48	3	6	24	46	52
Totals -----	95	33	26	9	165	58	

* Thirty-five schools did not provide information on trend of premarital pregnancies; 11 of the 35 schools did not answer the question because they were less than 10 years old.

The largest increase in premarital pregnancies appears to be in the schools in the largest communities. This may, perhaps, be partially due to more accurate recordkeeping presently as compared to the past.

Table VII

Reported Pregnancies Among High School Girls in 166 Schools
(September 1963-April 1964) *

Number pregnancies known to be premarital—

—that resulted in marriage-----	436	38%
—did not result in marriage at the time of reporting-----	393	35%

Number pregnancies—not known to be premarital—

—girl married, pregnancies were postmarital or it is not known when pregnancy occurred-----	306	27%
--	-----	-----

Total ----- 1,135 100%

The 1,135 pregnancies occurred among 73,122 girls in grades 10-12, a rate of 1.55%.

* Of the 321 schools in the sample, only 166 schools were able to furnish any data on high school pregnancies. Data on pregnancies were not always complete or accurate. However, it can be assumed that the figures underestimate rather than overestimate the actual number of student pregnancies. High schools in small communities (under 2,500) were more likely to furnish complete and accurate information on student pregnancies.

Table VIII

School Policies for Married and Unmarried High School Girls Who Become Pregnant
While Still in Student Status (School Year 1963-64)

School policy	Number of high schools reporting policy for—			
	—married girl		—unmarried girl	
	number	percent	number	percent
Girl suspended if becomes pregnant-----	27	8.5	87	27.4
Girl may stay in school until pregnancy shows -----	60	18.8	43	13.6
Girls may stay in school during most of pregnancy -----	102	32.0	48	15.1
Indefinite policy as to how long girl may stay -----	45	14.1	20	6.3
Home instruction provided-----	166	52.0	158	49.8
Transfer suggested to adult education, correspondence courses, other special courses or classes-----	29	9.1	28	8.8
Total -----	319 *		317 †	

* Two schools did not provide information on school policy for pregnant girls.

† Four schools did not provide information on school policy for pregnant girls.

NOTE: More than one answer could be checked, i.e., home instruction might be provided for girl who is required to leave school early in pregnancy.

High schools in small communities (less than 2,500) were more likely to suspend girls who became pregnant, especially unmarried girls. Schools in larger communities were more likely to be able to offer home instruction than schools in small communities.

Table IX

Family Living Courses in California Public Senior High Schools (1963-64)

Number of schools offering :

One course or unit on family living	130	40.5%
Two courses or units on family living	71	22.1
Three courses or units on family living	13	4.0
Four or more courses or units	2	0.6
Total	216	67 %
Number of schools which do not now offer courses, but have offered family living courses or units in the past	39	12 %
Number of schools which have never offered family living courses or units on family living	60	19 %
No information provided on whether or not family living courses offered	6	2 %
Grand total	321	100 %

Table X

Role of Family Living Courses in the High School Educational Program Over the Past Five Years
 As Reported by 199 Schools Presently Offering Courses or Units on Family Living, and 33
 Schools Which Have Discontinued Courses on Family Living

<i>Role of family living over past five years</i>	<i>School offers course or unit</i>	
Increasing role	56	24%
Decreasing role	77	33%
About the same	102	43%
Totals	235	100%

Table XI

Reason Given by School For Discontinuing Family Living Courses or For "Decreasing Role" of
 Family Living Courses by Whether School Offered Courses at the Present Time

<i>Reason</i>	<i>Courses offered, decreasing role</i>		<i>Courses discontinued</i>	
State mandate to replace "adjustment" courses with more "civics" and government courses	17	43%	11	30%
Indirect reference to mandate: "academic pressure"; "too many requirements"; "emphasis on civics"	12	30%	11	30%
Parental or community pressure; against "sex education in mixed classes"; religious objections	6	15%	5	14%
Lack interested or qualified teachers	1	3%	4	11%
Lack student interest; not meeting student needs	1	3%	2	5%
Other reasons	3	8%	4	11%
Totals	44	102%	37	101%

Part 2
 Appendix I

ILLEGITIMATE BIRTHS

<i>Age of mother</i>	<i>Total number births out of wedlock—1959 reported</i>
All ages	220,600
Under 15	4,600
15-17	43,100
18-19	41,500
20 and over	131,600

SOURCE: Children, March-April 1963: "Their stated source," National Division of Vital Statistics, Public Health Service.

Santa Clara County Hospital—1955-1962

Increase in illegitimate births	874.41%
Total deliveries 1955-1962 increase	170.8 %

Part 2

Appendix J

The following statement was submitted by Prof. Lester A. Kirkendall of Oregon State University, a nationally recognized authority on marriage.

August 12, 1964

TO: MR. ROBERT E. FURLONG

FROM: LESTER A. KIRKENDALL

I feel that the findings which have been developed in the research of Burchinal, Landis, Moss-Gingles and others on early marriage make it possible to support several recommendations which might be implemented by legislative action. As I would see it, these recommendations might be:

1. To provide safeguards against hasty marriages. Many of the early marriages are entered into by youth who are under the pressure of peer behavior and are so contracted at the time and under circumstances which provide a very unsound basis for the subsequent marriage. Therefore, waiting periods, public knowledge of intent to marry and provisions for premarital counseling should be provided, particularly for couples which would fall into the youthful marriage category.
2. There is no question but that many of these marriages are contracted either because the couple are sexually curious and are eager to enter into intercourse, or are involved in intercourse and fear premarital pregnancy, or are actually premaritally pregnant. This suggests that a very much more open and direct attack on the sex education problem both at the youth and at the adult level is needed. It is easier to implement at the youth level as far as mechanics are concerned. The schools and various other serving agencies are available. Programs of this kind, however, are likely to be thwarted by adult fears of the consequences which they expect to grow from an open discussion of sex. Unfortunately our society is obsessively preoccupied with and fearful of sex, and conducts itself in such a way that the very dangers which adults expect are made certain by their actions. Therefore, legislative action and encouragement of a much more open and straight-forward approach to matters of sex instruction is vitally needed. I think that this should take the form of encouraging workshops and in-service education opportunities for teachers and others working with youth. If at all possible, this ought to be accompanied by an adult education program which will help to ameliorate the fears which prevent action in this area.
If evidence is wanted to substantiate this point of view, I think it can be marshalled quite easily.
3. The provision of community mental health facilities which would provide counseling facilities for parents and youth on these problems would be quite important.
4. I would like to suggest that the ages of youth who would be involved in early marriage should be considered as boys under 20

and girls under 18. If the present ages are held (boys under 18 and girls under 16) you will, of course, get the more serious cases, but I do feel that the divorce rate and the amount of marital instability which characterizes marriages in which the boy is under 20 and the girl is under 18 are serious enough to warrant consideration of raising the age limits.

LESTER A. KIRKENDALL

Part 2

Appendix K

WAITING PERIOD REQUIREMENTS

Alabama	None
Alaska	3 day waiting period, can be waived (25.05.091)
Arizona	None
Arkansas	None
California	None
Colorado	No (90-1-6)
Connecticut	4 day waiting period, can be waived (46-5)
Delaware	None; except where both parties are nonresidents, then they must wait 2 days (13-107)
District of Columbia	4 day waiting period (30-109)
Florida	3 day waiting period (741.04)
Georgia	3 day waiting period, except if both the parties are over 21, or the female is pregnant. 5 day waiting period if both the parties are under 21 unless the parents consent or there are extraordinary conditions (23-204)
Hawaii	None
Idaho	None
Illinois	None
Indiana	3 day waiting period (44-201)
Iowa	3 day waiting period (595.4)
Kansas	3 day waiting period, can be waived (23-100)
Kentucky	3 day waiting period (KRS 402.080)
Louisiana	None
Maine	5 day waiting period
Maryland	2 day waiting period, can be waived (Art. 62, Sec. 6-7)
Massachusetts	3 day waiting period (c. 207 sec. 28; 1941 c. 601, 1959 c. 118)
Michigan	3 day waiting period (Sec. 551.103a; 1955 No. 227)
Minnesota	5 day waiting period, can be waived (517.08 amended 1963 c. 795)
Mississippi	3 day waiting period, can be waived (461.5b)
Missouri	3 day waiting period, can be waived (451.040)
Montana	5 day waiting period, can be waived (48-118.1)
Nebraska	None
Nevada	None
New Hampshire	5 day waiting period, can be waived (c. 457, sec. 26)
New Jersey	3 day waiting period, can be waived (Tit. 37, c. 1 sec. 4-5)
New Mexico	None
New York	3 day waiting period (D.R.L. sec. 13b)
North Carolina	None
North Dakota	None
Ohio	5 day waiting period (3101.05)
Oklahoma	3 day waiting period if parties under 21 (43-5)
Oregon	7 day waiting period, can be waived (106.077)
Pennsylvania	3 day waiting period
Rhode Island	None; except 5 day waiting period if both parties are non-residents (15.2.1 as amended 1961 c. 100)

South Carolina	1 day waiting period (20-22)
South Dakota	None
Tennessee	3 day waiting period if parties are under 21 (36-405)
Texas	None
Utah	None
Vermont	5 day waiting period, can be waived (18-5145)
Virginia	None
Washington	3 day waiting period (26.04.180)
West Virginia	3 day waiting period (c. 48, Art. 1, Sec. 4-6c)
Wisconsin	None; except a 5 day waiting period for nonresidents
Wyoming	None

SOURCE: Martindale Hubbell Law Directory, 1964.

Part 2

Appendix L

FINANCING FOR MANDATORY PREMARITAL COUNSELING

Plan A

Los Angeles County, 1962

Marriage licenses granted, 44,922

6 percent of parties involved were 17 or under

$6 \text{ percent} \times 2 \times 44,922 = 5,391$ individuals under 18

Conciliation Court Counselor receives between \$7,500 and \$9,000 per annum, 1. Can handle 75 filings/month, or 150 individuals or 1,800 individuals/year.

To counsel 5,391 individuals, need 3 counselors: $3 \times \$8,000 = \$24,000$, additional revenue needed.

Increase in marriage license fee of \$1 would yield \$44,922 added revenue.

Increase in marriage, divorce, annulment filing fee of 50 cents will yield \$30,760.

Increase in divorce and annulment filing fee by \$1.50 would yield \$31,708.

Los Angeles, 1960, total divorce, marriages, annulment filings, 61,521.

(Revenue in excess of the amount needed for counselors could be utilized for research and followup on program effectiveness.)

Plan B

MANDATORY COUNSELING FOR ALL INDIVIDUALS UNDER 20

California—1961-62 total divorce, separate maintenance and annulment filings = 89,212.

1961 total marriages, 109,703.

Of these 15,607 involved one party under 20.

Marriage Counselor, 75 cases/month, 900/year.

Approximately 18 counselors would be needed in the entire state to offer counseling to 15,607 cases (2 party).

Eighteen counselors at \$8,000/year: \$144,000, additional revenue needed.

An increase of \$1 for all filings and marriage licenses would yield \$198,915.

An increase of \$2 for all filings excluding marriage licenses would yield \$178,424.

An increase of \$1.50 in marriage license fee would yield \$164,554.

(Note Appendix B for source)

Part 3

EXISTING AND ALTERNATIVE JUDICIAL PROCEDURES FOR FAMILY PROBLEMS *

I. INTRODUCTION ¹

Adversary procedure, similar to the legal process we know today, had evolved in the time of the Roman Republic. In both Rome and medieval England (where it was a replacement and substitute for trial by *battel* and *ordeal*) the technique of pitting opposing counsel in a forensic contest before a neutral arbiter was a great improvement and advance over earlier systems. Judged by democratic values, it will compare favorably with the alternative "inquisitorial" system which is employed in some European countries. Throughout the centuries it has proved so successful that lawyers are loath to abandon the process. Unfortunately, however, the law tends to fit all subjects to the same procedure.

Certain problems simply cannot be handled by such procedures. Partisan procedure is ill-adapted to the treatment or solution of problems of an intensely personal nature; those matters so surcharged with emotion that a neutral judge or jury is almost impossible to find; and those issues as to which no community consensus has been formed. Adversary procedure is a dubious technique where a problem does not permit leisurely consideration or where its formal and dilatory procedures are too expensive for one of the parties.

The key to understanding the difficulties in attempting to adapt family problems to solution under our adversary system is an understanding of family law ancestry. In England, the two shaping influences were feudalism and the church. Due to feudalism, the husband-father had the status of lord and master of his household. In the eyes of the law, wife and children were not *sui juris*.² Due to the church, the concept of sin permeated the canon law and the sacramental or indissoluble nature of marriage became a dogma. The church did not heed the wisdom of Spinoza who once said: "He who tries to fix and determine everything by law will inflame rather than correct the vices of the world."³ Rather, the church attempted to regulate, with indifferent success, the minutiae of these intimate relationships, and do so upon the basis of ideal, if not ascetic, notions of morality.

* This part of the final report is based on testimony presented to the Assembly Interim Committee on Judiciary at its hearings on domestic relations in Los Angeles, January 8-9, August 13-14, and October 8-9, 1964, and on material submitted to the committee or otherwise brought to its attention.

¹ Some of the material in this section is taken from a paper by Professor Henry H. Foster, Jr., New York University Law School, which was delivered as a lecture before the Pittsburgh Neuropsychiatric Institute as part of its program on "The Psychiatrist and the Attorney Look at Family Law Problems" on March 19, 1962. It is reprinted in 2 *Journal of Family Law* 85 (1962).

² Lat. Of his own right; possessing full social and civil rights; not under any legal disability, or the power of another, or guardianship. *Black's Law Dictionary*, Fourth Edition.

³ Spinoza, *Tractatus Theol. Polit.*, Chap. 20.

In America, we took over much of the substantive ecclesiastical law of England as developed in the church courts manned by bishops and clerics, enacted some of it into statutes, and adopted more by court decision. The result has been that much of our law reflects theological thinking rather than a realistic balance of interests, or a spirit of compromise, or any sense of limitation.

By a balancing of interests is meant that to be workable the law must consider both the private and public aspects of marriage, and must acknowledge that there are different levels of legal, religious, and social validity and significance. Selfinterest engenders selfhelp when satisfaction cannot be obtained through regular channels.⁴ If the law obstructs, or religion inhibits, either custom will arise to compete, or legal and religious institutions will adapt in fact, if not in theory, to answer urgent and pressing human needs. Such has been our history as to both the formalities of marriage and the means for its termination.

In short, it is this failure to weigh and balance that gives rise to the gap between law in theory and that "living law" that actually is practiced. The religious or public aspects of marriage, important as they may be, cannot be its exclusive or sole concern if the law would be pragmatic. The law must remember that human beings are the subjects of its controls and their individual interests must be reckoned with.

The uncompromising nature and black-or-white assumptions of much of the law pertaining to marriage and divorce emanates from the ecclesiastical tribunals of England which were established by William the Conqueror and survived until the middle of the last century. Their rules for judicial separations were applied by us to absolute divorces. During the Reformation the teachings of Luther and Calvin regarding justification for divorce were incorporated into English law and the notion of marital fault became the focal point of inquiry for both parliamentary divorce and separations. In effect a decree became an award for an innocent and injured spouse and a punishment for serious marital misconduct. The mythical "innocent and injured" spouse was a fiction⁵ and such rules did not preclude the *de facto* dissolution of intolerable marriages. Desertion for centuries has been the most common method of terminating marriage, and even today desertions outnumber divorces.⁶

The sense of limitation mentioned above refers to the consideration that in reality what the law says may be of relatively minor significance insofar as marriage stability is concerned since there are many larger forces at work. War, economic depression, and many other factors have

⁴ See Foster, *Common Law Divorce*, 46 Minn. L. Rev. 43 (1961) and Mueller, *Inquiry Into the State of a Divorceless Society*, 18 U. Pitt. L. Rev. 545 (1957).

⁵ See Bradley, *The Myth of the Innocent Spouse*, Selected Essays on Family Law 937 (AALS ed. 1950).

⁶ Rheinstein, *The Law of Divorce and the Problem of Marriage Stability*, 9 Vand. L. Rev. 633 (1956), reports that in the United States over a million spouses disappear annually. Zukerman, *The Role of the Public Agency With the Deserted Family*, 15 Public Welfare 101 (1957) cites public assistance figures to show that in 1955 there were 1,900,000 deserted wives in this country and 1,500,000 deserted unwed mothers, as compared with 1,200,000 divorced or legally separated wives. It is estimated that in June 1961, there were over 9,000,000 women and children in the United States affected by the estrangement of the fathers. See 1961 Report, Family Location Service, Inc. It should also be noted that with the exception of "cruelty" in its many forms, "desertion" is the most commonly used statutory ground for divorce in the United States.

been shown to have more to do with divorce rates than a theoretical severity or laxity in divorce law. In Oklahoma, for example, the divorce rate actually declined after "incompatibility" was made an "honest" ground. The popular or individual image of marriage may have far more to do with the divorce rate than what statutory grounds are available. This is the basis for the position that sound education for the responsibilities and adjustments of marriage probably would accomplish much more to cut down the incidence of divorce than any model law of divorce.

Although it is true the law may hamper or impede the treatment or solution of family problems, by and large its crime is that of non-feasance rather than misfeasance, i.e., the law does nothing constructive to help families in trouble. This is because 90 to 95 percent of divorce cases are uncontested and the "innocent and injured" spouse's allegation of grounds are undenied, unexamined, and rubberstamped. On the one hand, the factfinding apparatus does not work where there is no contest and unwarranted divorces are granted. On the other hand, little or no effort is made to save the marriage or to effect a workable reconciliation. Occasionally, live marriages are pronounced dead by divorce decrees. The other side of this dismal picture is that all too often the contesting spouse, in the 5 to 10 percent of litigated cases, is actuated by hatred, spite, or greed, rather than a sincere effort to save the marriage. A denial of a decree in such cases is hardly a victory for public morality.

Although the failure of our courts to give affirmative help and constructive aid to families in trouble is the most serious indictment of the adversary process in divorce cases, the system also works positive harm. In all states, and especially in states such as New York where there are narrow grounds for divorce, perjury and adultery are promoted by the law's intransigence. The system engenders further bitterness and animosities are intensified. Both the procedure and the substance of contemporary family law contribute substantially to many of the domestic problems facing our contemporary society.

II. A BEHAVIORALLY ORIENTED ANALYSIS OF THE ADVERSARY APPROACH TO DIVORCE

A. *Basis for and Effects of Punitive Attitude Toward Divorce*

The adversary philosophy behind our present legal system has been reinforced by prevalent social concepts and through legislative action. This has been applied inappropriately and destructively to the area of domestic relations to make the acquisition of a divorce an excessively difficult and disturbing process from a behavioral viewpoint. The primary social concept which has perhaps served as the rationale for maintaining the adversary philosophy in the area of domestic relations is based on the assumption that keeping the couple together or "saving" the marriage will stabilize the family, most adequately meet the physical and emotional needs of the children, and best serve the social and economic welfare of society.

Most professional opinion embraces the belief that the development of "good" family relationships is the most important single goal any individual or society could endeavor to attain. The "good" family is

seen as the fountainhead of our individual and social health, freedom and progress. But this same professional opinion seriously questions the validity of the assumption that by simply keeping families together the welfare of the family members has been served. This viewpoint is based on clinical evidence which indicates that marriages which are held together, for whatever period, primarily or solely by social, economic, or legal pressures, contribute to our society an excessive number of disturbed and destructive individuals.

There is a growing body of clinical and research material which supports the thesis that children are damaged more emotionally by the excessive overt and covert conflict between parents during the marriage than they are by the divorce. It is suggested further that the extent of emotional trauma which may result from a divorce is largely determined by the emotional disturbances experienced prior to the divorce action.

Such testimony was not intended to make a case for divorce nor to in any way encourage legislation that would allow divorce by whim or reaction. But it was submitted that divorce legislation should not be based upon the precept of simply saving marriages, but oriented toward broader, long-range individual and social considerations.

It was suggested that the overall welfare of the individual and society would best be served if the primary consideration in creating legislation were oriented toward reducing the interpersonal conflict, the emotional upset, and the deep sense of rejection and/or failure that frequently accompanies this experience, both during and after the divorce. There was a firm conviction that the preservation of whatever emotional stability exists in the personalities of both parties in the marriage will contribute substantially to many immediate and long-term values for the individuals involved, the children, the court, and society. Some of the following benefits would be derived from such an orientation:

1. There would be less tendency to retaliate over the hurts and/or injustices sustained during the marriage and divorce experience, as well as less fear of retaliation, both of which encumber efforts to create and maintain some measure of congeniality during subsequent contacts.
2. There would be less displacement of hostility from the mate to the children or the tendency to use them destructively in an on-going struggle.
3. There would be less motivation or justification for either party to reject the relationship entirely, which excludes the other from seeing the children or by refusing to assume responsibilities for the children.
4. There would be less antagonism to complicate the questions of custody, property settlement, visitation, or other aspects of their subsequent contacts, most of which cannot be controlled by legal methods.
5. There would be less emotional need to rush into another marriage as an escape from the feelings of insecurity or aloneness that oftentimes follows a divorce or as a balm to damaged feelings of worth and acceptableness. Such marriages are usually particularly prone to be a repetition of the first one, with the ultimate result being further damage to everyone involved.

6. There would be greater capacity to function effectively in the economic, social, and parental roles after the divorce.

B. Disruptive Effects of the Adversary Procedure

Approaching marriage relationships and divorce by utilizing the adversary philosophy is inappropriate and destructive to those involved, often requires dishonesty, and always creates disrespect for the law. Some of the disruptive effects of the adversary procedure which makes change most desirable are:

1. Intensifies Undesirable Feelings, Attitudes and Conduct

Family members are automatically pitted against one another suddenly as opponents. The acting out of their aggression one upon the other is encouraged. In fact, the law actually suggests that they "fight" one another to the finish, and until one is judged officially as the good one, the right one, and the other is by authority declared publicly to be the bad one, or the wrong one. This in itself is an aggressive and vicious procedure. The law provides for certain personalities, professional and otherwise, to act in such a way as to take out their aggression on the participants in various ways. It encourages the clients to act out their aggression in terms of various asocial and even antisocial behaviors.

This is not a healthy system. It is not realistic, since it is practically a human impossibility for any human to take in the aspect of omnipotence to the extent that he judges any person either "right" in all respects, or "wrong" in all respects as the law frequently suggests, and particularly in cases where the fundamental problems are in the emotions of the individuals involved.

Inasmuch as the very nature of the adversary proceedings require one mate to prefer charges against the other as a basis for obtaining a divorce, it gives both support and justification to the usually longstanding destructive pattern of overt or covert projection of blame for the difficulties onto the mate. This is a pattern that has usually already contributed substantially to the emotional disturbances experienced by both individuals during the disintegration of the relationship. The result is almost inevitably an increase in the basic feelings of failure, inadequacy, unacceptableness, and/or guilt in the accused person. These feelings comprise the emotional basis and impetus behind the anger that is then projected outward onto the mate in the form of blame, retaliation and punishment.

Such hostility may express itself in an attitude of direct antagonism, through noncooperation, or in other destructive forms. Anger and projection are used as defense mechanisms as well, as the accused person seeks to allay his anxieties, cover his hurt, and protect his sense of worth and emotional stability. The ultimate effect of these disturbed feelings and defense patterns is usually one of further blocking the person's capacity to understand or respond constructively to the situation, whether it causes him to focus his efforts on exonerating himself for blame or to protect himself through withdrawal or denial of caring, or escap-

ing through drinking, another relationship, or even leaving the area.

While it supposedly brings some individuals to their senses and others to their knees, such results are usually short-lived as the person soon reverts to his previous patterns of behavior and the hurt, fear and hostility created find expression in forms that ultimately make the situation more difficult than before.

2. *Gives Court Restricted and Distorted View*

The adversary procedure demands that a very restricted and/or distorted picture of the marriage relationship be presented before the court. While one partner may have functioned less adequately and/or more destructively than the other in the marriage, both persons have inevitably contributed consciously or unconsciously to the difficulties or conflicts in the marriage. At the same time it is not infrequent that the one who appears to be the more capable and/or blameless actually contributes most significantly to the destructive interaction. In turn, the one who files for the divorce and is placed in the position of appearing to be the offended person is not infrequently the worst offender.

It is on the basis of this distorted picture, however, that the court must mete out its justice and deal with vital questions that could and will have profound effects upon the lives of all those involved—emotionally, socially, and economically.

3. *Unnecessarily Complicates Attorney's Task*

Due to some extent to the adversary procedure, attorneys are frequently in the position of having to cajole, persuade, manipulate, even threaten their clients in an effort to bring about agreement on questions of custody, property settlements, support, etc. before the case goes before the court. Done in the face of the hostility and hurt that usually exists, their job is often unnecessarily difficult and demanding on their time and patience, often beyond feasible economic remuneration.

At the same time, the position in which they find themselves oftentimes forces them to function in ways which serve to intensify the anger of their client toward their mate, the attorney, the law, the court, and even the state. The position they hold, also grants the attorneys power which is used in inappropriate and destructive ways on occasion, to the detriment of all concerned.

4. *Limits or Deters Reconciliation Efforts*

The struggle imposed by the adversary procedure along with the legal principles of condonation often result in attorneys placing strong taboos on any contract between their client and their client's mate. Such restrictions oftentimes not only serve to limit or deter reconciliation efforts that may be desired by one or both parties, but contribute to their sense of frustration and anger.

5. *Produces Diverse and Conflicting Judicial Interpretations*

The adversary procedure is interpreted in very diverse ways by the various judges who function in the area of domestic rela-

tions. Some judges interpret the law very strictly and require each case be decided solely on the basis of evidence presented in open court, while others are desirous of obtaining any and all information they can about the case from other sources, to assist them in making their decisions. They will seek and use help from other professional persons freely, as well as seek private sessions with the partners and oftentimes with the children where it seems appropriate and desirable. Some judges protect the confidentiality of information given by a patient to a professional person when he is called before the court, and others do not.

The removal of the adversary procedure from the domestic relations proceedings would do away with these conflicting attitudes on the part of judges and allow the free use of the services of various professional groups in seeking to arrive at the optimum solution to many complex domestic relations problems. It would in turn free the litigant to make full use of professional help which might be available to help him resolve his personal problems and/or marital difficulties without fear of information given in confidence being betrayed and used against him. Such assurance is absolutely essential if a counselor is to work with a person in the intimate, intense fashion requisite to providing significant help for him with his problems.

In general, however, the fundamental factor behind the destructiveness of the present adversary system lies in the necessity of proving guilt and making one person the object of all blame. This tends to not only further undermine the accused person's desire and capacity to function constructively in dealing with the crucial situation with which he is faced, but to disrupt or interfere with his emotional capacity and effectiveness in functioning as a parent or as a productive person in other aspects of his life.

C. The Concept of Fault and Guilt in Divorce Litigation

1. *A Malevolent Inheritance*⁷

The divorce courts appear to have inherited from the ecclesiastical courts, Anglican as well as Roman, not the basic Christian philosophy of love and forgiveness, but the ancient pagan doctrine of guilt and punishment. Perhaps early bishops in granting their separations *a mensa et thoro*⁸ were impelled by considerations of theology to call down the wrath of God upon a spouse who broke his marriage vows and punish him by depriving him of his marital status. There are several things slightly wrong with that concept when applied to this day and age of absolute divorce: it is utterly ridiculous to call it punishment for the offending spouse when more times than not he too is anxious to be free from the hypothetically innocent spouse. And if there be such a thing as a truly innocent spouse, and if legal recognition that a marriage is defunct be indeed punishment, it would appear anomalous to

⁷ Much of the following is taken from an address given by Judge Paul W. Alexander before the International Association of Legal Science, "The Family Court—An Obstacle Race?" reprinted in 19 U. Pitt. L. Rev. 602 (1958).

⁸ A partial dissolution of the marriage relation. Black's Law Dictionary, Fourth Edition.

punish the innocent spouse along with the guilty one. It is suggested that applying these concepts, the innocent spouse should be left married while punishing only the guilty one by divorce!

It was also suggested that perhaps the early bishops simply found it less distasteful to grant separation of what they believed God had joined together if they could blame it on some form of marital sin. There was ample precedent for putting a spouse away for cause, some of it dating back to the beginnings of history. Of course, the bishops did not realize they were setting such an easy, withal paradoxical pattern for divorce *a vinculo*⁹ in the secular courts in the years to come.

Thus the divorce court's function became mainly to adjudge guilt and administer pseudopunishment. Yet the American society, speaking through its state legislatures and the Congress, recognizes something inherently evil in marriage which is no longer a marriage but a legal fiction. Whether out of considerations of equity and justice or just plain sympathy for the suffering spouses, or as a prophylactic against the socially septic mess generated by the defunct and decaying marriage, society has decided to clean up the domestic debacle and provide for the legal interment of the potentially infectious remains by the issuance of a burial certificate in the form of a divorcee decree.

2. *The Anomalies of the Guilty Spouse and the Accusatory Approach.*¹⁰

The issuance of a marriage license or the presiding at a marriage are considered purely administrative functions. But within the past century or so the revocation of a marriage license, the unmarried of a still legally married couple, has been transformed into a judicial function by our legislatures. Whether the legislatures intended divorce to follow more or less the established patterns of the law of contracts, torts, property, partnership or nothing at all, they have succeeded in making divorce a misbegotten action sounding in criminal law. All that is needed to win severance of the bare marriage bond is to prove the defendant *guilty* of a statutory ground for divorce, ordinarily something commonly regarded as another name for some form of sin.

One trouble with guilt as the criterion of divorce is that it virtually assures the mortally feared and hated "divorce by mutual consent." Few things are easier of proof than the fault of the other spouse—especially if he isn't there to answer the charge, as is true in 85 percent to 95 percent of cases. This is why it is proclaimed with such verisimilitude that we now have divorce by mutual consent in almost all jurisdictions. One almost never hears of an earnest divorce seeker being thwarted. Plaintiff usually has little trouble recalling a plethora of nasty things to say about defendant spouse, with witnesses to verify them, and if, as happens once in a great while, the vital vitriol is in short supply and the court is

⁹ Divorce *a vinculo matrimonii*: a divorce from the bond of marriage, a total divorce, dissolving the marriage tie, and releasing the parties wholly from their matrimonial obligations. 1 *BLComm.* 440; 2 *Bish. Mar. and Div. Sec.* 225.

¹⁰ See footnote 7 *supra*. In addition there are also extensive parts from Rutman, *Departure From Fault*, 1 *J. Fam. L.* 181 (1961).

unconvinced, plaintiff merely profits by the experience and comes back later to the same or another court, with the same or another lawyer, and this time loaded with enough evidence of atomic efficacy to divorce a whole regiment. In those relatively few cases where a divorce is denied because the fault appears to lie with the plaintiff, it is not infrequent that the defendant comes in later seeking the divorce.

When domestic discord strikes at family life, few things could be better calculated to intensify antagonism than the cruel and senseless system which requires one spouse to attack the other in pleadings open to the public press, to bring witnesses into court to expose sin and shame, and to air his own unsavory accumulation of dirty linen.

Nor do the grounds for divorce represent the true causes of marriage failure, which is a process of disintegration and cannot be attributed solely to a specific act. Divorce is only the formal recognition of marriage failure. It is the effect and not the cause, and to pretend that in the case of rejecting a request for divorce, the parties will return to each other is in most cases illusory. Most sociologists would be hostile to the argument that easy grounds for divorce would lead to individuals taking marriage lightly, for most people intend, on entering the relationship, to make the partnership last for life. Certainly there is no evidence to support the contrary view. Marriage failure does not represent a question of guilt or innocence, for these concepts cannot be measured or evaluated. It is the conflict of personalities which may lead to the necessity of giving either or both parties aid in a mental breakdown or sickness, rather than attaching a label of guilt and giving the price of a divorce to the innocent victor. If guilt can be invoked at all, then both parties may be called guilty.

Where the parties are caught up in a negative pattern, it is better to release them from the bonds of matrimony, both for their own good and that of society which can only be harmfully affected through the hostile behavior of the parties and the reflection on their children. The argument that the state has an interest in maintaining the family relationship is meaningless where the family is no longer performing any useful function in promoting orderly adjustment between the sexes and rearing children. In fact, at this stage the family becomes a liability.

We must note the changing function of marriage in the light of the rise of liberal thought, altered sex attitudes, alterations in the economics of the family, the change from external necessity to internal affection as the basis for marriage, and the increase in behavior conflicts amongst individuals in contemporary society.¹¹

The present system, because of its adversary nature, simply adds to the division between the parties. It raises issues and revives wounds which debase their relationship to no value either for them or society. This emphasis on the past is not the problem for the court, for what is in issue lies between the future relationship for the parties within the marriage and their hopes of beginning a fresh and independent life.

¹¹ Lichtenburger: Divorce—A Social Interpretation.

Adversary procedures mean that no spouse may with impunity neglect the slightest grievance or overlook the smallest offense. He must store them up in his memory and harbor them no matter how much they may fester, for if worst comes to worst and his marriage turns out to be one which is destined for the divorce court, he will fare ill unless he can dredge up from his storehouse of iniquities enough raw material to be worked over by a skillful lawyer into grounds for divorce. The minute they quit tearing at each other's throats and sit down to talk things over sensibly so as to settle the conflict peaceably, they risk losing out entirely through the doctrine of collusion.

Of course, forgiveness may be fatal. The Christian principles of confession, repentance, forgiveness have no place in divorce court and their exercise in the interpersonal relationships which constitute the marriage may be fraught with risk. The husband who has strayed off the reservation and repented, and now wants to confess and seek forgiveness gets scant encouragement from the law. He would be furnishing his wife with a devastating weapon against himself simply because the law makes evidence of such guilt a ground for divorce. And on the other side of the picture the wife may be damaging her position by forgiving the husband, thus affording him the defense of condonation to use against her.

The instant either of them looks to the law for relief he must put aside all thought of confession, of making amends, of concession, of forgiveness. He must start out with accusation. Then he must maintain an attitude of antagonism. The stricter the law the more he must pile accusation on accusation.

Each fresh accusation drives the wedge deeper. But that is the only way to meet the law's demands. Guilt! That is what the law wants to hear about, to ferret out and to punish. Sin! That is at once the cornerstone and the keystone of the structure of the conventional divorce court. It has no room for, indeed it penalizes such simple virtues as kindness, sympathy, magnanimity, understanding, mercy, considerateness, unselfishness, honesty. The more the evidence of guilt piles up the more fully is the law satisfied. And honest efforts at marriage mending or amicable adjustment will continue to be frustrated by the law itself as long as the criterion of guilt prevails with its twin syndromes of the accusatory approach and the adversary procedures.

D. Detrimental Effects on Custody, Support and Visitation Determinations.

Inasmuch as the man in our culture has been expected to gallantly play the role of the offender in divorce cases, the woman has been placed in the position of being the one who is usually allowed to get the divorce. At the same time, under the adversary procedure the person who gets the divorce is assumed to be the more worthy individual, which almost automatically places them in the favored position for being given custody of the children. It would appear that subsequently over the years a strong judicial bias favoring the woman with regard to custody of children has developed except when serious extenuating circumstances exist.

This judicial bias has both reflected and received support from the family patterns and social concepts of the past, but in our present culture it is neither appropriate, judicious, nor fair. It tends to disregard the tremendous changes in family life structure and relationship today. It imposes perfunctory and arbitrary decisions in matters of custody that frequently disregard the actual welfare of the children. Some relevant factors that should be recognized in the legislative approach to the question of custody are:

1. A commonly accepted concept of the past, which no longer receives general acceptance in professional circles, is the belief that there is something innate about being a mother that gives her a special capacity or insight into the proper way to raise her children.
2. Educational, social and economic changes in our culture have brought about a tremendous increase in the number of married women with children in our work force. This has resulted in the mother frequently being gone from the home as many hours a day as their husbands. An even higher percentage of divorced women are found in the labor market due to the necessity for supplementing their income from their former husbands. Yet, another reason frequently given for granting custody of the children to the mother, is the fact that she is home with the children.
3. The rapidly changing roles in family life during the past hundred years have created a condition wherein many men today play as active a role in relating to and caring for their children as do their wives. There is no question but what some men are more conscientious and effective in their role as a parent than are their wives. In case of divorce, many of these men would provide more adequately for their children, give more time and concern to them, and maintain a more meaningful relationship with their children than would their wives. Yet, with relatively rare exceptions, no matter how effectively he has functioned as a parent, unless he can prove his wife's behavior to be in radical opposition to the social or moral values of our culture and/or of a severely destructive nature to the children, the man is ill-advised to seek custody of his children.

Even when it might be possible to obtain such information, the emotional upheaval that would result from such action for himself, his wife and the children, along with the large monetary outlay involved, dissuades many men from seeking custody of their children when such action might be most desirable in terms of the children's welfare. At the same time, there are a substantial number of cases wherein the wife has fought for and received custody of her children only for economic reasons, as a retaliatory measure, or because of the social expectation, rather than because of any real desire on her part for the children.

While there is no question but what women as a whole tend to prepare themselves for child-rearing more than men, spend more time with their children, provide a more meaningful emotional relationship and are usually more capable of caring for their overall welfare than their husbands, it is by no means as generally true

as might be suggested by the number of women who are given custody of their children upon being divorced.

It is because of these inappropriate and unjustified inequities, as well as the intensification of conflict that results from the present adversary process involved with divorce and custody that the need for removing custody from the adversary procedure and establishing it as a separate function from the divorce process is clearly indicated. This action becomes particularly desirable if the divorce process is not taken out from under the adversary procedure.

E. Some Observations Taken From Clinical Practice Might Emphasize the Possibilities of Further Study.

1. First of all, most persons don't really want the divorce as the solution to all of their personal problems.¹² The divorce is a defeat. It is hard on the self image whether the person is legally judged either the "winner" or "loser." They would rather succeed in their adjustment to life if they could perceive a better way.
2. Secondly, people lean back upon divorce, as a solution, in a "last ditch" desperate attempt at self preservation. They become so threatened by the aggression of others, professional and otherwise, and by their own tension and anxiety, that they will do anything to escape this threat. If divorce is offered as the solution, they will snap this up as "the answer" in lieu of any further understanding. This is a deprived and primitive state of affairs for a society that "knows better."
3. A third observation, from clinical experience, and worthy of research, is that divorce will not solve problems, but even perpetuate them. People who get divorced frequently remarry a person with a personality practically identical with that of their ex-mate. The problems are continued, and divorce is continued.
4. Another observation relates to the present type of counseling that most people are forced to rely on. Usually, friends, relatives, neighbors, acquaintances are involved as advisors or counselors. These people frequently try to do their best. However, they are not trained in scientific counseling procedures. It is difficult for them to be objective. Relatives and friends easily read their own problems and aggressions into the marital relationship, and they take their own feelings out in an unhealthy manner by setting up an adversary system, choosing sides, and "fighting it out" so that the opponent person becomes the scapegoat in the situation. In lieu of professional counselors, and, in their insecurity, marital couples in strife snap up such counseling services. They could

¹² After having presided over approximately 4,000 hearings or conferences since the inception of the Washington family court in the first three years of its operation, the supervisor of the King County Family Court stated that she was "... convinced that at least half of the people who start divorce suits are really hoping that something will stop them before it is too late. They insist they want a divorce, but at the same time they are wishing that somebody will step in and straighten things out. The tragedy is that in most cases nobody does. The vast majority obviously go into divorce without thinking through what it may entail; they think that divorce will automatically solve all their problems, but they are shocked and bewildered when they discover that it not only failed to cure everything but started a whole new set of problems and heartaches." Ralls, *The King County Family Court*, 28 Wash. L. Rev. 22, 26.

just as well have been referred to competent, trained, objective, and neutral professional workers.

III. ALTERNATIVE SUBSTANTIVE AND PROCEDURAL TECHNIQUES FOR HANDLING FAMILY PROBLEMS

A. Preliminary Processes

1. *Style of Case:*

As indicative of the new, behaviorally oriented approach to marital discord, the style of the case no longer needs to identify the parties as pitted against one another. Instead of John Jones *versus* Mary Jones the action would be styled "In the matter of John and Mary Jones" or "In the matter of Jones Family." It will also indicate that if a decree is granted, it will be granted not to one or the other, but to both or in regard to the Jones family.

2. *Notice of Intent to Commence a Divorce Proceeding:*

The experience of all those dealing with couples undergoing divorce procedures is uniform that once the actual complaint is filed, with its various assertions of fault and deficiency against the other spouse, the parties become committed to the roles in which they are cast by the legal language so that they are much harder or impossible to reach by counseling or other therapeutic techniques which will lessen the trauma of the experience. It was therefore suggested that when the situation has reached the point that one party feels he must take formal action, indication of that fact be accomplished by merely filing a "Notice of Intention to File a Divorce Complaint." This document says in substance nothing more than that the situation is critical and that if it is not relieved, it will be terminated by a divorce. A three-month period could then ensue during which neither party would be permitted to file a complaint for divorce. During this time, evaluation of the marriage status and, if indicated, reconciliation efforts would take place. A brief hearing could be held at the outset of this period, or whenever requested, to handle the usual questions of temporary custody, support, visitation, etc.

3. *Evaluation of Marriage Status; Reconciliation; Counseling for Divorce:*

Merely marking time during the three-month waiting period following the filing of the notice of intent has certain benefits in and of itself. It allows time for those actions based upon transitory emotional reactions of anger, despair, etc., those being used as manipulatory tools to bring about concessions, or those designed to bring home the seriousness of the situation, to resolve themselves. But more importantly, it would permit time for a required professional evaluation of the marriage viability to be made. This is not a reconciliation effort. It is an investigation made to furnish to the court a report of the character, family relations, past conduct, earning capacity and financial worth of the parties to the action.

During this time the parties can also explore with a professionally trained, experienced marriage counselor whether or not the

marriage is viable and whether or not they wish to attempt to keep it alive. If it is dead, the parties can be helped to understand the emotional conflict, the guilt feelings, the failure and the other upheavals they have been experiencing. They can be helped to recognize that while the divorce will terminate the legal relationship between them the social involvement by the parties with each other's lives will continue after the divorce becomes final, particularly if there are children. They can be helped to understand these things and to understand why it is so vital for the benefit of their children that they conduct themselves in such a way as to minimize the possible harmful effects on their children.

If either party voluntarily desires to explore a reconciliation attempt such counseling could be undertaken at this time. By restricting this effort to those who voluntarily desire it staff personnel are not impeded by having to try to reconcile parties who are not interested. The mandatory divorce investigation effort helps those families where divorce is certain to adjust to the fact of divorce. In any event, at least the opportunity was presented to all to have some help when it might have done some good. Towards the end of this period the question of custody, support, visitation and property settlement could be considered or worked out by the parties, or their attorneys, so the divorce procedure is not unduly prolonged.

B. Nonadversary, Nonfault Hearings

California has already recognized that under certain conditions a divorce may be granted which is not based on fault. Thus, as Justice Traynor pointed out in *DeBurgh v. DeBurgh*, 39 Cal.2d 858 (1952), "The rising divorce rate in the United States has compelled a growing recognition of marriage failure as a social problem and correspondingly less preoccupation with technical marital fault. This trend is strikingly exemplified by the recent amendment of Section 92 of the Civil Code designating incurable insanity as a ground for divorce. Formerly, no matter how vicious the conduct of an insane spouse, he could not be divorced, for the law refused to find in him the guilt essential to a marital offense. . . . The Legislature has come to realize, however, that when a union is dominated by insanity, fulfillment of the normal purposes of marriage is hopeless. What was once a bar to divorce is now recognized as a justification for divorce."

1. Incompatibility¹³

A realistic attitude recognizes the end of the *de facto* marriage, and appreciates there can be no purpose in continuing the outward form where the contents have been destroyed. "When it appeared that the purpose of matrimony had been destroyed to the extent that further living together was intolerable, it was in accordance with the court's duty and prerogative to grant the plaintiff a divorce. It is not the policy of the law that a man and a wife should be required to live together or be held in a marital relationship when they have come to regard each other as mere

¹³ Much of the following is taken from Rutman, *Departure from Fault*, 1 J. Fam. L. 181 (1961).

strangers.”¹⁴ This has been the policy which lies behind the incompatibility statutes.

Incompatibility was introduced as a ground for divorce in the Virgin Isles in 1920,¹⁵ in New Mexico in 1933,¹⁶ Alaska two years later, and more recently Oklahoma adopted it as a ground for divorce in 1953.¹⁷

Ideally, the court is now examining a state of affairs in which the marriage due to the hostile interaction of the parties has broken down. It should not attempt to lay guilt or innocence at the door of either spouse. However, it has not yet arrived at the stage of seeking the emotional motivations for the breakdown, although these may well be suggested during the inquiry. It would seem almost selfevident that if the court finds there is a maladjustment between the parties and that this is due to their psychological makeup, then it must continue its analysis along similar lines where it is confronted with the problems of alimony, custody of the child, and property rights. It is at this stage that the introduction of “fairness” or “injustice” which resolves future problems in terms of past behavior becomes ludicrous.

Incompatibility has been developed as a ground for limited divorce in three jurisdictions—Kentucky,¹⁸ Rhode Island,¹⁹ and Minnesota. The courts have interpreted this discretion broadly, and perhaps this is because of the nature of judicial separation, which seems to represent in the eyes of the court a less fundamental attack on the marriage relationship than in the case of absolute divorce.²⁰ This has given rise to the more liberal approach of the judiciary.²¹

The more subtle method of introducing a marriage failure basis was involved in a number of cases where lip service is paid to the existing law by attributing the divorce to a specific statutory ground, and pointing out that one spouse is at fault, whereas the fact situation has established a mutually inconsistent pattern between the parties, and no specific “cause” can be found. Such was the decision in *Ohligschlager v. Ohligschlager*,²² a California decision, where the rejected ground was mental cruelty, but their behavior pointed to the conclusion that such was their mutual disagreement over many issues that they were unable to live together, and that any further efforts to save the marriage would be futile.

¹⁴ *Ohligschlager v. Ohligschlager*, 125 Cal. App. 2d 458, 270 P. 2d 577 (1954). See also *Inskip v. Inskip*, 5 Iowa 204 (1857); *Clyburn v. Clyburn*, 175 Ark. 330, 299 S.W. 38 (1927); *Widstrand v. Widstrand*, 87 Minn. 136, 91 N.W. 432 (1902).

¹⁵ Divorce Law of Virgin Island, Bill No. 14 § 1 et seq. § 7.

¹⁶ N.M. Laws (1933) C. 54, P. 71, 2 N.W. Stat. (1941) 25-701.

¹⁷ Session Laws of Alaska, 1945, C. 54, P. 120; 3 Alaska Comp. Laws Ann. (1949) §§ 56-57. Oklahoma; S.L. 1953, 59, 12 O.S. Supp. S 1271.

¹⁸ Ky. Rev. Stat. (1948) S. 403.050. Divorce from bed and board may be rendered for any cause that allows divorce, or for any other cause that the court in its discretion considers sufficient.

¹⁹ R. I. Gen. Laws of 1948, C. 416, § 8 . . . For such cause as may seem to require the same (i.e. a divorce).

²⁰ *Widstrand v. Widstrand*, 87 Minn. 136, 91 N.W. 432 (1902), represents the typical view—“If nothing but misery is to be attained by living together, then what warrant is there in compelling the continuance of that existence.” See also *Quinn v. Quinn*, 279 Ky. 286, 130 S.W. 2d 834 (1939), *McDaniel v. McDaniel*, 292 Ky. 56, 165 S.W. 2d 966 (1942).

²¹ *V. Schlater v. LeBlanc*, 121 La. 919, 46 So. 921 (1908).

²² 125 CA 2d 458, 270 P. 2d 577 (1954).

A similar approach was adopted in Utah in *Wilson v. Wilson*,²³ where, although the alimony issue was based on fault,²⁴ the question of granting the divorce was placed on the ground of the inability of the parties to carry on living together.²⁵

2. Voluntary Separation²⁶

The ideal in both incompatibility and voluntary separation suits is similar, although it may take a different form. Where incompatibility is concerned, we look at the whole context of the marriage and adopt incompatibility as a general clause to discover if the marriage has broken down to an irreparable extent. Voluntary separation has, or should have, the same basis, but we are limited to the extent of having as the evidence of this breakdown, separation for a number of years. This represents the essential aspect of the parties' incompatibility, and it may well be more suitable for the court to be granted discretion to see that the divorce cannot be obtained where the separation is due to an accidental parting or a reason such as military service or imprisonment, and that in fact the parties are irreconcilable.

The principal distinction between voluntary separation and incompatibility lies, however, not so much in the indicia which go to establish the existence of the cause, but in the implications of voluntary separation. Granting a divorce upon the latter basis is to recognize divorce by mutual consent.

It is unrealistic to fail to recognize that in practice numerous divorces are carried out under circumstances of mutual consent. It is one of the factors which has brought law into disrepute that it continues to regard the litigation as an adversary proceeding, and, not as it is in many cases, a mutual arrangement. The number of undefended cases is but further evidence which goes to prove this now well-accepted statement.²⁷

There are, at present, 21 jurisdictions which have some form of voluntary separation as a ground for divorce.²⁸ The period of years involved varies from 2²⁹ to as much as 10 years.³⁰ It is

²³ 5 Utah 2d 76, 296 P. 2d 977 (1956).

²⁴ "The court considers the relative loyalty or disloyalty of the parties to their marriage vows, and the relative guilt or innocence in causing the breakup of the marriage."

²⁵ See also *Hendricks v. Hendricks*, 123 Utah 178, 257 P. 2d 366 (1953); and the reasoning in *Spensenberg v. Carter*, 151 La. 1038, 92 So. 673 (1922).

²⁶ See fn. 13 *supra*.

²⁷ In the United States, answers were filed to about 1/7 of all petitions (14.8 percent 1946-50), but this does not necessarily reflect controversy over the granting of the decree, for it may only extend to the terms governing the "incidentals." Jacobsen, *Marriage and Divorce*, 120.

²⁸ Alabama, Ala. Code tit. 34, S. 22(1) (Supp. 1957); Arizona, Ariz. Rev. Stat. Ann. S. 25-312 (1956); Arkansas, Ark. Stat. Ann. S. 34-1202(7) (Supp. 1955); Colorado, Colo. Rev. Stat. 46-1-2(9) (Supp. 1958); Idaho, Idaho Code Ann. S. 32-610 (1947); Kentucky, Ky. Rev. Stat. Ann. S. 403-020(1) (b) (1955); Louisiana, La. Rev. Stat. S. 9:301 (1950); Maryland, Md. Ann. Code Gen. Laws Art. 16, S. 24 (1957); Minnesota, Minn. Stat. Ann. S. 518.06(8) (1958); Nevada, Nev. Rev. Stat. S. 125.010 (1957); New Hampshire, N.H. Rev. Stat. Ann. S. 458:7 (Supp. 1957); North Carolina, N.C. Gen. Stat. S. 50-6 (1950); North Dakota, N.D. Rev. Code S. 14-0605 (1943); Rhode Island, R.I. Gen. Laws S. 15-5-3 (1956); Texas, Tex. Rev. Civ. Stat. Ann. Art. 4629(4) (1958); Utah, Ut. Code Ann. S. 30-3-1(8) (Supp. 19**); Vermont, Vt. Rev. Stat. S. 3205(7) (1947); Washington, Wash. Rev. Code S. 26.08.020(9) (1958); Wisconsin, Wis. Stat. Ann. S. 267.07(7) (1957); Wyoming, Wyo. Comp. Stat. Ann. S. 3-5906 (1945). Dist. of Col., D.C. Code Ann. S. 16-403 (1951).

²⁹ Alabama; Louisiana; New Hampshire; Wyoming.

³⁰ Rhode Island.

not only in interpretation that the laws differ from each other, but also in the construction of the individual statutes.

The living apart statutes express, on the surface at least, an exclusion of fault considerations in about half of the states. In practice this has not been the case. The introduction of technical terms, the reiteration of traditional jargon and the lack of continuity in thought are apparent in almost all the cases. In some instances, where it seemed that the policy of the Legislature or at least the apparent policy, has been carried out in the granting of the decree, this has not been followed through with reference to alimony or property rights.

What has replaced this is a course which looks at the marriage as a whole and blurs the line between fault and **nonfault**. It is in fact a method which falls in the middle, at times vaguely aware that blame or guilt is not the ideal approach, at others slipping back into the traditional patterns of thinking and analysis.

3. *Eliminate Fault-Oriented Defenses*

The third part of a new approach to divorce hearings is to remove from the code those defenses to divorce which presuppose the issue of fault. The decision of *DeBurgh v. DeBurgh* has already done away with the harmful effects of the defense of recrimination. The remainder of the doctrine should be eliminated by repealing Civil Code Section 111 (4) and Civil Code Section 122.

The proposed Pennsylvania code goes much farther: It provides in Section 304 that

"Except as otherwise provided in this act, the defenses of recrimination, condonation, connivance and collusion are hereby abolished; provided, however, that where adultery is charged, if it be established that the party alleging such offense either conspired to procure its commission or willingly forgave the offense, the court may refuse to grant a divorce on that ground but may consider such offense in determining whether other grounds exist for termination of the marriage."

The "otherwise provided" clause seems to have been intended to refer to Section 406, where the act states that

"Collusion shall be found to exist only where the parties conspired to fabricate grounds for divorce or annulment, agreed to and did commit perjury, or perpetrated fraud on the court."

It must be recognized that incompatibility and voluntary separation *per se* stand in a different category to other divorce grounds. They are subject to different considerations than other grounds for divorce. Hence defenses which presuppose the issue of fault have no application to these grounds. "The power of the court to decree divorce where it is found that the parties are incompatible, i.e., can no longer live together, is inconsistent

with the application of the doctrine of recrimination.”³¹ At long last there has been some judicial recognition of the strength of the criticisms which emanated from sociologists and psychiatrists alike: The denial of divorce did not bring to life again a family which was sociologically dead. “I cannot feel that when the parties are living separate and apart, and one or other, or both, are guilty of adultery, that the courts can serve any good purpose by forcing them to live for the rest of their lives as husband and wife, separate and apart, and thereby create a situation which can do nothing but cause sorrow and unhappiness.”³²

Incompatibility and voluntary separation as grounds for divorce cut across all the other offenses, and tend to replace them. Adultery, desertion, and cruelty are but the resultant external characteristics of hostile interaction. The criticism that nobody will seek a divorce on any other ground when these are on the statute books is misplaced, for any other ground may only represent one facet of a situation in which the parties are unable to live together. The basic premise behind this position is that by allowing incompatibility or voluntary separation to be interpreted in a liberal manner we shall be opening the floodgates for easy divorce, that marriage as an institution will be finished in a society where divorce by consent goes hand in hand with a multitude of promiscuous relationships. Such a view clings to the traditional pattern of divorce law and finds its central thesis in the proposition that divorce law affects behavior in society.³³

The proposed Pennsylvania Divorce Code, drafted after a long study under the supervision of Professor Harry Foster (now of New York University), contains this nonfault ground for divorce:

“Living apart for a continuous period of two years because of estrangement due to marital difficulties.”

The legal theory of divorce based on separation is not fault, but marriage failure.

The newly enacted Family Code in Wisconsin does not go quite as far as the proposed Pennsylvania code. A divorce may be granted in Wisconsin, at the suit of either party, whenever they have lived apart for five years pursuant to a judgment of legal separation. While it is unnecessary to establish a fault basis in the divorce action, it still is necessary to do so in the separation action.

C. Separate Matters

In furtherance of the previous proposals, several matters should be treated separately and apart from the decision of awarding the divorce. These include:

1. *The Division of the Community Property*

Civil Code Section 146 has been interpreted to require an award of more than half the community property to the prevailing spouse if the divorce was granted for cruelty or adultery. (See *Enslinger*

³¹ *Chavez v. Chavez*, 39 N.M. 480 1950 P. 2d 264, 272 (1935).

³² *Pavletich v. Pavletich*, 50 N.M. 224, 174 P. 2d 826, 829 (1946).

³³ *Supra* note 13 at 186.

v. *Enslinger*, 47 Cal. 62.) If the divorce was granted for incurable insanity the property may also be divided unequally. But if the divorce is obtained on the ground of desertion, willful neglect, habitual intemperance, or commission of a felony, the community property must be divided equally.

The question of division of community property should not be connected with the issue of fault in such a way as to make a moral judgment that adultery is worse than desertion, or cruelty than habitual intemperance, the distinction based on the grounds for divorce ought to be removed from Section 146. The Legislature must then choose between allowing the court to divide the property as it deems just in all cases or dividing it equally in all cases. An equal division is more compatible with the theory of Section 161a of the Civil Code that the parties' interest in the common property is equal. If we assume that the contribution of both to the acquisition of the property is equal, and this is the theory of the community property system, then it should follow that the vested interest should not be divested by the commission of marital fault. The fault principle thus would be entirely eliminated if the property were divided equally in all cases.

In the *DeBurgh* case, of course, where divorces were granted to both parties, the court held that the community property should be divided equally because neither was innocent.

2. *The Award of Alimony*

Civil Code Section 139 provides in part that :

"In any interlocutory or final decree of divorce or in any final judgment or decree in an action for separate maintenance, the court may compel the party against whom the decree or judgment is granted to make such suitable allowance for support or maintenance of the other party for his or her life, or for such shorter period as the court may deem just, having regard for the circumstances of the respective parties . . ."

California courts have already substantially modified the apparent meaning of this section. Thus, in *Hudson v. Hudson*, 52 Cal. 2d 735 (1959) the Supreme Court awarded alimony to a California wife following an ex parte divorce procured by her husband in a sister state. And in *DeBurgh v. DeBurgh*, *supra*, the court held that where divorces are granted to both parties, alimony may be awarded to either. These cases were followed and extended in *Salvato v. Salvato*, 195 Cal. App. 2d 869 (1961). In that case the wife filed for separate maintenance and the husband crossfiled for divorce. The trial court granted a divorce to the husband and awarded alimony to the wife, and the district court of appeal affirmed, holding that the trial court had power to grant alimony to the wife when she had proved a cause of action for separate maintenance against her husband, even though the divorce was granted to him. The *Salvato* case was recently followed in a situation where the trial court, not content with merely granting the wife alimony, granted her a decree of separate maintenance as well, and at the same time awarded the husband a divorce. (*Barton v. Barton*, 230 A.C.A. 43 Sept. 29, 1964).

Other states have, under special circumstances, awarded alimony to a "guilty wife." Thus, in 1963 Oregon enacted the following statute: (Rev. Sta. 107.100)

"Whenever a marriage is declared void or dissolved, the court has power to decree as follows:

"(c) For the recovery from the party at fault, or under unusual circumstances in the discretion of the court, from the party not at fault, such amount of money . . . as may be just or proper for such party to contribute to the maintenance of the other; provided that in case recovery from the party not at fault is allowed, the decree must contain special findings of the facts constituting the unusual circumstances . . ."

Anno., 34 A.L.R.2d 313 (1954) discusses this issue and lists the following states which permit alimony to be awarded to a wife even though the husband procured the divorce:

- a. In states which have statutes permitting the court to award alimony when it grants a divorce, the statute does not refer to fault and the court is therefore authorized to award alimony to either party. States having such statutes include: Arkansas, Colorado, Illinois, Indiana, Iowa, Maryland, Massachusetts, Mississippi, New Hampshire, and New Mexico.
- b. In other states, the courts are permitted by statute to award alimony to a wife when the divorce is procured by the husband, unless the ground of divorce is the wife's adultery. Such states are:

Michigan, Minnesota, Nebraska, and Wisconsin.³⁴

In both the proposed Uniform Divorce Act and the proposed Pennsylvania Divorce Act, the question of alimony is separated from the issue of fault. Thus, the uniform act provides in Section 17.01 "In any proceeding brought under this act, the wife or husband, when it is just and equitable, shall be awarded temporary or permanent alimony . . ." and the proposed Pennsylvania act expressly states in Section 504 that "the marital fault of either party as it appears in the annulment or divorce proceeding shall not preclude nor affect the granting of such an allowance where both need and ability to pay are established."

3. *The Child Custody Decree*

The child custody decision is not connected in legal theory to the grounds of divorce. But the adversary system is used to make the decision and the dominant parental right doctrine is used to require a finding of unfitness whenever the child is removed from a parent and awarded to a nonparent. Changes in the law of child custody which would remove the decision in that area from the adversary system are set forth in another part of this report.

³⁴ (The statutes of these states have not been researched to see whether the laws and case decisions under those laws remain unchanged since 1954).

D. Time of Hearing and Interlocutory Period

1. Time of Hearing

For those couples where divorce is the indicated answer to their problems, the three-month period provided for constructive re-evaluations and problem resolution should enable the actual divorce hearing to be expedited. A special calendar might be considered for these couples in order not to unduly prolong the process, which is usually destructive for everyone involved.

2. Interlocutory Period

Following the granting of the divorce decree, an interlocutory period of three to six months should elapse before the divorce becomes final. Inasmuch as divorce action usually has a disturbing impact on both parties, it oftentimes precipitates reactions that cause both parties to face their roles in the relationship more honestly and motivates them to seek a solution in a more serious and realistic fashion than has been previously true. There are also some individuals who quickly find the single life to be something less than the "ball" they visualized and are moved toward a reevaluation of the marriage in a few months. There are in addition, a few persons who somehow seem to feel the need to punish their mate or free themselves by totally rejecting the other, by way of obtaining a divorce decree before they are emotionally ready to recommit themselves to the relationship. The interlocutory period would allow time for such reactions and reevaluations without unduly restricting or punishing those individuals who wish to rebuild their lives and establish other sustained relationships.

IV. INTERMEDIATE REMEDIES IN JUDICIAL ORGANIZATION

A. The Problem

1. The Bar

Family law has long suffered from an absence of interest and engagement by the better minds of the legal profession. The elite of the profession were too busily involved in the more remunerative tasks of legal ministers officiating at corporate marriages, juridical midwives at the birth of subsidiaries, and counselors at intracompany proxy fights to contribute their professional skills to the human counterpart. Marital litigation is distasteful and unpleasant to most attorneys. While the medical profession has not ignored the treatment of venereal disease and cancer, the legal profession has generally turned to more lucrative areas which do not exact such a high toll of one's emotions. Without justification the legal profession has generally shirked its duty and denied our society the expertness of its professional competence in this vital area. The number of people experiencing marital and family problems in this country is so large that the manner in which we deal with them and their children is no longer the problem of an aberrant minority.

A prominent jurist has observed that it would appear unduly optimistic to look to the bar to screen out the unwanted, unneces-

sary and undesirable divorces. In contrast to members of the "divorce bar," the scrupulous, conscientious lawyer is rarely besought for divorce. When he is, he brings to bear a world of common sense and sagacity along with his strategic and purely legal abilities. Above all when *he* is stymied he does not hesitate to call upon exponents of other social sciences. But sad to relate, most of the truly high-grade lawyers disdain divorce; even for the daughter of a wealthy client they prefer to leave it for one of the younger to handle.

There is some evidence to indicate that about 8 percent of the lawyers handle about 80 percent of the divorce business in some cities. For them divorce is their rent, their stenographer's salary, their baby's shoes, sometimes their solid-gold Cadillac. The simplest uncontested case is generally worth a couple of hundred dollars; a case involving even a moderately well-to-do husband accused (not necessarily guilty) of infidelity is ordinarily worth a few thousand to the lawyers. How unrealistic to expect them to forego anything like that for mere considerations of ethics or morals.

2. *The Bench*

The problem of inadequacy bordering on incompetency is not restricted to the practicing bar. Almost uniformly in this country, judges take turns in sitting for the briefest of periods on the domestic relations bench. An eminent jurist cogently observed that this is one of the greatest problems: family law matters are handled, perhaps shuffled is a more descriptive term, in sort of an orphan court. One judge will take them for three months, then another one takes it for three months and the assignment is like going to the salt mines of Siberia. No judge has any chance to really start to understand the problems. Many of these judges never handled domestic relations cases when they practiced law. They are never in the court long enough to understand the problems and procedures or to develop programs for saving marriages or ameliorating the trauma of dissolution. The typical lack of unified procedure in the administration of matters of domestic relations in the California court system is readily seen in divorce proceedings in the County of San Francisco.³⁵ All judges of this court hear divorce proceedings except those assigned to specialized divisions such as criminal, probate, juvenile and domestic relations. The domestic relations judge does not hear questions of divorce, separation or annulment. This court hears preliminary motions for alimony and child support, delinquent payment charges, change in custody or support, violation of visitation agreements and the like—10 to 15 cases a day are disposed of. In the domestic relations court the judge serves on limited rotation, usually six months. The appointment of judge to this division is often avoided as "a kind of K.P."³⁶ since it is considered as a "garbage court."

³⁵ Virtue, M., *Family Cases in Court*, Durham, Duke University Press, 1956.

³⁶ *Ibid.*

Another disturbing aspect of the present situation generally prevailing in this state and throughout the country is the wide disparity in the handling of substantially identical cases. Great disservice is done to both the legal profession and the public when there is violation of one of our basic jurisprudential concepts that persons in similar situations shall be treated similarly. No one with full comprehension of the problems involved advocated removal of discretion from the judges. There was general concurrence that an enlightened and concerned bench, working with members of the bar possessing similar attributes, is the most desirable arrangement. But serious concern was expressed about the lack of guidelines and uniform policy, especially in the larger, multijudge courts. It was suggested that the administration of family justice would be no better than the quality of the members of the bench and bar who are involved.

B. Proposed Solution

1. Judicial Reorganization

One method of increasing the competence of the bar in family matters is to increase the competence of the bench before which they practice. Highly competent jurists can and do hold practitioners to higher standards than do inferior colleagues. It was suggested that assignments to the domestic relations bench be of longer-than-minimal periods. It was noted that in the multijudge courts there were numerous specialties among the jurists: criminal law, torts, law and motion, probate, etc. It was suggested that a similar arrangement should be developed for family law matters.

Note was taken of the extensive use of commissioners in the Los Angeles Domestic Relations Division. With supervision and policy establishment originating from one source there was great uniformity. This contrasted sharply with what the practitioner faced when his cases were assigned to other judges for hearings. It was suggested that this organizational structure be enlarged to encompass all of the various parts of a divorce hearing instead of the limited portions presently under such an arrangement. As an alternative in other courts, where the commissioner approach might be suitable or desirable, it was suggested that the presiding judge establish policies for the other members hearing domestic relations or that a separate department of the court be created for domestic relations matters, with a presiding judge to establish more uniform procedures.

V. SOPHISTICATED REFINEMENTS IN JUDICIAL ORGANIZATION: THE FAMILY COURT

A. Evolution of the Concept

The idea of a family court grew out of experience with the juvenile court and its philosophy of protecting and rehabilitating children instead of punishing them. Thus, in California, when a child is referred to the juvenile court for the commission of an act which, if it had been committed by an adult would be a crime, there is no trial by jury in an adversary setting to determine guilt and assess a penalty as there

would be in an adult criminal case. For example, if a minor is picked up by the police for stealing a car and sent to juvenile hall, the probation officer will secure a social study of the child, his family, and his background. The probation officer then may file a petition on behalf of the minor, not adverse to him, setting forth the facts that indicate that the minor has stolen the car and thus comes within the juvenile court's jurisdiction. At the hearing before the juvenile court judge where the minor and his parents may be represented by counsel, a determination whether the minor comes within the court's jurisdiction is made. If the determination is in the affirmative, the court considers the social study and decides whether to place the child with a family of good character, in a foster home, a child care institution, a public agency organized to care for children, or a county juvenile home, ranch, camp, forestry camp, or the youth authority. Throughout the proceedings and the subsequent treatment, the emphasis is on helping the child to become a valuable member of society.

Judge Paul Alexander of Ohio has pointed out the relationship between the lesson taught by the juvenile court and the idea of the family court:

"The question in the juvenile court is: what is best for the individual child? What are we going to do *for* the child, not *to the* child? Why can we not apply that same logic, same philosophy, same diagnostic and therapeutic approach to the family when the family comes to court? Why can we not ask what is best for this family, diagnose the case, find out what caused the rift, and then apply all the skills of all the professions we can bring to bear on the problem? It is not going to make divorce easier or make divorce harder. It is going to stop divorces that should not be granted, and if, from a sociological viewpoint, the divorce must be granted, the court will act without the necessity of a public trial. We will not harass the parties by forcing them to accuse each other and consequently, do damage to themselves and the children." (Emphasis added.)³⁷

The conclusion drawn from the juvenile court experience by some who have worked with it is that the problems there encountered are family problems that should be solved in a family court.

B. Major Characteristics

The commonly accepted definition of a true family court embraces three major characteristics.

1. *Specialist Judge and Integrated Jurisdiction*

A true family court is headed by a specialist judge and has an integrated jurisdiction over all legal problems that confront the family in conflict. This requirement means three things. It means that the family court should be a single court, if possible in a single plant. It can either be a special court or a court of general jurisdiction with specialized duties, such as the present juvenile and probate courts. It means also that the court should have a

³⁷ Alexander, "The Therapeutic Approach," *The University of Chicago Law School Conference on Divorce*, University of Chicago Law School Conference Series, No. 9 (1952) pp. 51-54.

judge with a permanent, or at least lengthy, appointment to enable him to develop specialized skills in handling family problems. Finally, the specialized court should handle all legal problems of the family in conflict. That is, it should handle, to quote Judge Alexander again,

"... abandonment (of child, pregnant woman, spouse), abuse of child, adoption, alimony claims, annulment of marriage, assault and battery (intrafamilial), bastardy, consent to marry, contributing (to delinquency, dependency, or neglect), custody of children, declaratory judgments, dependency of children, divorce, filiation proceedings, habeas corpus (intrafamilial, husband and wife), juvenile delinquency, neglect of children, nonsupport (of child, parent, spouse), parent and child, partition of real estate (intrafamilial) separate maintenance, and visitation of children."³⁸

In addition to the benefits of the nonadversary proceeding, the family court system would provide immediate practical benefit in other areas, by eliminating much of the duplicated effort and congestion of calendars which characterizes our present process. Consider the following hypothetical case—which would by no means be typical:

After some months of increasing family friction and discord, the wife obtains an interlocutory decree of divorce, and is given custody of the minor child, a boy aged 11. Upset by the discord between his parents, the boy develops more and more problems at school, and finally refuses to attend at all. He is then referred to the juvenile court as a truant, and is made a ward of the juvenile court. After the final decree, the father petitions the court for appointment as guardian of the minor's estate, feeling that the mother is incapable of sound business management. Shortly thereafter, the mother remarries and her second husband wishes to adopt the boy through a stepparent adoption. After some time, mother and her second husband seek to adopt another child.

Involved in this case are five separate divisions of the superior court, and at least as many ancillary agencies.³⁹ The reports of one are not readily available to another; much testimony is repetitive; investigations are duplicated; calendars are clogged; and parties as well as taxpayers are put to needless expense and confusion. Since a marital severance proceeding frequently generates one or more such "collateral" actions, such as petitions in juvenile court, attention should be given to the possibilities of combining them within a single division of the court.

³⁸ Alexander, *The Family Court—An Obstacle Race?* 19 U. of Pittsburgh L. Rev. 602 (1958).

³⁹ When the issue of the child's custody is first raised, the court may order a custody investigation by the probation officer under Section 582 of the California Welfare and Institutions Code (1963). (This may be done by domestic relations investigators in counties having such a system.) At the hearing in juvenile court, the probation officer will present another report. If it wishes, the probate court may order an investigation (also under Section 582) at the time of the hearing of the guardianship petition. This will be a third report. The step-parent adoption would be investigated by the juvenile probation officer, and finally the "straight" adoption report would be prepared by the State Department of Social Welfare.

2. *Interdisciplinary Staff Assistance*

The second major characteristic of the true family court is that it is assisted by a staff of specialists, trained in social work, psychology, psychiatry, and sociology. Information gathered about the court's "clients" from the various disciplines helps to give the court the complete, undistorted picture of the actual situation. Persons in the respective professions work together and pool their combined resources to deal with the complete family situation.

An interdisciplinary approach promises a more efficient and productive direction of available potential in the handling of divorce cases. An interdisciplinary approach is valuable in several important respects. This type of an approach would foster greater understanding of the basic mechanics of divorce in terms of information available through the behavioral sciences regarding such things as the interpersonal nature of marriage, the feelings, the emotions. An interdisciplinary approach would facilitate a more responsible handling of the cases through the courts by providing the legal profession with substantial information that would permit a more objective handling of facts in any given case. This is a more dignified approach to divorce problem cases by responsible people who are "in the know." This approach permits increased use of knowledge gleaned from experience and research by behavioral scientists. This area of study, practice, and research does not have the tradition of the legal profession from an applied standpoint. However, it has developed to a point where it has accumulated valuable insights and findings that are now pertinent to further efficient handling of divorce by the legal profession. The behavioral sciences have progressed to a point where they are in advantageous position to make a real contribution in the more humane handling of divorce cases. The behavioral scientists now have information that is usable in facilitating the study of divorce more objectively on a natural level, and in terms of the feelings and emotions experienced by husband, wife, and children. Information gathered about the court's "clients" by the staff should be kept in central files and be available to the court and its staff each time a family member appears in court.

3. *Therapeutic Orientation*

The true family court is a therapeutic institution: It exists for the purpose of providing help for families in trouble and employing the resources of the community to that end. This promotes a more objective and realistic approach to the handling of divorce cases. Since the difficulty in these cases is rooted in the emotional and interpersonal nature of the relationships in the family unit, a more humane and positive legal approach is necessary. The legal profession can promote this. The legislators can provide this.

The legal profession has done much to provide this. This is the case at least in some quarters. There has been a departure from the practice of a strictly Napoleonic Code in the treatment of such human relations cases. There has been movement away from an adversary system of case handling. There has been movement toward more conciliatory legal procedures. However, this move

has not progressed to the extent that it might in many quarters, and there is little promise that progress will come quickly. In most instances, the handling of these family relationships is only in terms of education in justice, legal counsel, and the practice of jurisprudence.

4. *Psychosocial Evolution in Reconstructing Marital Relationships*

Clinical practice in the behavioral sciences has produced experience, in the handling of marital relationships, that suggests a natural psychosocial evolution important to a legitimate and realistic effort at reconstruction of such a relationship. This provides a natural groundwork for a positive effort at working out the relationship on a nonfault level with understanding.

It is also the wife who usually agrees to try some kind of professional counseling service. The husband usually says "yes" to this, but it is the wife who acts first (that's probably the husband's problem—dependency problem) and he'll swing in if mama leads the way. She has more empathy for psychological emotional aspects of life somehow—probably through female intuition—she's closer to it—a better understanding of this. Usually the wife comes in. If the husband notes any kind of change, through insight in the woman, he trails in after her.

Another point: After the wife gets the attention she wants for her feelings from a substitute husband for a period (for example, a counselor who understands feelings, who can give her support) she can approach her husband more realistically and give him support: give him advantage of the insights and usually he becomes curious. It is difficult for him to initiate an appointment; seeking help is unflattering to the male ego in our culture. They would rather flunk or just kind of disappear than to be sought out and pinpointed as a child inadequate in the marriage situation. It is more manly to play games at maintaining a stiff upper lip. However, actually the man is dependent and usually sighs with relief when he can actually admit this out in the open before a counselor not in authority. He usually follows in counseling, after observing the spontaneous relief feelings of the wife, and when encouraged by some other professional authority figure who he can take confidence in, and who understands his feelings of helplessness.

C. *Approximations to These Criteria*

1. *Domestic Relations Court, Toledo, Ohio*

The court that comes closest to approaching the true family court on all three counts is the domestic relations court of Toledo, Ohio. The court has for some years been under the leadership of Judge Paul Alexander. A study of the court conducted by Maxine Virtue in 1953⁴⁰ indicated that the court's outstanding characteristics were a structure combining jurisdiction over juvenile, divorce, and domestic-criminal cases; a specialist judge with skills developed through study and long-term contact with domestic re-

⁴⁰ Virtue, Maxine, *Family Cases in Court* 182-201 (Duke University Press, 1956).

lations cases; and a staff trained in nonlegal professional skills valuable in diagnosing personal problems and in supervising the carrying out of the court's plan. The personnel of the staff included, in 1953, one child support referee, two intake interviewers, four boys' referees, eight boys' counselors, one girl's referee, four girls' counselors, one home finder, five marriage counselors, one service administrator, and three divorce investigators. Of these persons, one was a lawyer and one a law student, eight had masters' degrees in social work, social service administration, or a similar field; three had masters' degrees in psychology; four had masters' degrees in education; five have taken some graduate work in the social work field; all but two have A.B. degrees and two have Ph.D. degrees.

A 1951 law required investigations by the staff in all divorce cases involving children under 14. The staff reports that in many of these investigations it finds prior information about the parties in its own files, gathered at the time of investigations under its juvenile jurisdiction. Although the law makes no special provision for conciliation in divorce cases, the court has five marriage counselors who work with couples before and after the divorce as well as during the court proceedings. Maxine Virtue made these observations about the conciliation activities of the court in her book, *Family Cases in Court* (1953):

"With respect to the objectives of the entire department, it is said that if the marriage is viable, it is the job of the court, through any available personnel, to give the parties what help they need and the court can give, or if possible to transfer the couple to another agency for help in the marital relationship or in the parent-child relationship.

"If the marriage is dead, then it is the goal of the department to aid the litigants to respond as mature adults to the difficult experience of the divorce. If the department, by relieving tensions or offering comfort or interpretation, can enable the litigants to respond less hysterically or vindictively and more reasonably to the experience of divorce, the legal positions can be more intelligently and constructively analyzed by the judge and attorneys, and the court may more easily develop final orders which will operate to the best interests of all parties involved."⁴¹

Once we turn from the Ohio court to other courts, the term "family court" cannot strictly be applied. Judge Alexander pointed out in 1958 that "quite a number of courts calling themselves family courts and domestic relations courts do not have as extensive a jurisdiction as outlined above. With a few exceptions, they are juvenile courts enlarged to apply social service principles to other family members and matters. The most conspicuous omission from their jurisdiction is divorce, which, next to juvenile delinquency, presents the greatest challenge to the integrated

⁴¹ *Id.*, at 192-193.

court.⁴² We should notice developments, however, in several states: New York, Pennsylvania, Wisconsin, Texas, and the marriage counseling experiments in Washington and Utah.

2. *New York Family Court Act of 1962*

The New York Family Court Act of 1962⁴³ was based on studies undertaken in 1953 by the Tweed Commission, and continued in 1958 by the judicial conference. The judicial conference recommended the establishment of a statewide family court. Although the court was not given the power to grant divorces, annulments, or marital separations (these powers remaining in the supreme court—New York's lower court of record), the family court was to have jurisdiction over the following classes of cases:

- (1) The protection, treatment, correction and commitment of children who are in need of the exercise of the authority of the court because of the circumstance of neglect;
- (2) The custody of minors in all cases except actions for divorce, marital separation, annulment, and also excepting habeas corpus actions;
- (3) Adoption;
- (4) Support of all dependents, except for support incidental to actions for divorce, marital separation, and annulment;
- (5) Paternity suits,
- (6) Conciliation of spouses;
- (7) Guardianship; and
- (8) Crimes and offenses, except felonies, against or by children or between spouses, or between parent and child, or between members of the same family or household.

In addition to these specified areas of jurisdiction, the family court has jurisdiction to determine certain matters that may be referred to it by the supreme court (the trial court). These matters are:

- (1) Habeas corpus proceedings for determining custody of children; and
- (2) The granting, enforcing and modifying of orders relating to child custody and support in actions for divorce, marital separation, or annulment.

It will be seen that jurisdictionally the New York family court is more than a mere juvenile court, although it exercises full jurisdiction over all juvenile matters. It is not a true family court, however, because it lacks jurisdiction over divorce and, except where special referrals are made by the supreme court, it lacks jurisdiction over child custody and child support matters relative to divorce actions. Judges will be appointed for 10-year terms. The court is provided with a probation service in each county, and it has power to require persons within its jurisdic-

⁴² Alexander, *supra* note 2, at 602.

⁴³ See generally, *Symposium on the New York Family Court Act of 1962*, 12 Buffalo L. Rev. 409 (1962-63).

tion and parents of children who come before it to be examined by a physician, a psychiatrist, or a psychologist if such examinations would be useful. The probation service, in addition to its normal juvenile work, is authorized to confer with spouses in divorce cases with a view toward conciliation. The conciliation proceedings are not compulsory, and the aims of this part of the new act are simply to promote a conciliation conference under the auspices of the court and to encourage the parties to consult with appropriate voluntary social or religious agencies. Another duty of the probation service is to act for the court in securing data in adoption cases. The probation service is again called upon to investigate custody cases for the court.

3. *Proposed Pennsylvania Divorce Code*

The proposed Pennsylvania Divorce Code⁴⁴ was drafted by the subcommittee on domestic relations of the Advisory Committee to the Joint State Government Commission. Professor Henry H. Foster, now of New York University, acted as reporter. Parts of the proposed code were separated from the completed draft and enacted separately in 1959. The entire draft is expected to be submitted to the Legislature in 1965. Professor Foster says of the proposed code that it does not establish a true family court. He points out that "there is no complete integration of family matters under the jurisdiction of one court, and no special courts are created. Instead, the proposed codes establish the framework for a possible family court type staff on a local option basis, and various devices are employed to promote the social philosophy of family courts. These somewhat limited objectives were impelled by a realistic appraisal of the local court structure, the willingness of the public to support reforms, and the attitudes of bench, bar, and the legislature." The Pennsylvania courts, in contrast to the New York courts, will have jurisdiction over divorce, annulment, custody, support, maintenance, property settlement, and related matters, but no jurisdiction over juvenile matters. Thus the Pennsylvania courts will not have an established probation staff to aid them in carrying on investigations and conciliation work. The proposed code, therefore, creates a "domestic relations division" for each county, but leaves the number of probation officers to be added to the staff up to the particular county.

The proposed code makes provision for attempts at reconciliation and marriage counseling. It describes the functions of probation officers to include consultation and referral, and marriage counseling. The court may require conferences if there are children under 14, as in Ohio, and it may grant conferences in cases where there are no children. Parties are required to provide such information as is requested by the probation officers and to meet with them or with counselors of their own choice, in order to determine whether a reconciliation is practicable. Before the court can grant a divorce, it is required to find that "attempts at reconciliation would be impracticable or futile and not to the

⁴⁴ Foster, *Spadework for a Model Divorce Code*, 1 J. of Family Law 11 (1961).

best interests of the family." If the court finds that attempts at a reconciliation are practicable, it may delay the divorce proceedings up to 6 months if there are children under 14, and up to 60 days where there are no children. If at the end of the delayed period no reconciliation has been achieved, the court must grant the divorce.

The Pennsylvania proposed divorce code also recommends substantive reforms in the law of divorce. Thus, it adds a new ground, called by Professor Foster, an "honest ground" for divorce,⁴⁵ under which the court must find that "disruption of the marriage is irreparable and that attempts at reconciliation would be impractical or futile and not to the best interests of the family." If the court so finds, and where there has been a "living apart for continuous period of two years because of estrangement due to marital difficulties" the court may grant a divorce without proof of guilt or fault.

4. *Family Code of Wisconsin, 1960*

The Family Code of Wisconsin became law in 1960.⁴⁶ Like the proposed Pennsylvania code, its "family court branch" has jurisdiction over marriage, annulment, divorce, legal separation, and support but no jurisdiction over juvenile matters. Nor does it have jurisdiction over adoption or assault cases involving husbands and wives. Thus its jurisdiction is much more restricted than that of the true family court. But Wisconsin departs in another major way from the family court philosophy: Its rejection of the specialized staff supporting the court in favor of traditional legal skills. The Wisconsin act creates a "family court commissioner" who must be "some reputable attorney, of recognized ability and standing at the bar." No requirements are imposed to insure special ability or skill in family law problems. The commissioner is required in every case to "cause an effort to be made to effect a reconciliation between the parties." The statute also establishes a department of family conciliation, under the direction of a director of family conciliation who has a staff of "men and women investigators" to assist him.

5. *Texas, 1949*

In 1949 legislation was passed in Texas⁴⁷ which in effect turned the juvenile courts of the larger counties into family courts. The combined courts had jurisdiction in all children's cases, including adoption and custody, desertion and support, and divorces involving children. The Dallas court by 1953 had employed three divorce custody investigators and one divorce counselor. The judge is assigned for an indeterminate period.

6. *Washington Family Court of Conciliation, 1949*

Several states have experimented with marriage counseling services attached to the divorce courts without attempting to deal

⁴⁵ Foster, *An "honest ground" for divorce in Pennsylvania*, 34 *Pennsylvania Bar Association Quarterly* 646 (1963).

⁴⁶ Foster, *supra* note 7.

⁴⁷ Chute, *Divorce and the Family Court*, 18 *Law and Contemporary Problems* (full issue on *Divorce*) 49 (1953).

with juvenile cases or even to extend their social work staff into the areas of child custody or adoption. Thus, in 1949, the State of Washington created the family court of conciliation as a branch of the superior court.⁴⁸ The act covers controversies between spouses having minor children and includes controversies arising prior to, during, or after divorce, annulment, or separate maintenance. The counseling service may also be used by spouses who do not have children if the case load is not too great. The director of the King County court reports that chances for conciliation are greater before the divorce action has been filed. Reference is voluntary, and cases are retained by the conciliation court for a minimum period of 30 days. If conciliation appears impossible, the case is sent back to the divorce court. Information gathered by the staff is not revealed to the divorce judge, and all proceedings are strictly confidential.

7. *Utah Marriage Counseling Law, 1957*

A similar attempt to the Washington experiment was tried and rejected in Utah.⁴⁹ A marriage counseling law was enacted in that state in 1957 and repealed in 1961. Domestic relations counselors were chosen by the State Department of Public Welfare and attached to the district courts. The counselors were to interview and counsel the parties in divorce actions upon request of either party and in all cases where minor children were involved, if so directed by the court. The counselors were also available before a divorce complaint was filed if requested by the spouses in writing. The staff thus handled both court and noncourt cases. The counselors also investigated in custody and support cases. Several problems beset the Utah experiment. For one thing, no adequate screening procedure was established, with the result that appointments were greatly delayed to the annoyance of the parties and their counsel. Another problem was that the counselors came to the same conclusion found in Washington, namely, that success in achieving reconciliations was much greater in noncourt cases. The final statistics from the entire operation showed that the staff had a 9 percent record of reconciliation in cases referred by the court and a 44 percent record in cases where the referrals were voluntary or through attorneys, doctors, and churches. The overall rate was 19.4 percent. The experiment was marked throughout by misunderstanding on the part of professionals on both sides of the professional skills and goals of each. The judges did not choose the social workers on their staffs, and did not feel in control of the situation. The social workers, for their part, did not understand the demands of legal procedure, and were understandably impatient with the judges' attempt to "talk moral sense" to the parties. Brigitte Bodenheimer, commenting on the experiment in the *Utah Law Review* in 1961, pointed out that there are several lessons to be learned from Utah's efforts. The major lesson, she feels, is that

⁴⁸ Ralls, *The King County Family Court*, 28 Washington L. Rev. 22 (1953).

⁴⁹ Bodenheimer, *The Utah Marriage Counseling Experiment: An Account of Changes in Divorce Law and Procedure*, 7 Utah L. Rev. 443 (1961).

"A new approach to family litigation cannot be imposed on an unprepared and unwilling judiciary. The statutory scheme remains meaningless and empty unless filled with life and spirit by a judge who assumes leadership. The judge must determine how to build the contributions which other professions can offer into the judicial process. The other professions can be of service, but they cannot decide how justice is to be administered in the courts."⁵⁰

She adds that "needless to say, the relationship between (the judge and his aides) must be one of trust and respect for the professional competence of the assistant, coupled with a recognition on both sides of the value the law as well as the other social sciences have in the solution of family problems."⁵¹

8. *California: Children's Court of Conciliation*

There is no true family court now in existence in California. The children's court of conciliation in Los Angeles⁵² has established a conciliation service for spouses who voluntarily use the services of the court. It is quite similar to the court in Washington and to the Utah experiment. Similar courts are presently in operation or are beginning to operate in Sacramento, San Diego, San Mateo, San Bernardino, Imperial and Alameda Counties.⁵³ The conciliation service is an important adjunct to an integrated family court, as has been seen.

However, the problems of the family involve the problems of child custody and visitation after the divorce has been granted, as well as problems of continuing therapeutic help for the divorced couple.

D. *Report of San Francisco Bar Association Committee on Family Law, 1962*

In its report in 1962, the San Francisco Bar Association Committee on Family Law proposed the adoption in San Francisco of a modified family court. The following are three paragraphs of its proposal:

"By family court we mean a court with its own staff of judges, marital counselors, social workers, investigators, psychologists, and psychiatrists who handle all family cases.

"Our committee feels such a family court is greatly superior to the present structures in San Francisco, where preliminary, modifying, and enforcement orders are handled in one department, but all other contested and uncontested matters are handled by the other departments.

"Although family courts throughout the United States usually include the juvenile court, we feel that to begin with, in San Francisco, the juvenile court should not be a part of such family court. We think the initial, more feasible approach would be a family court handling all divorce, separate maintenance, annulment, support, custody, visitation, enforcement, and paternity cases. Such court would, however, cooperate closely with the existing juvenile court."

⁵⁰ *Id.*, at 472.

⁵¹ *Ibid.*

⁵² Pfaff, *The Children's Court of Conciliation* (Pamphlet, Los Angeles Superior Court).

⁵³ Pfaff, *Testimony Before California Assembly Interim Judiciary Committee*, Los Angeles, California, January 8-9, 1964.

The report includes a recommendation that "marital counseling services for families in domestic difficulties should be made available . . . not only after divorce is filed, but also earlier when problems arise." The report goes on to recommend that the counseling service be attached to the domestic relations commissioner's office, in order to insure greater direct control and consistency. The report also asks for reliable, adequate investigative services to be attached to the court and be made available "in all cases where children are involved."

E. National Support

The movement for family courts has not been limited to the states. The children's bureau has for some time shown great interest in and support for the establishment of family courts. In 1960, the bureau published a pamphlet called "*Family Courts—An Urgent Need.*" And in 1957, William Sheridan and Edgar Brewer, of the children's bureau published an article on the family court.⁵⁴ The last two paragraphs of their article summarize in pointed terms the problems to be faced by those who advocate family courts as well as the gains to be achieved if the hurdles standing in the way of this much-needed reform can be achieved. They say:

"Pressing legal and social reasons call for the establishment of family courts. The legal arise from the need for a more effective judicial organization for the administration of justice in relation to interpersonal family problems. The social grow out of society's concern for the protection of children and family life and recognition of the need to use the scientific knowledge and skills available to accomplish these objectives.

"It seems doubtful whether much progress will be made until the various professional persons involved—judges, social workers, attorneys, doctors, and others—more carefully think through the issues and problems involved, some of which were presented in this article. In moving toward the establishment of a family court, it is important for a community to give careful thought not only to immediate problems, but also to long-range objectives, including the development of the broad, comprehensive, and coordinated community programs which are necessary to strengthen family life and thus to solve at least in part, the serious problem which divorce presents in our society."⁵⁵

VI. FINDINGS AND RECOMMENDATIONS

The committee did not conclude its study on this subject and hence has recommended continuance for further study.

⁵⁴ 4 *Children* 67-73 (U.S. Dept. of H.E.W., March-April, 1957).

⁵⁵ *Id.*, at 73.

Part 4

INTEGRATED PROPERTY SETTLEMENT AGREEMENTS *

I. HISTORICAL DEVELOPMENT OF THE INTEGRATED PROPERTY SETTLEMENT

A. General Introduction

Public policy in California favors agreements between spouses that attempt to settle property disputes amicably. In *Hill v. Hill*, 23 Cal. 2d 82 (1943), the court stated:

“ . . . public policy does not discourage divorce where the relations between husband and wife are such that the legitimate objects of matrimony have been utterly destroyed. . . . In the absence of fraud, collusion or imposition upon the court, public policy does not prevent parties who have separated from entering into a contract disposing of their property rights which shall become effective only in the event one of the parties obtains a divorce, even though such a contract may be a factor in persuading a party who has a good cause for divorce to proceed to establish it.”

In the *Hill* case the parties were separated on a permanent basis; there appeared to be no prospect of reconciliation; and a ground for divorce existed. Under these circumstances, the court held that the agreement was not void even though the agreement itself might be a factor in persuading the party having a cause of action for divorce to establish her action.

Given the encouragement of the *Hill* case, the parties began negotiating property settlement agreements. The first major case in the long line of cases establishing the concept of the integrated property settlement followed within a few years.

B. Integrated Property Agreements: The Case Law

Of all the Supreme Court cases dealing with the integrated property settlement agreement, the first two stand out by establishing the underlying pattern that was followed by the rest. The first case to be noticed is *Adams v. Adams*, 29 Cal. 2d 621 (1947).

In the *Adams* case the parties executed an agreement after their separation. The agreement contained the following important provisions:

- (a) The wife received the major share of the community property;
- (b) In exchange for her share of the community property; waived all support rights after eighteen months; and
- (c) The parties stated that they intended to settle all their rights against each other in the agreement.

* This part of the final report is based on testimony presented to the Assembly Interim Committee on Judiciary in its Hearing on Domestic Relations at the California State Bar Convention in Santa Monica September 30, 1964.

The wife then brought suit for divorce on the ground of mental cruelty. The trial court refused to approve the waiver of support and advised defendant's counsel to stipulate to an order that the support would continue indefinitely, until further order of the court. The defendant refused to stipulate to this change; plaintiff filed an amended complaint in line with the court's wishes; and the court in granting the divorce ordered that the support payments should continue until further order of the court. The defendant appealed, urging that the agreement should have been approved by the court as written in the absence of a finding that it was inequitable or had been procured by fraud. The Supreme Court, agreeing with defendant, modified the judgment to conform to the property settlement agreement and affirmed the judgment as modified.

In its opinion the Supreme Court set forth a three-part division of property settlement agreements, stating the limits of the trial court's power over each type of agreement. The categories there established are:

- (1) Agreements in which the support provisions are in the nature of alimony and severable from the division of community property. The trial court may modify the support provisions if the agreement is presented to it for approval. If the agreement is merged into the judgment, the court may modify the payments after the divorce under its general power over alimony.
- (2) Agreements in which the support provisions are in lieu of a division of the community property. These agreements may not be modified by the court since they represent a contract between the parties dealing with their property rights. But the court may add an alimony provision to the agreement since the parties have not contracted with respect to alimony themselves.
- (3) Agreements in which the support provisions represent both a division of the community property and alimony and in which the parties have made the amount of the payments in consideration for their agreement. The court's language is as follows: "The third category includes contracts in which the wife waives all support and maintenance, or all support and maintenance except as provided in the agreement, in consideration of receiving a more favorable division of the community property." The trial court's power over this type of agreement, which has come to be known as an integrated agreement, is limited to approving or disapproving its terms. If it approves the agreement, it may not add an alimony provision since that would change the agreement arrived at by the parties. The *Adams* agreement was found to be integrated; therefore the court could not add an alimony provision as it tried to do.

Two points bear noticing about this case. First, the case did not involve a question of modification of the support payments after divorce. It presented instead the question of the trial court's power to add an alimony provision to an integrated agreement. Second, although the facts of the case presented the situation where the wife had taken a larger share of the community property in exchange for smaller alimony payments, the reasoning of the case extends to the converse situation

where the wife takes a large alimony settlement in exchange for giving her husband the larger part of the community property.

The second leading case to be noticed is *Dexter v. Dexter*, 42 Cal 2d 36 (1954). This case differed from *Adams* in that the parties had divided the community property equally between them. The agreement provided for monthly payments of \$150 for the support of the wife, son and adult daughter. The following clauses were included: (a) the parties stated that they desired to divide the community property and to provide for support "by friendly agreement" instead of by resort to the court; (b) the parties stated that they intended to finally settle all their rights against each other in the agreement and promised to release each other from all obligations except as provided in the agreement.

Several years later, the wife petitioned to modify the agreement by increasing the support payments to \$800 per month. The trial court held that it lacked jurisdiction to modify the agreement, and the Supreme Court affirmed.

The agreement was held to be integrated, relying on the clauses specified. Two arguments were put forth by the wife to the effect that the agreement was not integrated. Both were held not controlling by the court. The first argument was that the community property had been divided equally. The court, however, pointed out that since the wife had gotten the divorce on the ground of mental cruelty she could have been awarded all the community property by the court and perhaps been given less alimony than the agreement provided. The wife was entitled, said the court, to trade a lesser part of the community property for the security of payments that could not be reduced. Moreover, the parties may not have been certain how the trial court would characterize their property; and they were entitled to make a bargain that saved from chance that characterization.

The second argument made by the wife was that the monthly payments were called alimony in the agreement and shared two characteristics of alimony: They were to terminate on her death or remarriage. The court pointed out that in an integrated agreement the payments share both the characteristics of alimony and a property division; they have a dual character. The presence of alimony characteristics was to be expected and was not controlling.

Since the agreement had been an integrated one, the payments represented an agreement of the parties that could not be modified by the court without changing the bargain struck by the parties.

The principles set forth in *Adams* and *Dexter* were sharpened and refined in the cases that followed, but the underlying pattern remained constant. Thus, in *Flynn v. Flynn*, 42 Cal. 2d 55 (1954), it became clear that a provision inserted in the agreement permitting modification of the monthly payments if the husband's salary fell below a stated figure did not mean the agreement was not integrated. It merely meant that the parties had consented to a modification under certain conditions which had to be respected by the trial court. In *Messenger v. Messenger*, 46 Cal. 2d 619 (1956), the court pointed out that in determining whether the property and alimony provisions were in consideration for each other, the court must look to the value placed on their assets by the parties, not the value established by the trial court at the time of a

modification hearing. It was the intent of the parties as expressed in their agreement which was controlling on the issue of integration versus nonintegration.

Finally, by the time of *Plumer v. Plumer*, 48 Cal. 2d 820 (1957), the court had reduced the holdings of its prior cases to a single sentence. The court stated:

"An agreement providing that the purpose of the parties is to reach a final settlement of their rights and duties with respect to both property and support, that they intend each provision to be in consideration for each of the other provisions, and that they waive all rights arising out of the marital relationship except those expressly set out in the agreement, will be deemed conclusive evidence that the parties intended an integrated agreement."

The court went on to point out that even in the absence of one or more of the foregoing provisions other evidence may exist indicating that an integrated agreement was intended. The court said:

"Thus, the parties may be uncertain as to the value or legal ownership of property. They may be uncertain which of them is entitled to a divorce and on what grounds and therefore uncertain as to their legal rights with respect to support and division of property. An agreement for a specific division of property and specified support payments settling such uncertainties is integrated in the absence of convincing proof that the parties intended it to be severable."

After the *Plumer* case, the question for counsel was not how to draft an integrated agreement, but how to draft any other kind of agreement. The court had arrived at an agreement that, if carefully negotiated, offered security for the wife and predictability for the husband. She had payments that could never be reduced and that could be enforced, if the agreement had been merged into the judgment, as a judgment is enforced: by civil contempt. The husband could plan his affairs, including a new family, in the knowledge that the payments could not be increased.

The court had, however, made two significant concessions along the way. The first, in *Hough v. Hough*, 26 Cal. 2d 605 (1945), was that the agreement, if merged into the judgment, lost its standing as a separate contract and became a part of the judgment. This meant that the normal contractual enforcement remedies were lost. Since contempt enforcement was available for the judgment, however, the contract action may have seemed a small loss. The second concession came in *Messenger v. Messenger*, a case which has already been noticed. In that case, the court held that the 1951 amendment to Civil Code Section 139 providing that orders made under that section "may be enforced by the court by execution or by such other order or orders as in its discretion it may from time to time deem necessary" meant that execution itself was available only in the discretion of the court. In *Messenger* the trial court had denied execution against the husband, a doctor, because it felt the use of execution might impair or damage the doctor's practice and make it harder for him to meet the payments. Thus, if

the agreement was merged into the judgment, contract remedies were not available under *Hough* and execution was available only in the discretion of the court. But contempt was still available in a proper case.

In *Bradley v. Superior Court*, 48 Cal. 2d 509 (1957), however, the contempt enforcement of the integrated agreement became unavailable. In that case, a majority of the court held that if the agreement was integrated, so that the monthly payments were "contractual and negotiated" instead of "marital and law-imposed" then the use of contempt to enforce their payment would violate the provisions of the California Constitution against imprisonment for debt. Mr. Justice (now Chief Justice) Traynor dissented, pointing out (correctly in the view of many) that the division of marital property was so closely akin to marital support that both types of payments, united in the integrated agreement payment, should share the exemption from the debt clause.

Matters grew worse. It is now, happily, of historical interest only that the court next held (again over Justice Traynor's dissent) that child support payments in an integrated agreement also could not be enforced by the contempt powers of the trial court. This legislation, by amendment to Civil Code Section 139 in 1959, changed the ill-starred decision in *Plumer v. Superior Court*, 50 Cal. 2d 631 (1958). But in *Hull v. Superior Court*, 54 Cal. 2d 139 (1960) the court held that a husband who was not making the payments required by an integrated agreement could not be spurred on to comply by having the trial court delay entry of the final decree of divorce. While the *Hull* decision is not generally considered to be wrong, since a dead marriage should not be kept alive merely to collect support, the case illustrates the predicament faced by wives after *Bradley* and *Plumer*. The *Hull* case also stated, in apparent contradiction of the earlier *Hough* case, that the wife could enforce the agreement by normal contract remedies.

The final spectre is the possibility that payments under an integrated agreement will be held to be dischargeable in bankruptcy. If *Bradley* is adhered to, and the court shows no signs of abandoning it, then the "contractual and negotiated" payments to the integrated agreement may well be held to be a debt dischargeable in bankruptcy.

C. Legislative Actions

In 1961, the Legislature amended Civil Code Section 139 to read:

"That portion of the decree or judgment making any such allowance, and the order or orders of the court to enforce the same, including any order for support of children, *or order for support of the other party*, based on a provision for such support in an integrated property settlement agreement, may be modified or revoked at any time at the discretion of the court except as to any amount that may have accrued prior to the order of modification or revocation. *This paragraph shall not be construed to render an integrated property settlement modifiable when there are no minor children of the parties to the agreement.*"

What did this amendment, which was removed in 1963, mean? No appellate case has as yet construed its terms, so only professional opinions are available. A substantial segment of that professional

opinion feels that the amendment seems to mean that integrated property settlement agreements as they have been understood in California, cannot be executed by parties who have minor children; or, if executed that the agreements will not be treated as integrated agreements by the courts. The last sentence seems clearly to exempt childless couples from its provisions; but what of persons who had minor children at the time they executed their agreement and who seek modification of the agreement after the children reach their majority? Or what of persons whose children have reached majority but remain dependent upon the parents for support either because of physical or mental incapacity? The amendment does not answer these questions. The policy of permitting modifiability, and so hopefully contempt enforcement, of agreements entered into during the minority of children seems clear. But there are many peripheral questions that are not answered by the amendment.

II. PRACTICAL HAZARDS AND IMPLICATIONS OF CURRENT SITUATION

A. *General Introduction*

It is necessary to discuss some of the practical aspects in the application of California law to property settlement agreements in order that you may know what situations create the need for new legislation. It is also desirable to know what portions of our law are working well so as to know what not to change.

One situation which exists in the California law is an uncertainty on the part of the practitioner as to whether he has an integrated or a severable property settlement agreement. To clarify this statement we must define the two basic types of agreement. An integrated agreement is one in which the division of the property and the setting of support are so closely linked as to be inseparable. As a practical matter, this encompasses a great many property settlement agreements drafted by counsel. The very process of drafting one of these agreements involves a certain amount of horse trading back and forth. For example, one attorney may indicate: "We will give you less alimony if the wife gets the house." It could be argued that every situation in which horse trading goes on involves an integrated property settlement agreement. The courts have sometimes hinted that this results. But the courts do continue to construe agreements as being both integrated and severable agreements under the law and so they have obviously recognized the severable agreement as a continuing entity.

A severable agreement has a negative definition. It is an agreement which deals with property and support and which is not integrated.

B. *Judicial Construction of Marital Settlement Agreements*

When the courts construe a marital settlement agreement, they cannot inquire into the basic state of mind of the party at the time they drafted the agreement. Neither can they go back and reconstruct the course of negotiations. To do so would be to open the floodgates of memory, but memory distorted by self interest. So the courts look at the text of the agreement and try to determine whether the parties intended an integrated agreement or a severable agreement. Several guidelines of construction have developed over the years to determine

whether the agreement is integrated or severable. The courts will look to three causes in the agreement—the finality clause, the consideration clause, and the waiver clause.

First, consider the finality clause. This clause indicates that the agreement is final and takes care of all the rights of the parties. If the court finds that this clause is final as to all aspects of the parties' relationship, including alimony, then they find that the agreement is integrated. The reasoning is that the parties intended a complete and final settlement as to every aspect of their relationship, including alimony. They further reason that any possibility of the modification of alimony must have been traded off against other considerations, such as a larger division of property. On the other hand, if alimony is left flexible and subject to future adjustment, the courts reason that the parties did not contemplate a final disposition of all rights. Therefore, changes in alimony have not been bargained away for a more substantial division of property. Therefore, the agreement is severable.

The next clause which the courts look to is the consideration clause. This clause is particularly revealing. A clear-cut consideration of the clause would provide that the setting of the support payments was made in consideration of the division of property under the agreement. Such a clear-cut clause would be a strong aid in establishing the intention of the parties to create an integrated agreement. On the other hand, an absence of such a clause might lead the courts to the conclusion that the parties intended a severable agreement.

Finally, the courts look to the waiver clause which is generally found in marital settlement agreements. If the agreement provides that the parties waive all future rights, except as set forth in the agreement, the courts take this as an indication of intention that the agreement is integrated. If, on the other hand, the agreement waives all rights except that it reserves the right to future modification of support, this is an indication that the agreement is severable.

C. Sources of Uncertainty

Uncertainty arises as to whether an agreement is integrated or severable for two reasons. First, lawyers often neglect to state in the agreement whether they want an integrated or severable agreement. Secondly, though the courts use the three criteria described above, they refuse to be bound by any rigid formulas. For example, the absence of the consideration clause, which is the best indicator of an integrated agreement, will not automatically lead the court to conclude that the agreement is severable. The court may go on to find an intent to draw an integrated agreement even in the absence of such a clause. The court has constantly stated that its only absolute guide is the intention of the parties. And on occasion the court has found an intent to draw an integrated agreement by the very fact that the parties traded off an income-producing asset for a support provision. In *Di Marco v. Di Marco* (1963) 33 Cal. Repr. 610, the court found that the fact that the husband had retained the business, which was the only income-producing asset in exchange for a broad support provision, was evidence that the agreement was integrated.

D. Consequences of Integrated or Severable Agreements

1. Modification

Depending on whether the attorneys have drafted an integrated or a severable property settlement agreement, certain legal results will follow. One such result is that a provision for alimony, when found in an integrated agreement, will not be modifiable unless the agreement states that alimony is modifiable. The danger, of course, is that the attorney will draft an integrated agreement but overlook the need to make alimony modifiable. The case of *Di Marco v. Di Marco*, *supra*, is an excellent illustration of the kind of problem that can arise. An integrated agreement was drafted, apparently without conscious knowledge of the attorney for the husband. The agreement contained a provision that alimony would be revised upward automatically each time the husband's income increased. The husband's income rose, but in the meantime he had acquired a whole new family, including a new wife and three children. The court of appeals tried to relieve him of the automatic upward escalation in the alimony by determining that the agreement was severable, and therefore that alimony was modifiable. The California Supreme Court disagreed, found the agreement integrated, and found that alimony could not be modified.

The same problem is not present with regard to child support. Since the 1959 amendment to Civil Code Section 139, child support is always modifiable, and this regardless of any intent by the parties to make it nonmodifiable.

2. Contempt Enforcement

Perhaps the most serious consequence of drafting an integrated agreement is the loss of the contempt remedy. To state the matter as simply as possible, support orders arising out of an integrated agreement are deemed contractual. Being contractual, they are in the nature of debt. Article I of the Constitution of the State of California forbids imprisonment for debt. Since the court's contempt remedy is enforceable by imprisonment, it cannot be available where a debt is involved. Thus the contempt remedy is lost where it arises out of an integrated agreement. Much to the surprise of many practitioners, the contempt remedy is lost not only as to alimony but as to child support. *Bradley v. Superior Court* (1957) 48 C.2d 599. Where a husband of limited means is involved, and this is in most of the cases, contempt is the only effective remedy. The remedy of execution is relatively useless where the husband has nothing but a small salary. Thus, in losing the contempt remedy, the court may lose the only effective remedy against a nonsupporting husband or father.

3. Bankruptcy Discharge

Another problem which may arise is the possibility of discharging both alimony and child support obligations in bankruptcy, where these payments arise out of an integrated property settlement agreement. Support payments, such as alimony and child support, are not dischargeable under the bankruptcy rules.

But payments which arise out of an integrated agreement stand on different ground. This is because support payments arising out of an integrated agreement are a "debt" and debts are dischargeable in bankruptcy. It is clear that back alimony is dischargeable. Whether bankruptcy discharges the entire alimony obligation, including the obligation to pay future alimony, is open to question. The right to discharge child support obligations is also unclear. A strong public policy argument can be made against discharging child support payments in a bankruptcy proceeding. Child support payments are always modifiable under Civil Code Section 139. The power to fix these payments is reserved to the courts, regardless of the intention of the parties and notwithstanding the fact that the payments are embodied in an integrated property settlement agreement.

Thus, it can be argued, that these payments are law-imposed rather than contractual, even when they are found in an integrated agreement. While decisions are not available on the subject, it is likely that this is the probable line decision.

4. *Execution and Exemption*

A remedy available to the husband to fend off alimony and child support obligations may arise where the husband has acquired a whole new set of family obligations. Thus, where the husband marries again and has a new family, he may fend off an execution against his salary by filing a claim for exemption under Code of Civil Procedure Section 690.11. Under this section, the salary of a breadwinner may be exempted from execution if the debt with which he is charged has not been incurred for the common necessities of life. While relief afforded by this section does not apply to alimony, it would be available against a contractual indebtedness. It may be argued that the section is applicable here. Whether an earlier alimony or child support obligation is an obligation for the common necessities of life may constitute a question of fact in any given instance.

Another interesting situation, which may apply to either integrated or severable agreements, arises out of the discretionary power of the court to either grant or withhold execution in divorce actions. In 1951, Section 139 of the Civil Code was amended to provide that the court *may* enforce its support order by a writ of execution. In the case of *Messenger v. Messenger* (1956) 46 C.2d 61, 630, it was held that the trial court had discretion to determine in each case whether execution is an appropriate remedy for enforcing its order. In the case of *Tobin v. Tobin*, 181 C.A.2d 789 (1960), it was held that the court retain its jurisdiction to issue a writ of execution or appoint a receiver regardless of whether the agreement is integrated or severable. The husband, in a distress situation, presently may ask the court to exercise its discretion in his favor and withhold the remedy of execution.

While the areas discussed are only some of the problems arising out of integrated and severable agreements, they represent some important background areas which must be considered by the Legislature when evaluating proposals for remedial legislation.

III. PROPOSALS FOR REMEDIAL LEGISLATION

A. General Introduction

The concept of integrated agreements and the myriad problems of negotiation, drafting, bargaining, and enforcement reflect clearly the present adversary nature of the divorce laws. To the extent that the Legislature deals with these problems it is dealing only in legal procedures and not with the grave social problems that are inherent in every marital disturbance. This is but a part of the Assembly's overall study of the real reasons that disturb the delicate relationship between husband and wife and parent and child. It is the hope of those conducting the study that at its conclusion the law will be able to deal with basic solutions to family problems and stop concerning itself merely with improving procedures or dealing superficially with the symptoms of basic marital and family discord.

B. Jurisprudential Query

On rereading *Adams v. Adams*, 29 Cal.2d 621 (1947); *Dexter v. Dexter*, 42 Cal.2d 36 (1954); *Fox v. Fox*, 42 Cal.2d 49 (1954); *Flynn v. Flynn*, 42 Cal.2d 55 (1954); and the other landmark cases involving integrated property settlement agreements, one is struck by the court's lack of regard for the provisions of the Civil Code. Section 155 provides that a "husband and wife contract toward each other obligations of mutual respect, fidelity and support," and Section 159 provides that "a husband and wife cannot by any contract with each other alter their legal relations except as to property and except that they may agree in writing to an immediate separation and may make provision for the support of either of them and of their children during such separation."

If the parties cannot alter their legal relation and can only contract with each other with reference to property, it is difficult to understand why a court would be bound by the agreement of the parties which alters the support obligations and permits them to be made part and parcel of a property division. However, this puzzlement is entirely academic since Justice Traynor, in *Adams*, stated that "a property settlement agreement . . . that is not tainted by fraud or compulsion or is not in violation of the confidential relationship of the parties is valid and binding on the court." (*Adams*, p. 624.)

C. Conceptual Framework

While there may be little uncertainty in the law as to what constitutes an integrated property settlement agreement, questions may be raised of the social desirability of such agreements. The solutions proposed to several of the problems raised by integrated property settlement agreements are grounded on the following premises:

1. Any support order contained in a divorce decree, whether subject to modification or not, and whether or not reflecting an agreement of the parties, integrated or otherwise, should in all instances be enforceable by contempt.
2. All orders for the support of minor children should be subject to modification by the court at any time regardless of any contract between the parents.

3. All orders for support of a husband or wife should be subject to modification by the court unless the husband and wife have expressly provided otherwise.
4. No obligation for support of a spouse or of a child should be subject to discharge in bankruptcy merely because the order for support reflects or is based on an integrated agreement.

D. Specific Proposals

1. *Ability of court to enforce support orders by contempt.*

Payments for support of a wife or children contained in an integrated property settlement agreement, even though made part of an interlocutory decree under Civil Code Section 139, are not enforceable by contempt because they fall within the constitutional proscription against imprisonment for debt. *Bradley v. Superior Court*, 48 Cal.2d 509 (1957).

The remedy of contempt is not available even though the integrated agreement has been merged in the decree and even though the payments are subject to modification by the express terms of the agreement. *Plumer v. Superior Court*, 50 Cal.2d 631 (1958).

Based on the *Bradley* and *Plumer* cases, one would conclude that no support payments finding their source in an integrated property settlement agreement can be made punishable by contempt short of an amendment to Article I, Section 15, of the California Constitution, to provide an exception to the prohibition against imprisonment for debt in cases of divorce, annulment, separate maintenance, paternity and child support.

Such amendment of the Constitution is the obvious, and probably foolproof, solution to the problem raised by the *Bradley* and *Plumer* cases. However, it does not appear to be a practical solution.

During 1964, a committee of the Conference of the State Bar Delegates considered this problem and concluded that an amendment to Civil Code Section 139 could achieve the socially desirable result of providing contempt as a means of enforcing support obligations. A copy of the report of the committee is attached as Exhibit "A" and contains the proposed amendment to Civil Code Section 139.

This amendment expressly provides that support orders may be enforced by contempt as well as execution and other appropriate orders. It also provides that all agreements for child support and support of either party shall be deemed separate and severable from all provisions of any agreement between the parties relating to property and that when ordered by the court such provisions for support shall be deemed to be law-imposed and made under the power of the court to make such orders and shall not be dependent or based upon any agreement of the parties.

The amendment also spells out that all orders for support of children shall be subject to modification and that all payments for support of either husband or wife shall be subject to modification unless the parties by agreement expressly provide that such orders shall not be subject to modification or revocation by the court.

One cannot predict what the Supreme Court will do to this amendment but, from a practical standpoint, a statutory change of this nature should be tried before resorting to the more difficult solution provided by constitutional amendment.

2. *The court should always have the power to modify payments for support of children.*

Prior to the 1959 amendments to Section 139 of the Civil Code, the law seemed clear that payments for the support of minor children contained in an integrated property settlement agreement could be revised upward but not downward. *Puckett v. Puckett*, 21 Cal.2d 833 at 843 (1943).

As to integrated agreements executed after 1959, Civil Code Section 139 specifically provides that orders for support of children, even though based on a provision contained in an integrated property settlement agreement, may be modified or revoked at the discretion of the court except as to amounts accrued prior to the order of modification or revocation.

The Legislature undoubtedly felt that a constitutional question would arise if the 1959 amendment were given retroactive effect so as to apply to integrated property settlement agreements existing prior to the amendment.

Although Civil Code Section 139 has been amended in 1961 and in 1963, the power of the court to modify child support payments under appropriate circumstances has not been and should not be changed.

3. *Modification of payments for support of wife provided in integrated property settlement agreements.*

The law is clear that payments for the support of a wife contained in an integrated property settlement agreement are not subject to modification even though a decree of divorce approves the agreement, incorporates the same into the decree, and orders compliance therewith. *Dexter v. Dexter*, 42 Cal.2d 36 (1954).

If the parties specifically provide in the agreement that the payments can be modified under certain circumstances, the court has the power to order modification but can do so only in accordance with the conditions set forth in the written agreement. *Fox v. Fox*, 42 Cal.2d 49 (1954).

There is a legitimate difference of opinion as to whether the husband and wife should be free to freeze payments for support or whether a wife in any instance should be free to waive all support by contract.

Without solving the merits of this dispute, there can be little dispute over the proposition that problems of interpretation would be minimized if payments for support contained in an integrated property settlement agreement should be subject to modification unless the parties otherwise specifically and expressly agree in writing.

As pointed out above, the modifiability of the support payments does not solve the enforcement problem because a provision for modification does not change the character of the payments as

being part of an integrated property settlement agreement and therefore contractual. *Plumer v. Plumer*, 48 Cal.2d 820 (1957).

4. *Discharge in bankruptcy of support obligations.*

A discharge in bankruptcy does not discharge liabilities for maintenance or support of a wife or child. (Bankruptcy Act, Sec. 17; 11 U.S.C.A. 35.)

However, in view of the decision in *Bradley v. Superior Court*, 48 Cal.2d 509 (1957), holding that support payments contained in an integrated property settlement are solely contractual, it is possible that support payments provided in an integrated property settlement agreement may be dischargeable in bankruptcy. See *Yarus v. Yarus*, 178 Cal.App.2d 190 (1960); *Smalley v. Smalley*, 176 Cal.App.2d 374 (1959); *Tropp v. Tropp*, 129 Cal. App. 62 (1933); *Remondino v. Remondino*, 41 Cal.App.2d 208 (1940); *Fernandes v. Pitta*, 47 Cal.App.2d 248 (1941).

One would assume that the court has continuing jurisdiction over a minor child and under present law would be able to make a new order for support should a contractual provision be discharged in bankruptcy.

However, the status of the obligation to support a divorced wife is not so clear. If she has waived all statutory right to alimony and has only a contractual obligation to receive periodic payments, the discharge of the contractual obligation will probably not revive the former statutory obligation which she has waived.

To eliminate uncertainty a section could be added to the Civil Code to provide:

"In the event obligations for the support of a spouse and/or child or children contained in an integrated property settlement agreement are discharged in bankruptcy the appropriate court of this state shall thereupon be vested with jurisdiction to make proper orders for the maintenance and support of such spouse and/or child or children, as the court may deem just, having regard for the circumstances of the respective parties."

5. *Miscellaneous problems of enforcement.*

a. *Execution.*

Section 139 of the Civil Code, by 1951 amendment, provides that the court "may" enforce its support orders by execution. The Supreme Court, in *Messenger v. Messenger*, 46 Cal. 2d 619 at 630 (1956), held that the trial court has discretion to determine in each case whether execution is an appropriate remedy for enforcing its orders. In *Tobin v. Tobin*, 181 Cal. App. 2d 789 (1960), it was held that the trial court in its discretion might also appoint a receiver in aid of execution under Civil Code Section 140, even though the support payments are part of an integrated property settlement agreement. No statutory changes seem required to deal with these odd judicial rulings.

b. *Separate action on contract.*

Despite the decision in *Hough v. Hough*, 26 Cal. 2d 605 (1945), holding that the merger of an integrated agreement in a decree results in the decree superseding the contract, the case of *Hull v. Superior Court*, 54 Cal. 2d 139 (1960), indicates that even though the agreement is merged in the decree a separate contract action will still lie. Such result seems illogical but not of legislative concern.

c. *Exemptions.*

It has been assumed that one of the characteristics of a judgment for alimony is that as against such judgment debtor's earnings are not exempt from execution. (*Bruton v. Tearle*, 7 Cal. 2d 48 at 57 (1936).) However, if the husband's obligation to make support payments is purely contractual (*Bradley v. Superior Court, supra*), the exemption of his earnings from attachment or execution under the circumstances described in Code of Civil Procedure Section 690.11 is probably applicable. With the constant increase in the amount of wages which are exempt from execution this problem calls for legislative consideration.

E. Report of California Bar Committee on Modification and Enforcement of Support Orders

The following is the report of the 1963 State Bar Conference Committee:

**REPORT OF COMMITTEE ON 1963 CONFERENCE
RESOLUTIONS NOS. 22, 40 AND 61
(Modification and Enforcement of Support Orders)**

I. SUMMARY OF COMMITTEE'S ACTION

The 1963 conference adopted a resolution referring to Conference Committee Resolutions Nos. 22, 40 and 61, proposing amendments to Civil Code Section 139. The amendments proposed sought to insure that the remedy of contempt would be available to enforce provisions in an interlocutory decree for support of minor children and support of either party even when based on an integrated agreement and whether or not modifiable. The amendments also sought to render modifiable provisions for the support of either party unless the parties agreed in writing that such support provisions were to be nonmodifiable.

The committee to which this study was referred has concluded that the objectives of Resolutions 22, 40 and 61 can be achieved by an amendment to Civil Code Section 139 in the form attached as Exhibit "A".

The committee members concurred with the objectives of the proponents of Resolutions 22, 40 and 61 and unanimously agreed that:

- (1) All support orders, whether for children or for wife or husband, should be enforceable by contempt;
- (2) All support orders should be subject to modification, except that
- (3) A husband and wife should be free to enter into a nonmodifiable agreement for the support of the husband or wife, regardless of whether minor children are involved; and

- (4) The husband and wife should not be competent to make non-modifiable child support payments.

There was some division of opinion as to whether or not a constitutional amendment might be necessary to make all support payments enforceable by contempt in view of the decisions in the cases of *Bradley v. Superior Court*, 48 Cal. 2d 509 (1957); and *Plumer v. Superior Court*, 50 Cal. 2d 631 (1958). The committee, however, was unanimous in concluding that it would be more practical to attempt achievement of the objectives of the resolutions by amendment to Civil Code Section 139 rather than by seeking an amendment to Article I, Section 15, of the California Constitution, to provide an exception to the prohibition against imprisonment for debt in cases of divorce, annulment, separate maintenance, paternity and child support.

II. DISCUSSION

A. Discussion of the Problems

Payments for support of a wife or children contained in an integrated property settlement agreement, even though made part of an interlocutory decree under Civil Code Section 139, are not enforceable by contempt because they fall within the constitutional proscription against imprisonment for debt. (*Bradley v. Superior Court*, 48 Cal. 2d 509 [1957].)

The remedy of contempt is not available even though the agreement has been merged in the decree and even though the payments are modifiable by the terms of the agreement. (*Plumer v. Superior Court*, 50 Cal. 2d 631 [1958].) The court in *Plumer* reasoned that the obligations sought to be enforced are contractual and negotiated, as distinguished from marital and imposed by law, even though the contract relates to marriage obligations. The court seemingly rejected the theory of Justice Trayner contained in *Dexter v. Dexter*, 42 Cal. 2d 36 (1954), to the effect that payments provided in an integrated property settlement agreement have a dual nature and are in part a division of property and in part a discharge of court obligations.

The committee agreed with the proponents of the resolutions that all provisions for child support should be modifiable by the court even though based on a provision contained in an integrated property settlement agreement, leaving the law as it has been since the 1959 amendment to Civil Code Section 139.

However, the committee concluded that even though child support payments contained in agreements drawn after the 1959 amendments to Civil Code Section 139 are modifiable, the courts, following the *Plumer* decision, will probably find that such payments are contractual if they find their source in an integrated property settlement agreement and are therefore not enforceable by contempt. The same result would probably be reached with reference to payments for support of a wife which by virtue of the agreement give the court unrestricted power to modify.

The committee also agreed with the proponents of the resolutions that one of the most effective means of enforcing support obligations is the remedy of contempt and that it is socially desirable that such remedy be available whether or not the support provisions are modifi-

able and even though such provisions find their source in an integrated property settlement agreement.

The committee also agreed with the proponents of the resolutions, and with the conference committee report on 1959 Conference Resolution No. 3, that so long as integrated property settlement agreements are possible, the problems of interpretation would be minimized and it would be more desirable if payments for support of the husband or wife were subject to modification under Civil Code Section 139, unless the parties otherwise specifically agreed in writing.

The 1963 Resolutions Committee approved the three resolutions in principle but was not certain that the resolutions would adequately accomplish their objectives.

The report stated:

"The Resolutions Committee agrees that orders for support should be enforceable by contempt and subject to modification (Resolutions 22, 40 and 61) and that it should be competent for a husband and wife to enter into a non-modifiable agreement for alimony even though they have minor children (Resolution 40).

"However, the committee felt that Resolutions 22, 40 and 61 as drawn do not satisfactorily meet the constitutional problems raised in the *Plumer* and *Bradley* cases, the Legislature cannot by statute eliminate the constitutional impediment to contempt described in *Bradley*, nor is the problem properly answered by taking away from the parents the right to contract with each other for child support. Reference is made to the report of the Conference Committee on 1959 Conference Resolution No. 3 for discussion of these problems."

B. Discussion of the Solutions Proposed by 1963 Conference Resolutions 22, 40 and 61 and the Solutions Suggested by the Committee

While the committee agreed with the objectives of the resolutions under study, it did not believe the resolutions offered adequate solutions to the problems discussed.

(1) Resolution 22

(a) Deficiencies of Proposal.

As submitted, Resolution 22 sought to make all provisions for support of minor children enforceable by contempt by amending Civil Code Section 139 to add language rendering void any agreement of the parties for support of minor children. The validity of the remainder of such agreement would have been saved by making the remaining provisions severable. Although void, the provision for child support would be *prima facie* evidence of what is reasonable and necessary for child support.

Resolution 22 did not take into account the necessity for valid contractual obligations between parties where there are trial separations without divorce or prolonged separations prior to submission of a support agreement to a court.

(b) Alternative Suggestions by Committee.

The objectives of Resolution 22 can be achieved if the husband and wife are able to contract with each other for support or custody of children, provided they are not able to make such provisions part of, or dependent on, a division of property rights in an integrated property settlement agreement and provided further that the parties by agreement between themselves are not permitted to limit the power of the court to enforce by contempt or to modify such payments.

Hence the committee recommends that provisions for support of children, while valid and binding on the parties, should in all instances be deemed separate and severable from any other part of a property settlement agreement and when integrated into an interlocutory decree should be subject to enforcement by contempt, and subject to modification or revocation from time to time by the court as the financial circumstances of the parties and the needs of the children require.

(2) *Resolutions 40 and 61*

(a) Deficiencies in the Resolutions.

Resolution 40, according to its proponents, sought to clarify the court's right to use contempt as a means to enforce alimony and child support provisions in judgments not based on integrated property settlement agreements by adding language which would specifically permit enforcement by contempt "regardless of whether or not the order or orders are subject to modification." The resolution further added language to Section 139 to provide that orders for support of either party would be subject to modification unless the agreement expressly provided that such orders would not be subject to modification. Provisions for support of minor children would be modifiable regardless of the agreement of the parties. The statement of reasons is not clear as to whether or not nonmodifiable alimony payments based on an integrated agreement should be enforceable by contempt.

Resolution 61 appeared to be identical with Resolution 40, except that it referred to agreements of the parties "whether written or oral." The proponents of Resolution 61 stated that the purpose of the amendment was to remove the term "integrated agreement" and to permit alimony orders to be modifiable unless the agreement specifically provided to the contrary. The proponents further stated that they felt that the remedy of contempt would thereby become available to enforce *all* court orders for support. The use of the term "oral" obviously took into account the case of *Lipka v. Lipka* (1963), 60 Cal. 2d 472, 386 P.2d 671, holding a payment "for support and maintenance" contained in an interlocutory decree to be in effect "an integrated property settlement" under the circumstances

of the case and the oral statements of counsel in open court (p. 479).

Both resolutions seem to assume that modifiable orders are enforceable by contempt whether or not based on integrated agreements. This overlooks the plain language in *Bradley v. Superior Court*, *supra*, 48 Cal. 2d 509 (1957), and *Plumer v. Superior Court*, *supra*, 50 Cal. 2d 631 (1958). The test is not whether the payments are modifiable but rather whether they are part of an integrated agreement and hence merely contractual in nature.

(b) Solution Offered by Committee.

The committee believes that only if support orders are law-imposed and based on the power of the court to make such orders do they become subject to enforcement by contempt, and the constitutional questions raised by the *Plumer* and the *Bradley* cases eliminated.

Therefore, in the amendment proposed by the committee orders for support of the husband or wife, contained in an interlocutory decree, as in the case of child support orders, would be deemed separate and severable from the other provisions of an integrated agreement in which they found their source. Such support payments would be subject to modification unless the agreement expressly provided otherwise, thus leaving to the parties the right to contract with reference to the modification of such payments. Where there is no written agreement between the parties, it would be competent for the parties to stipulate in open court that support payments would not be subject to modification, taking into account the *Lipka* case. However, all orders for support, whether of child, wife or husband, would be subject to enforcement by contempt regardless of the agreement or stipulation of the parties.

III. CONCLUSION

It is felt that the attached proposed amendment to Section 139 accomplishes the objectives of the proponents of the 1963 Resolutions 22, 40 and 61 and the recommendations of the committee on 1959 Conference Resolution No. 3, which was adopted by the conference in 1960.

The amendment would make all provisions for child support and for support of either husband and wife separate and severable from all other provisions of an integrated agreement and would make orders for support law-imposed under the power of the court to make such orders and therefore subject to modification or revocation by the court and enforceable by contempt. The amendment would leave to the parties the right to agree to nonmodifiable support provisions for a husband and wife.

This amendment would avoid the objectionable feature of Resolution 22 which would make any agreement for support of minor children void, and the committee believes it would also eliminate the constitutional problems raised by the *Bradley* and *Plumer* cases.

The committee points out that the problems herein discussed are being considered for study by the Assembly Interim Committee on Judiciary, Subcommittee on Domestic Relations, under the chairmanship of Assemblyman Pearce Young of Napa.

It is the recommendation of this committee, therefore, that the proposed amendment be approved by this conference and referred to the State Bar with the recommendation that the proposal be submitted to the Legislature so that the Assembly Judiciary Committee will have before it the comments and recommendations of this conference in dealing with proposed amendments to Civil Code Section 139.

Dated: July 30, 1964.

Respectfully submitted,

RICHARD C. DINKELSPIEL, *Chairman*

RICHARD A. IBANEZ,
Vice Chairman

BRUCE F. BUNKER

RAYMOND H. GOODRICH

ISABELLA H. GRANT

ROBERT B. HANSEN

JOHN T. HOLT

BRADFORD J. JEFFRY

MARCUS M. KAUFMAN

LESTER E. OLSON

E. LOYD SAUNDERS

ROY A. SHARFF

ROBERT B. WHITE

IV. FINDINGS AND RECOMMENDATIONS

Findings:

1. The public policy of California favors agreements between spouses which attempt to settle property disputes amicably. Heretofore a husband and wife facing divorce could contract with each other in regard to settlement of their respective rights and duties arising from their marriage, with security for the wife and predictability for the husband.
2. A lengthy course of judicial interpretations has impinged upon effective use of integrated property settlement agreements. Under the present state of the law, based in part upon interpretation of the California Constitution, a California wife, who might be forced to deal with a recalcitrant husband, now finds herself in the position of no longer having a contract to enforce, precluded from use of the remedy of contempt, unable to coerce by withholding the final decree, solely dependent upon the discretion of the court for execution, and facing the possibility of discharge of the obligation by a proceeding in bankruptcy.
3. Use of the enforcement remedy of contempt is socially desirable.

Recommendation:

1. The committee acknowledges that a constitutional amendment may be necessary to restore the socially desirable enforcement remedy of contempt but recognizes the difficulties of that approach and feels that an attempt should be made to meet the objections of the California Supreme Court by statutory amendment of Section 139 Civil Code.

2. The committee further recommends that all orders for the support of minor children should be subject to modification by the court at any time, regardless of any contract between the parents, and that all orders for support of a husband and wife should be subject to modification by the court unless the husband and wife have expressly provided otherwise.
3. To accomplish these purposes the committee recommends that the proposals developed by the California State Bar Committee on Modification and Enforcement of Support Orders, as submitted to and adopted by the Conference of State Bar Delegates, be enacted by the Legislature.

Part 4

EXHIBIT "A"

SECTION 139. [PROVISION IN DECREE OR JUDGMENT FOR SUPPORT, ETC., OF SUCCESSFUL PARTY AND MINOR CHILDREN; ENFORCEMENT: MODIFICATION, REVOCATION, OR TERMINATION OF OBLIGATION: EFFECTIVE DATE OF AMENDMENT AS TO PROPERTY SETTLEMENT AGREEMENT.]

In any interlocutory or final decree of divorce or in any final judgment or decree in an action for separate maintenance, the court may compel the party against whom the decree or judgment is granted to make such suitable allowance for support and maintenance of the other party for his or her life, or for such shorter period as the court may deem just, having regard for the circumstances of the respective parties and also to make suitable allowance for the support, maintenance and education of the children of said marriage during their minority, specifying in such judgment or decree the name, age and amount of support for each child, and said decree or judgment may be enforced by the court by execution, *contempt*, or by such order or orders as in its discretion it may from time to time deem necessary.

That portion of the decree or judgment making any such allowance or allowances, and the order or orders of the court to enforce the same, ~~including any order for support of children [1] based on agreement,~~ may be modified or revoked at any time at the discretion of the court except as to any amount that may have accrued prior to the order of modification or revocation. [2] Except as otherwise agreed by the parties in writing, the obligation of any party in any decree, judgment or order for the support and maintenance of the other party shall terminate upon the death of the obligor or upon the remarriage of the other party.

The provisions of any agreement for child support shall be deemed to be separate and severable from all other provisions of such agreement relating to property and support of the wife or husband. All orders for child support shall be law-imposed and shall be made under the power of the court to make such orders. They shall not be dependent or based upon any agreement of the parties. All such orders for child support, even when there has been an agreement between the parties on the subject of child support, may be modified or revoked at any time at the discretion of the court except as to any amount that may have accrued

prior to the order of modification or revocation and may be enforced by the court by execution, contempt, or by such other order or orders as the court in its discretion may from time to time deem necessary.

The provisions of any agreement for the support of either party shall be deemed to be separate and severable from the provisions of the agreement relating to property. The provisions of any agreement for the support of either party shall be subject to subsequent modification or revocation by court order unless the agreement expressly provides that they shall not be subject to modification or revocation by the court. All orders for the support of either party to an action shall be law-imposed and shall be made by the court under its power to make such orders. All such orders, even where there has been an agreement between the parties on the subject of the support of either party, may be modified or revoked at any time at the discretion of the court except as to any amount that may have accrued prior to the order of modification or revocation, provided, however, that the parties in person or by counsel may stipulate in open court that the order for payment of support shall not be subject to modification or revocation or shall be subject to modification or revocation only as provided by the terms of the stipulation made in open court. All orders of the court for support, even if there has been an agreement or stipulation of the parties, may be enforced by the court by execution, contempt, or by such other order or orders as the court in its discretion may from time to time deem necessary.

The amendments to the second paragraph of this section enacted at the 1959 Regular Session of the Legislature are effective only with respect to property settlement agreements entered into after the effective date of such amendments.

The 1963 amendments to Section 139 of the Civil Code apply only with respect to property settlement agreements entered into after the effective date of such amendments.

The 1965 amendments to Section 139 of the Civil Code apply only with respect to property settlement agreements entered into after the effective date of such amendments.

NOTE: So that no possible conflict might remain, it is suggested that Civil Code Section 159 should be amended to provide that its provisions are subject to the provisions of Civil Code Section 139.

Part 5

MANNER OF HOLDING TITLE BETWEEN HUSBAND AND WIFE IN CALIFORNIA AND DISPOSITION OF PROPERTY RIGHTS UPON DIVORCE *

I. BACKGROUND

"A husband and wife may hold property as joint tenants, tenants in common, or as community property." Civil Code Section 161.

A husband and wife may agree between themselves as to how their property will be held, and the only consideration necessary for such an agreement is the "mutual consent of the parties." Civil Code Section 160, Sections 158, 159.

The agreement between husband and wife transmuting property from one form to another may be an oral agreement. *Woods v. Security-First National Bank*, 46 Cal.2d 697 (1956) (agreement between husband and wife to transmute wife's separate property into community property).

When property is acquired after marriage, it is presumed to be community property (Section 164); and the burden is on the person asserting that it is separate property to prove that fact by tracing (Civil Code Sections 162, 163) the source of the funds to separate property or by proving an agreement between husband and wife that the property shall be held as separate property.

When property is held by the spouses under a joint tenancy deed (which must be in writing) there arises a different presumption which has been created by judicial decisions in California to the effect that such property is held by each of them as separate property and not as community property. This is because the incidents of community property are inconsistent with the incidents of joint tenancy. (*Siberell v. Siberell*, 214 Cal. 767 (1932).)

II. PAST APPLICATION RE JOINT TENANCY

In *Siberell*, the record showed only that the property was acquired with community funds and was deeded to the husband and wife as joint tenants. The wife argued that *Dunn v. Mullan* applied and that she held her joint tenant's share as separate property while her husband held his as community property. This would mean that she had a greater interest in the property than her husband. The court held that a joint tenancy must have the four unities present. There must be the unity of *interest* (as well as time, title and possession). The two interests would be unequal if the wife held as separate property while the husband held as community property. The court therefore held that joint tenancy and community property were inconsistent and could not

* This part of the final report is based on testimony presented to the Assembly Interim Committee on Judiciary in its hearings on domestic relations in Sacramento, August 13-14, 1964.

subsist together at the same time in the same property. Furthermore, it interpreted Civil Code Section 164 (which at that time presumed that husband and wife took as tenants in common, unless a different intention was expressed in the instrument) as meaning that the joint tenancy deed itself expressed the intention that the interests were separate but equal: both separate property. The court said:

"The use of community funds to purchase the property and the taking of title thereto in the name of the spouses as joint tenants is tantamount to a binding agreement between them that the same shall not hereafter be held as community property but instead as a joint tenancy with all the characteristics of such an estate."

Later that same year, the Supreme Court in *Delanoy v. Delanoy*, 216 Cal. 23 (1932) reduced the "binding agreement" to an inference: In *Delanoy* also the property had been acquired with community funds and the deed taken in joint tenancy. The wife made the same argument as the wife in *Siberell*. The court said:

"This court has recently determined that *in the absence of any evidence of an intent to the contrary*, where property is purchased with community funds and the title is taken in the name of the husband and wife as joint tenants, the community property must be deemed severed by consent, and the interest of each spouse therein is separate property."

In *Tomaier v. Tomaier*, 23 Cal. 2d 754 (1944) which is still the leading case on the subject in California, the court (Traynor) reviewed the effect of *Siberell* and *Delanoy*. This was another case where the property was acquired with community funds and held as joint tenancy. The court below had held that property was joint tenancy and would not admit evidence tending to show that it was community. This judgment was reversed, and the California Supreme Court held that evidence of the parties' intention is admissible. The court reviewed the rules as to property holding in California, pointing out that property may be shown to be community property even though the record title is held as separate property, joint tenancy, or tenancy in common. As to *Siberell* and *Delanoy*, the court said:

"The statement that 'The use of community funds to purchase the property and the taking of title thereto in the name of the spouse as joint tenants is tantamount to a binding agreement between them that the same shall not thereafter be held as community property . . .' should be understood as stating the applicable rule, only 'in the absence of any evidence of an intent to the contrary.' (*Delanoy v. Delanoy*.) In its holding, as distinguished from its language, the *Siberell* case established only that whether such property is a joint estate or community property, the trial court in a divorce proceeding has the power to divide the property equally."

The result of *Siberell*, *Delanoy* and *Tomaier* has been to create in the joint tenancy deed a presumption that the property has been changed from community property to joint tenancy and to require

the parties to overcome that presumption by contrary evidence before the property can be held as community property again.

In *Huber v. Huber*, 27 Cal. 2d 784 (1946), the Supreme Court permitted the husband to prove that property acquired with his separate property and taken in joint tenancy with his wife was intended to remain his separate property because he did not intend to make a gift to his wife of one-half of the property as her separate property.

(A) Type of evidence: When the property is taken in joint tenancy, however, the evidence necessary to show that it is really community property must be evidence of a mutual agreement not to hold the property as joint tenancy. A secret intention, undisclosed to the other party, not to make a gift is not sufficient to overcome the joint tenancy deed. *Socol v. King*, 36 Cal. 2d 342 (1950); *Gudelj v. Gudelj*, 41 Cal. 2d 202 (1953).

III. PAST APPLICATIONS RE TENANCY IN COMMON

When property is held by spouses as tenants in common the cases have worked together to indicate that the husband holds his half as community property whereas the wife holds her half as separate property (Section 164 presumption). The leading case establishing this curious rule of law is *Dunn v. Mullan*, 211 Cal. 583 (1931). In that case the property was acquired from funds of an undisclosed source (therefore presumptively community property) deeded to husband and wife as husband and wife. At that time the presumption of Section 164 was that the married woman "takes the part conveyed to her, as tenant in common, unless a different intention is expressed in the instrument." That was before the amendment to Section 164 which provided that if the husband and wife were described as husband and wife, the presumption would be that the property was held as community property. The court held that under *Miller v. Brode*, 186 Cal. 409 and *Estate of Regnart*, 102 Cal. App. 643, this meant "that deeds naming as grantees both husband and wife presumptively vest property in spouses as tenants in common, the half interest conveyed to the wife being presumed under Section 164 of the Civil Code to be her separate property and that conveyed to her husband the community property of the marriage . . ." since the husband did not have a similar presumption in Section 164 operating in his favor.

In *Miller v. Brode*, the property was acquired partly from wife's separate property and partly with community property; title was taken in the names of both husband and wife. The court said:

"We can see but one conclusion that can be rationally drawn from these facts, and that is that the one-half interest which the conveyance on its face operated to convey to the decedent wife was taken and held by her as her separate estate, and that the other half was taken and held by her husband as community property. Such was the presumption on the face of the deed (Civil Code Section 164; *Pabst v. Shearer*, 172 Cal. 239) . . ."

In *Pabst v. Shearer* (1916), the property was acquired by deed to husband and wife as husband and wife. The court said that this creates a presumption of tenancy in common per 164, and went on to

say "Under the express provision of Section 164 of the Civil Code, as amended in 1897, the presumption is, therefore, that the undivided one-half interest in the other three lots, was vested in Margaret Pabst as her separate property."

Dunn v. Mullan was followed in 1962 by *Speer v. Speer*, 209 ACA 255, 25 Cal. Rptr. 729 (Lillie, J.). The facts in this case are really rather odd and respectable opinion is found to support the decision under the technical presumptions of the law even though the result may not be that which all would prefer to see. In *Speer*, the property was originally held by husband and wife in a deed describing them as joint tenants. Thus wife owned one-half as her separate property and husband owned one-half as his separate property. The husband then conveyed his half to a third party, thus making the wife a tenant in common with the third party. The third party later reconveyed to husband and no source of funds is shown for the reconveyance. Therefore, again, the presumption was that it was acquired by community property funds. This meant that the husband and wife were tenants in common since their interests had not been created by the same document. Under these circumstances, as the court said:

"*Dunn v. Mullan* is controlling. That case holds that where, as here, there is no evidence as to the source of funds procuring the second conveyance, the presumption created by statute (Civil Code Section 164) must prevail; namely, one joint tenant (the wife) held as undivided one-half interest therein as her separate property, while the remaining half was the community property of the husband and wife. The trial court correctly so held."

Therefore, the court could award, in the divorce action, three-fourths of the property to the wife, leaving one-fourth to the husband.

IV. PRESENT LAW

Civil Code Section 164 establishes the following presumptions (as amended, 1961) which are governing presumptions in the absence of any proof of tracings to the contrary:

"All other real property situated in this state and all other personal property wherever situated acquired during the marriage by a married person while domiciled in this state is community property; (this is the basic community property presumption) but whenever any real or personal property, or any interest therein or encumbrance thereon, is acquired by a married woman by an instrument in writing, the presumption is that the same is her separate property, and if acquired by such married woman and any other person (which would include her husband) the presumption is that she takes the part acquired by her, as tenant in common, unless a different intention is expressed in the instrument; (this is the situation in *Dunn v. Mullan* and *Speer v. Speer*) except, that when any of such property is acquired by husband and wife by an instrument in which they are described as husband and wife, unless a different intention is expressed in the instrument, the presumption is that such property is the community property of said husband and wife.

In cases where a married woman has conveyed, or shall hereafter convey, real property which she acquired prior to May 19, 1889, the husband, or his heirs or assigns, of such married woman, shall be barred from commencing or maintaining any action to show that said real property was community property, or to recover said real property from and after one year from the filing for record in the recorder's office of such conveyances.

As used in this section, personal property does not include, and real property does not include leasehold interests in real property."

From the above it is seen that the *Dunn v. Mullan* and *Speer v. Speer* situations arise only (1) where it is clear that the property is tenancy in common as it was under the facts in the *Speer* case, or (2) where the property has been acquired by husband and wife by an instrument in writing in which they are not described as husband and wife.

There has been some speculation in the law reviews and some of the treatises about the situation when people are not described as husband and wife. Professor Armstrong in her California Family Law treatise, which is probably the leading textbook in the state, makes the argument that if the description is Mr. and Mrs. John Doe, obviously there is no problem. But if the description merely says "John and Mary Doe," the presumption may not be established. If they are described as "John and Mary Doe, husband and wife" then clearly the presumption would be established. It appears to depend upon how well the parties are described.

V. PROBLEMS OF TITLE HOLDING BETWEEN HUSBAND AND WIFE

The problems arising from the manner in which property is held between husband and wife come up not only in the situation of divorce and death, but also in the basic question of what is the fundamental public policy of the state as to how property should be held between married persons. Our law has traditionally been said to favor the existence of the community property system. This, of course, means that the husband and wife have a present, existing and equal interest in the community property; that that property is under the management and control of the husband; that the creditors of the community may look to that property for payment of community debts incurred by the husband or by the wife with the husband's consent. Community property may be divided upon divorce between the spouses in cases of mental cruelty, adultery, and insanity "in such proportions as the court . . . may deem just." In all other cases it is divided equally. Upon death of either spouse, the surviving spouse owns half the community property and, in default of testamentary disposition by the decedent, takes the other half subject to the claims of creditors.

The joint tenancy deed, however, is very widespread in the state, particularly as a manner of holding residential property. If the property is true joint tenancy, as we have seen, each spouse owns an undivided half as his separate property. Thus, either may convey without the consent of the other; the property may not be divided other than equally upon divorce (thus making it impossible for the court to award the residence to the wife); and upon death the joint tenancy property

may not be transmitted by will but automatically goes to the survivor ahead of the claims of unsecured creditors.

The tax treatment of joint tenancy may not be as favorable to the survivor as the tax treatment of community property, as in a rising real estate market for upon death the community property achieves a new basis, while the joint tenancy property achieves a new basis only as to half.

For these and other reasons, proposals for change have been made in the past and continue to be made.

VI. PROPOSALS FOR CHANGE

1. In a recent law review article, entitled *Community Property in Joint Tenancy Form*, (14 Stanf. L. Rev. 87 (1961)) it was argued that the effect of the California decisions has been to create a hybrid form of property: community property held in joint tenancy. It was suggested that this new form should be given legislative or judicial help by reversing the *Siberell* presumption: Property should be presumed to be community property when purchased by husband and wife even if it is held in joint tenancy form "for all purposes except situations involving third persons who have relied on the joint tenancy form when purchasing from the survivor." The proposed amendment to Civil Code Section 164 is as follows:

"When any of such property is acquired by husband and wife by an instrument in which they are described as husband and wife, *whether as tenants in common or as joint tenants or otherwise*, unless a different intention is expressed in the instrument, the presumption is that such property is the community property of said husband and wife. . . . *Property in joint tenancy form is conclusively presumed to be true joint tenancy in favor of any person dealing in good faith and for a valuable consideration with a surviving joint tenant.*"

2. Another suggestion, which is directed mainly at the problem of division of the property upon divorce, is to amend Civil Code Section 146 to provide that the court may dispose of "the marital residence of the parties, whether held of record as community property or as joint tenancy property" upon divorce, or separate maintenance.

The purpose of this proposal is not to make any more favorable the ultimate award granted to the wife but to make it possible, in a proper case, to award the family home to the wife in order that the children may continue their lives with minimal trauma notwithstanding the divorce. Children need the security and stability which continued residence in their family residence is able to afford them in many cases where divorce is undertaken. If the value of the home exceeds the amount to be awarded the wife in the final, total division of the couple's assets, or if the mortgage payments will grossly exceed her ability to maintain regular payments, sale of the residence and divi-

sion of the proceeds thereby realized is the only alternative. However, in many cases where the title is held in joint tenancy the children could be spared the difficult emotional conflicts caused by moving out of the only residence they may have ever known if the court were permitted to make such an award to the wife with full credit for the monetary value of the family residence credited to the husband in the final disposition.

3. The foregoing proposal was addressed to an important problem but concern was expressed that remedial efforts should attack the basic problem of what is meant by a joint tenancy deed and how it works together with community property. In an attempt to do this, it was suggested that Section 164 be amended to provide that all property acquired by husband and wife by an instrument in writing be presumed to be community property, whether or not they are described therein as husband and wife and whether or not the property is held as tenants in common or as joint tenancy. This would overrule *Siberell* and *Dunn v. Mullan* and would put the burden on the party asserting that the property is separate property to overcome the presumption that it is community property.

As part of this suggestion it was proposed that the present provision of Section 164 to the effect that any property acquired by a married woman with another party is here separate property as tenant in common should be amended to provide that she acquires separate property only when title is taken in her name alone or with another person not her husband. The result of these amendments would be that when a married woman takes property with her husband it is presumed to be community property whereas when she takes it in her name alone or with someone not her husband it is presumed to be her separate property. The burden would then be placed on anyone asserting the contrary to assume the proof of their position by rebutting the presumptions. It was felt that this arrangement would most nearly effectuate the expectations intended by the parties. It was asserted that there is no need for a statutory presumption to favor tenancy in common over joint tenancy in a community property state. That may be necessary in a common law state, where tenancy in common is more likely to approach the expectations of the parties. But in a community property state, community property is to be preferred to both common law estates.

A bill to accomplish this latter suggestion was introduced in the 1963 session by Assemblyman Dannemeyer (AB 1464), a member of this committee to which the matter was referred for interim study. The committee's attention was directed to the fact that under the present situation the parties have the burden of proving that notwithstanding the form of the deed the property is nevertheless held by them as community property. The change proposed to the committee, by testimony presented in its hearing and by the Dannemeyer Bill, is to reverse the presumptions to favor the community property concept instead of being against it as under the existing situation. This

would be wholly in accordance with the long established public policy of this state favoring the concept of community property.

The proposal would not preclude a husband and wife from actually holding property as joint tenants. It would merely impose upon them the burden of overcoming the contrary presumption. This same burden is presently upon them in reverse in that they must overcome the presumption the property has been changed from community property to joint tenancy. In either event, proof to rebut the presumption would be by tracing the funds which were used to make the purchase or showing an agreement between the parties.

A suggestion was made to the committee that the standard joint tenancy deed form be amended to provide that such property is taken by the husband and wife as joint tenants with the right of survivorship and not as community property. The only advantage ascertained for this proposal was that it might put people on notice if they read the deed. But the view was expressed that this would get away from the Supreme Court's holdings that the parties could still agree to change the nature of the property from joint tenancy, even in that form, to community property. It was not recommended that agreements between husband and wife to change the nature of property be in writing. If the joint tenancy agreement, established by *Siberell* and *Dunn*, were put in writing, for example, it was suggested that this would merely result in a new deed form, "To husband and wife as joint tenants with right of survivorship and not as community property." The end result suggested was that after a few unsettling years of test cases, the situation would be back to exactly where it is now.

The major problem which is attempted to be solved by these proposals, is the fact that husbands and wives take property in joint tenancy without legal counsel but primarily because deeds prepared by real estate brokers, escrow companies, and by title companies are usually presented to the parties in joint tenancy form. The result is that they don't know what joint tenancy is, that they think it is community property, and then find out upon death or divorce that they didn't have what they thought they had all along and instead have something else which isn't what they intended. On the occurrence of a divorce there is strong motivation to establish the status of the residence as community property notwithstanding the form of the deed since the divorce court cannot award the residence to the wife and children if it in fact is held as joint tenancy.

On death the necessity of the decedent's half interest in the community property being subjected to probate was deemed somewhat undesirable in the majority of cases where the family home constitutes the main asset of the marriage. It was suggested perhaps the automatic aspect of survivorship which characterizes the joint tenancy ought to be made applicable to the decedent's half interest in the community property if he did not utilize his right to dispose of his half by will.

Concern was expressed that the incident of survivorship for community property should not be absolute as it is with joint property since this would preclude one spouse from transmitting his interest for the benefit of his children. For example, if it is the husband who dies first under a joint tenancy, his interest goes automatically to

the wife and he must rely upon her to provide for the children. Many men prefer to establish definite provisions for the benefit of their children lest the wife remarry and subsequently die, leaving, perhaps, the provision for the first husband's children solely within the discretion of her second husband who has no blood ties with those children.

The suggested proposal which was evolved from consideration of these factors was to establish the characteristic of survivorship regarding community property which is not otherwise disposed of by will. This would eliminate the necessity of probate.

Concern was expressed over creditors who, denied an opportunity to be paid through probate procedures, would be relegated to the status of unsecured creditors just as they are with regard to joint tenancy property. It was noted that the unsecured creditor is not relying normally on the property in the first place and that the parties could cut him out by changing the form of the holding from community to joint tenancy. In fact, it was observed that it is mostly in the small estates that the joint tenancy is used. In the larger estates, where estate planning concepts come into play, there are sufficient funds to pay the creditors. It is in the small estates that the creditors are more likely not to get their money and those are the estates which presently are in joint tenancy.

This amended proposal would not preclude the very valuable tools of estate planning since the community property could be put into a trust, for example, by testamentary disposition, for the benefit of the wife during her lifetime, and thereby avoid the double taxation at the wife's death.

VII. RESTRAINT ON TRANSFERABILITY UPON DIVORCE

In addition to the problems previously discussed, joint ownership of property, whatever its form or substance, requires the owners to join in any conveyance in most cases. Thus pending the final decree of divorce the signature of both the husband and the wife must be obtained in most situations before title to real property can be passed or equity in personal property encumbered. This is frequently impossible to obtain with the result that the parties must await a final determination as to the status of the property by the court, all too often with disastrous results.

In considering property rights at the time of divorce, this restraint on the alienation of property during the interlocutory period is perhaps the main problem the plaintiff is faced with after entry of the interlocutory decree.

To put the situation in focus, consider a typical factual situation. The husband and wife are a young couple who own a home, car and furniture; in all of which they have some equity, but none is fully paid for. The wife goes to court and obtains an interlocutory decree by default awarding her all or at least half of the community property and an order directing the husband to make the necessary payments on the home, automobile and furniture during the interlocutory period. If the husband already hasn't done it before this time, he either disappears in the state, or leaves the state and no one can find him. At any rate he

fails to make the necessary payments. Under the law, the wife, much to her surprise, is obligated to make these payments. However, she has three small children, is not working, and has no independent means of income. As time goes on the furniture is repossessed, the car is repossessed and a deficiency judgment obtained on it and the house is foreclosed upon. In the usual situation the repossessed car and furniture would probably be sold for no more than the payments due on them and when the home comes up for sale at the trustee's sale the wife does not even have the opportunity to bid her own equity in the home for she has no means of obtaining the cash. Without the signature of the husband, she has no power to encumber the property. This is not at all an unusual case to be found in our courts today. Many times, superior court judges hearing such a case have called the title companies and pleaded with them to pass title on the real property so that the wife would at least end up with something to start out with. Due to the current status of the law, in most instances title companies are helpless to act.

Consider also some of the case law in this area upon which the refusal to pass title or encumber property is based. The main case relied on is *Luepe v. Luepe*, 21 Cal. 2d 145 (1942). In this case the court decided that the trial court has the power to make an immediate division of the property if put in issue by the allegations or property settlement agreement and that its decree is final on this issue upon the expiration of the time of appeal or the time of relief granted under Code of Civil Procedure Section 473. The court also decided that after the lapse of this time, unless stated in the decree, it has no power to modify these rights. It would seem, then, that after the time for appeal has elapsed and after 90 days have elapsed for the notices provided for in Code of Civil Procedure Section 743, then the property could be encumbered or conveyed.

This is only apparently the situation for there are two factors which serve to abrogate the rule.

First is the situation where the property settlement agreement or the interlocutory decree purports to make final disposition of the property but does not in fact make such a disposition. In *Johnston v. Johnston*, 106 Cal. App. 2d, 775 (1951), the court said that the *Luepe* rule has no application to an interlocutory decree which does not purport to make a present final disposition of property. There are many pitfalls an attorney can fall into in drafting a property settlement agreement or drafting an interlocutory decree which would bring the pleading within the *Johnston* rule. It might give the court the power to modify the interlocutory decree, or the language might not be definite enough. However, if the property settlement made final present disposition of the property and the interlocutory decree did not, title could probably be passed on a conveyance because the party would be estopped in court on the ground of his own contract. The result is that in any set of facts which fall within the *Johnston* rule no title is passed until the final decree is rendered.

Perhaps the most serious problem preventing encumbering of property or the conveying of property during the interlocutory period is that of the possibility of reconciliation. The *Luepe* case did not decide

the question of whether or not a reconciliation canceled the provisions of the interlocutory decree as to the disposition of property rights. In a line of cases running from *Peters v. Peters*, 16 Cal. App. 2d 383, (1936), down to *Tompkins v. Tompkins*, 202 Cal. App. 2d 55 (1962) the courts have dealt with the subject of property settlements and whether or not the provisions of these property settlements were canceled by reconciliation. The courts have ruled in these cases that whether or not the provisions of the property settlement are canceled is a matter of the intent of the parties and inference can be drawn from the fact of reconciliation that they did intend to cancel these provisions of the property settlement agreement. However, in the *Tompkins* case the court said that this alone is not a strong enough inference to justify the cancellation. In a majority of these cases, the court found that the reconciliation did cancel the executory clauses of the property settlement. The question is almost completely unresolved as to whether or not the final present disposition of property in the interlocutory decree is canceled by the reconciliation of the parties. For the purposes of title practices, the recommended rule is to assume that reconciliation does cancel these provisions.

VIII. WHEN CONVEYANCE CAN BE MADE

In light of the foregoing, until the divorce decree becomes final no property should be conveyed or encumbered in the interlocutory period. However, this rule is not consistently followed by banks and title companies. For example, a bank might lend on property if the husband joins in. A title company might look at the factors surrounding the case and decide it can pass title. For example, if the husband has deserted and left the state, an attorney has attempted to locate him without any success and it looks like there is very little chance that he will return, the title company may pass title and take the risk that there will be no reconciliation. Of course, there is the obvious exception to this rule. If one of the parties died during the interlocutory period, and there is a *Luepe* type of decree, then after the appeal period has run, and the time specified in 437 or 437a, the disposition becomes final.

IX. AREAS CLEAR FROM DOUBT

The law in other areas surrounding interlocutory periods seems to be fairly clear. For example, if community property is acquired by the husband in his name alone after the interlocutory decree but before the final decree, title can be passed one year later under Civil Code Section 172a. But absent this it cannot be passed even after the final decree in the absence of an adjudication to the contrary. This result ensues because such property is vested in both parties as tenants in common and the wife must join in the conveyance. On the other hand, property acquired in the same period by the wife is presumed to be her separate property so title can be passed before or after the final decree under Civil Code Section 164. If one of the parties dies before the final decree and the interlocutory decree makes the present final disposition of the property, disposition then becomes final, after the running of the appeal period or the periods as prescribed in Section 473 or 473a. The status of the property, whether it is community or sepa-

rate, if put in issue usually becomes final at the time of the final decree. Also, if there is a property settlement agreement not made in contemplation of divorce, which sets forth the status of the property and makes a final disposition, title can be passed on the property after such an agreement has been entered into. As mentioned previously, a reconciliation may cancel property settlement agreements made in contemplation of divorce. Foreign divorce decrees are treated the same as if the divorce decree was obtained in the state, which does not settle the property rights. Under Civil Code Section 146 the parties hold as tenants in common except where the divorce is granted for adultery, extreme cruelty or incurable insanity. These rights can be later adjudicated into separate proceedings.

X. POSSIBLE SOLUTIONS

If the Legislature retains an interlocutory period, there are several possible solutions to mitigating the above problems.

- (a) The most obvious solution would be to shorten the interlocutory period, perhaps down to six months. At this time, final disposition could be made of the property.
- (b) Another solution would be to provide that any award of community real property made in an interlocutory decree would be final and conclusive in favor of a third party purchaser for value of an interest in that property from the party to whom it was awarded, regardless of reconciliation of the parties, when the time for any direct attack upon the decree has passed. This would mean that in a contested divorce, final disposition could be made when the period for appeals had run. At the other extreme, in a default divorce where service was by publication, final disposition could be made 180 days after the notice provided by Code of Civil Procedure Section 437a had been given. This proposal would also mean that the Legislature could retain the one-year waiting period without adversely affecting the right of alienation. If the parties did reconcile then the decree or property settlement might be canceled by the reconciliation but as to third parties the rights would be final. A bill to accomplish this suggestion was introduced in the 1963 session by Chairman Willson of the Judiciary Committee (AB 2774) and referred to this committee for interim study.

In conjunction with either one of the above suggestions, the time periods required in Code of Civil Procedure Section 437 of 90 days and Code of Civil Procedure Section 437a of the 180 days could be shortened even further. However, since these sections have a broader application than just to divorce actions, serious study would have to be given to shortening these periods. If they were shortened down too far the statute might be vulnerable to attack on the ground of constitutionality for not meeting the requirement of due process.

In summary the problem of restraint on the alienation of property during the interlocutory period is really not a serious problem at all for lending institutions or title companies, but is more

of a social problem because of the hardship caused the wife during this period since she is unable to convey or encumber her property.

XI. RELATED PROBLEMS

There is another area involving real property rights in the divorce decree which sometimes causes a problem. Occasionally the attorney drafting an interlocutory decree, or even the court will describe the real property involved by the street address alone, instead of putting in the proper legal description. The historical background for doing this is that when the homestead exemption was utilized oftentimes the attorney would rush out to file the exemption with the street address of the home alone, just before the judgment attached. There was no time to insert the legal description of the property. This has spread to other areas, including divorce decrees. The problem is that sometimes the attorney will put the wrong street address down so when the wife goes to convey the title to the house she finds that she must go back into court again to quiet title. As a matter of fact, since there is no legal description in the decree, its recordation does not impart constructive notice. Another problem is that sometimes when only the street address is used, the home might turn out to be a duplex or a fourplex or even a condominium in which several residences have the same address. Confusion is created which may result in clouding the title of the owners of the other units. Therefore, it is suggested that a requirement be put in the statute that for interlocutory decrees which do make disposition of real property, a legal description of the property should be utilized.

Attorneys for some of the state's largest banks indicated that they found no major problems in this area of the law. One of the minor problems which has arisen for them periodically occurs when a divorce decree orders the husband to make payments on a loan acquired for an automobile or furniture. If the husband defaults in these payments, the wife is often shocked to learn that she must either make these payments or have the property repossessed. It is probably more of a customer relations problem than anything else. However, the problem could be entirely avoided if this were made perfectly clear in the interlocutory decree.

Other minor problems have arisen around a restraining order or attachment issued under Code of Civil Procedure Section 539a et seq. A common occurrence when an attorney files a divorce action for a wife is to immediately tie up the husband's bank account, not only for the support of the wife, but for attorney's fees. First of all, it is not clear to the banks under the current law whether or not such a restraining order or attachment is valid without the bond required in the statute. They indicate that in some instances such a bond is not posted. They also have administrative problems in complying with the order. In many instances the order will say, if the husband has a business, money is to be disbursed only in the ordinary course of business and for the necessary expenses of living. It is sometimes extremely difficult to ascertain what is in the ordinary course of the business and what is a necessity for the husband. Another problem banks encounter with such

orders is that oftentimes the orders will not specify the branch of the bank. If the bank is a large one, such as the Bank of America, it is a rather expensive process for the bank to circularize all its branches to ascertain if the husband has bank accounts in any other branches. As a practical matter, however, this only has to be done in the case of a rather wealthy person, since the average person has only one bank account.

Apart from the problems of the bank, one banker indicated that he felt under our current laws some attorneys become overzealous and thus kill the goose that laid the golden egg. The committee was informed of a case of a husband who had a steel business which was doing very well. As soon as the divorce was filed the attorney for the wife immediately tied up all the liquid assets of the corporation. Subsequently the court appointed a trustee to administer these assets. As a result of having all his assets being administered by a trustee who knew nothing of the business, the business went into involuntary bankruptcy within six months. It was suggested that perhaps some thought should be given to limiting the use of such restraining orders or attachments so that such businesses could be allowed to efficiently continue to run.

XII. FINDINGS AND RECOMMENDATIONS

The committee did not conclude its study of the problems set forth in this part of the final report and hence recommends continuance for further study.

Part 6

BLOOD TESTS NEGATING PATERNITY *

I. INTRODUCTION

Previous efforts to enact legislation permitting blood tests to negate paternity despite the provisions of Code of Civil Procedure Section 19625(5) failed in the legislative sessions of 1961 and 1963. It was recommended to this committee that it renew its efforts for such legislation because (to quote Justice Fourt of the district court of appeal in his dissenting opinion in *Wareham v. Wareham*, 195 Cal. App. 2d 64, 88) a law or a court's interpretation of it which "bypasses, ignores or disregards a manifest truth should be changed forthwith." To place the following proposals in proper context, it is important to review some of the pertinent historical background with respect to blood tests and their effect in disputed paternity proceedings.

II. BACKGROUND FACTS

By the provisions of Code of Civil Procedure Section 1962(5), it is provided that "the issue of a wife cohabiting with her husband, who is not impotent, is indisputably presumed to be legitimate." This conclusive presumption has been the law of this state, with certain exceptions to be noted hereafter, ever since its enactment in 1872. Some 56 years ago, a scientist known as Landsteiner discovered the fact that human blood possesses some characteristic qualities. Ten years later it was proved that these qualities are inherited according to definite laws. During the past 50 years biological and genetic studies of these qualities have progressed to the point of establishing the following proposition: Since a person's blood type can be ascertained easily, and is inherited according to well defined and simple biological laws, it follows that blood tests are highly suitable as evidence in disputed paternity cases. As is generally known, the blood tests as developed are regarded as conclusive in excluding or negating paternity, but cannot be used positively to establish paternity. Quoting the leading authority in the field on the subject, to wit: Schatkin, *Disputed Paternity Proceedings*, 3d Edition (1953), at page 234:

"As far as the accuracy, reliability, dependability—even infallibility—of the tests are concerned, there is no longer any controversy. The result of the test is universally accepted by distinguished scientific and medical authority. There is, in fact, no living authority of repute, medical or legal, who may be cited adversely. Furthermore, that the weight of enlightened legal authority is in favor of according decisive evidentiary effect to reliably reported blood test exclusions, is shown by the favorable comment on

* This part of the final report is based on testimony presented before the Assembly Interim Committee on Judiciary at its hearings on domestic relations in Los Angeles, October 8 and 9, 1964.

instances of judicial acceptance of exclusions, and the critical deprecatory view of judicial disregard of the exclusions which have appeared in law reviews throughout the country."

In 1963 our Legislature adopted the Uniform Blood Test Act in its entirety, omitting Section 5 thereof, which was and now is the proposed subject of an amendment to the Code of Civil Procedure, which is to read as follows:

"Section 1980.8. The presumption of legitimacy of a child born during wedlock is overcome if the court finds that the conclusion of all experts, as disclosed by the evidence based upon the tests, show that the husband is not the father of the child."

As noted, the purpose of the Uniform Blood Test Act, Section 5 thereof, made the results of accurate blood tests conclusive. The present objective is to do the same thing by the amendment which was originally intended to accomplish the foregoing.

The result of the omission of our legislative enactment to give conclusive effect to blood tests in the 1953 legislation gave rise to the problems that confronted our courts in *Kusior v. Silver*, 54 Cal. (2d) 603; 7 Cal. Rep. 129; and *Wareham v. Wareham*, 195 Cal. App. (2d) 61, 15 Cal. Rep. 463. In both cases blood tests negated paternity of the defendant, who was adjudged the father of the illegitimate child. Both the Supreme Court and appellate court held, among other things, that if the conclusive presumption statute was applicable, (namely, a husband and wife cohabitating) the results of the blood test could not be introduced to overcome the presumption. Justice Fourt, dissenting in *Wareham v. Wareham*, *supra*, criticized this view as follows:

"In this case we have followed the ruling which denies to the husband the most potent, accurate and competent evidence known to man to insure the ascertainment of the truth; because there is no evidence known to the judicial process which is more lucid and scientifically certain than the blood grouping test when used to negate paternity.

"This whole situation is a perfect example of what occurs when truth and justice are not equated. Any law or decision which bypasses, ignores or disregards a manifest truth should be changed forthwith.

"We are placing our stamp of approval upon an outdated fiction of the law in the face of and against inexorable scientific facts. I do so reluctantly because, as a member of an intermediate court, I am constrained to follow the law as it has been stated by the Supreme Court of this state."

III. RATIONALE—PUBLIC POLICY UNDERLYING THE CONCLUSIVE PRESUMPTION STATUTE

Based on the decisions in question, it is well to ask ourselves what public or social policy considerations justify the conclusive presumption that a child born in wedlock is legitimate even in the face of conclusive proof that it is not. Three policy considerations have been most frequently mentioned.

1. The Stigma of Illegitimacy

A refusal to bastardize a child born in wedlock. The stigma of bastardy should be narrowly weighed against values to be achieved in furtherance of social justice, truth and reason. Perhaps the most persuasive answer to this consideration is contained in Justice Fourn's dissenting opinion in *Wareham v. Wareham*, 195 Cal. App. 2d 61, at page 83:

"If the theory of the court is to protect the child from the stigma of illegitimacy, it is a mistaken idea. The child will ultimately know by the very nature of things that in fact and in truth the plaintiff in this action was not her father and that it was an absolute scientific impossibility that the plaintiff in this action could have been her father and yet the law is so declaring that the plaintiff is the father. What respect for the law does such a course build in either the mind of the person who is most directly affected, namely the child or in the mind of the general public from which the support of the law emanates. This brand of so-called justice is not substantial in any sense because it is grounded in hypocrisy and untruths."

2. Financial Burden

There has been an understandable hesitancy to exonerate a husband because a child might become a financial burden upon the state. In the first place, it is submitted that by the very nature of these cases, they are infrequent. When the court has no certain way of knowing who the father is, and the mother was married and cohabiting with her husband at the time of conception, the husband is the obvious choice. Logic and reason would support the applicability of the presumption of legitimacy. But where there can be no doubt as to the husband's status as "father" when he is excluded by scientific tests, no policy reason can justify a denial of the truth simply because there might be some additional burden to the state. This assumes, of course, that the true father cannot be located or financial responsibility imposed on him.

3. Family Integrity

Perhaps the most frequent and consistently argued policy in favor of the conclusive presumption is the reluctance to disturb the sacred integrity of the family unit. One can seriously question as to whether or not there is any "integrity" left when the parties are in court and publicly proclaiming that there has been adultery, infidelity, immorality, etc. Even in the prior California cases applying the conclusive presumptions, certain exceptions have been recognized:

- (a) If a husband was able to prove his potency, this fact could always be shown to eliminate or render inapplicable the conclusive presumption.
- (b) If the husband were residing out of town or absent (e.g., in military service) at the time of conception, such fact could likewise be shown.
- (c) It is assumed that if the husband were proven to be sterile, such fact could be shown.

In effect, what our cases have now affirmed is that if absence, sterility, impotency, were proven, this is all right. On the other hand, if the wife were unfaithful and committed adultery during marriage, we will not permit the use of blood tests to negate the husband's paternity. The inconsistency of the case holdings reaches absurdity. Once again a quote from Justice Fourt in his dissenting opinion in *Wareham v. Wareham*, 195 Cal. App. 2d 64, Page 85, 15 Cal. Reporter 465, 477-478:

"The matter of 'the integrity' of the family has been referred to from time to time as something which should not be impugned and that therefore the conclusive presumption should prevail regardless of truth or fact.

"Integrity is a state of quality of being complete, undivided or unbroken—an unimpaired state, moral soundness, honesty, freedom from corruption—a state of innocence.

"To impugn is to assail, to deny.

"Does anyone believe that there is any integrity in the family where the wife has admitted associating with other men and has given birth to a child which could not possibly in fact be the child of her husband and the husband has so charged such facts in a verified proceeding and has proven his allegations therein set forth beyond a peradventure of a doubt. Where is the moral soundness, the freedom from corruption, the state of innocence to be preserved in such a situation?"

IV. CONSTITUTIONALITY OF CCP SECTION 1962(5)

In a recent comment, Volume 35, Southern California Law Review, the writer raises serious question as to whether Code of Civil Procedure Section 1962(5), is constitutional as applied to facts where blood tests negate paternity. The article points out that the power of the Legislature to enact presumptions has been reviewed in many state and federal decisions, frequently resulting in a holding that the presumption is unconstitutional, especially where it is arbitrary and operates to preclude a party from asserting or presenting his defense to the main fact presumed. As stated by the Supreme Court in *Heiner v. Donnan*, 285 U.S. 312, the court held that a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the 14th Amendment. Is there not serious doubt that a husband excluded by blood tests as the father of a child born to his wife, and who is not permitted to present this evidence to a court to overcome the conclusive presumption, is effectively deprived of due process of law?

V. CONCLUSIONS

A British writer once said: "Maternity is a matter of fact; paternity is a matter of opinion." This statement no longer holds true in certain situations. It is conceded that a blood test cannot determine who the father is, but it definitely can determine who isn't the father. It was suggested that inevitably our Legislature or the Supreme Court of either the State of California or of the United States, if presented with the question anew in the face of the present acceptance of blood tests, will rule that a husband is entitled to equate a scientific truth with justice

where it is urged (and he disputes) that he is the father of an illegitimate child. The Supreme Court of Maine, in a paternity case (*Jordan v. Mace*, 69 Atl. 2d 670) decided in early 1949, recognized the value and conclusive effect of blood tests in a paternity case:

"We are not disposed to close our minds to conclusions which science tells us are established, nor do we propose to lay down as a rule of law that the triers of fact may reject what science says is true; for to do so would be to invite at some future time a conflict between scientific truth and *stare decisis*, and in that contest the result could never be in doubt."

It was therefore urged that this committee recommend passage of Code of Civil Procedure Section 1980.8 reading as follows:

"Section 1980.8. The presumption of legitimacy of a child born during wedlock is overcome if the court finds that the conclusions of all experts, as disclosed by the evidence based upon the tests, show that the husband is not the father of the child."

VI. FINDINGS AND RECOMMENDATIONS

Findings

1. Previous efforts to enact legislation permitting blood tests to negate paternity despite the provisions of Code of Civil Procedure Section 1962(5) failed enactment in the legislative sessions of 1961 and 1963.
2. The conclusive presumption of legitimacy of a child born to a couple during cohabitation has been the law of this state since its enactment in 1872.
3. In the intervening years scientific knowledge and techniques have been developed to the point where it can now be determined with scientific accuracy in certain cases that a particular male could not have biologically sired a certain child of a certain woman. Yet our present law precludes the introduction of this evidence to refute the conclusive presumption that the husband sired his wife's child.
4. Serious question has been raised of the validity and social policy considerations of the present law which has been grounded on the stigma of illegitimacy, and considerations of financial burden and family integrity. Doubt has also been raised regarding the violation of constitutionally protected due process considerations by the present law.

Recommendation

1. The committee recommends that further study be made exclusionary regarding blood tests and conflicts in social policy which are engendered by the present suppression of scientific fact obtained by blood tests which negate paternity in order to effectuate the policy embraced in the conclusive presumption of legitimacy.

Part 7

CONSTITUTIONAL AMENDMENT FOR UNIFORM MARRIAGE AND DIVORCE LAWS *

I. THE PROBLEM

Article IV, Section 1 of the United States Constitution requires the several states to give full faith and credit to the public acts, records and judicial proceedings occurring in neighboring states. In a long line of cases going back to *Pennoyer v. Neff*, cite 95 U.S. 715, 24 L.Ed. 565, decided in 1877-78, the U.S. Supreme Court has established that only those actions taken by court having proper jurisdiction over the person or subject matter of the proceeding are entitled to full faith and credit in the sister states.

II. MIGRATORY DIVORCE

Migratory divorce, i.e., residents of one state going to another for the purpose of obtaining a divorce, did not become popular until late in the 19th century and no authoritative answers to the numerous questions raised by this practice were forthcoming until the U.S. Supreme Court addressed itself to this area in 1901 in the case of *Atherton v. Atherton*, 181 U.S. 155. Beginning with *Atherton* and running down a long line of cases decided periodically since then,¹ culminating with the two *Williams'* cases² in the 1940's it was established that domicile of one of the parties within the state granting the divorce is essential to give that court jurisdiction to dissolve and terminate many aspects of the marital status of the couple notwithstanding that one party did not participate in the action.

Difficulty results because of the requirements of establishing domicile in a jurisdiction. Derived from the Latin, *domus*, meaning home or dwelling house, domicile is the legal conception of "home." It is defined as that place where a man has his true, fixed and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning or that place where there is a present intention of making a permanent home, for an unlimited or indefinite period.³ In order for a competent person to acquire a new domicile all that is required is his physical presence in the new jurisdiction, freely, and with the requisite mental intent that such jurisdiction shall be his domicile.

* This part of the final report is based on testimony presented to the Assembly Interim Committee on Judiciary at its hearings on domestic relations in Los Angeles, January 8-9, 1964.

¹ *Atherton v. Atherton*, 181 US 155 (1901); *Bell v. Bell*, 181 US 175, 21 S.Ct. 551 (1901); *Andrews v. Andrews*, 188 US 14, 23 S.Ct. 237 (1903); *Haddock v. Haddock*, 201 US 562 (1906).

² *Williams v. North Carolina I*, 317 US 287, 63 S.Ct. 207 (1942); *Williams v. North Carolina II*, 325 U.S. 226, 65 S.Ct. 1092 (1945).

³ *Kurilla v. Roth*, 132 N.J.L. 213, 38 A.2d 862, 864 (19--); in re *Garneau* 127 F. 677, 62 CCA 403 (19--); *Black's Law Dictionary*, Fourth Edition.

If one of the parties, usually the plaintiff, was in fact domiciled in the jurisdiction, and if the other procedural requirements, such as maintaining residence there for the required period of time, are satisfied, a divorce granted by the courts of that jurisdiction is entitled to full faith and credit in the other states, at least as to those elements which the court had authority to determine. The fact of whether or not domicile actually existed may be questioned in a trial *de novo* by a court in another state when the matter of full faith and credit is in issue there if the challenging party did not raise that issue in the first court or participate generally in the merits of the divorce action.⁴

New York and California have led the nation in establishing the concept of "divisible divorce" whereby a spouse, especially a husband, who flees to another state for the purpose of divorce is unable to terminate the property right of support possessed by his wife who does not participate in that foreign divorce.⁵

The result of these cases is important in two main areas: First, if the spouse being divorced participates in the foreign divorce, as by the entrance of an appearance by a local attorney retained for that purpose, the divorce decree is virtually unassailable. This is so despite the fact that neither party actually had a domicile in the divorce-granting state and despite the position taken by the U.S. Supreme Court long ago that the appearance of a nonresident (nondomiciled) defendant could not invest a court with jurisdiction over a suit for divorce instituted by one who had no bona fide domicile in the state.⁶ Parties intent upon obtaining a divorce in contravention of the established policy of their home state are thereby able to thwart the efforts of their home state to regulate the marital status of their citizens. This is one of the main reasons that New York citizens, who are confronted with a restricted domestic policy regarding divorce in New York where adultery is the only permissible grounds and California citizens, who are confronted with a restrictive domestic policy wherein divorce procedures take a minimal period of one year to become final, flock to sister states who gain lucrative economic incentives to continue trafficking in the so-called "quickie" divorces. It is for this reason that New York citizens constitute the largest number of people divorcing in Nevada while California furnishes the second largest number.⁷

⁴ A special appearance to contest the jurisdiction of the original trial court granting the divorce precludes a second, subsequent collateral attack of the divorce decree on jurisdictional grounds in the courts of a sister state where the decree is not susceptible to such collateral attack in the courts of the state which rendered the decree. *Davis v. Davis*, 305 US 32, 59 S.Ct. 3 (1938). The same result ensues from a general appearance since jurisdiction is one of the items which could have been litigated at that time. *Sherrer v. Sherrer*, 334 US 343, 68 S.Ct. 1087 (1948). A stranger to the divorce action who did not participate therein, as a child of the plaintiff, has been held unable to attack the validity of the divorce in a sister state if the law of the state where granted did not permit such a collateral within the granting state. In the only case of this type which has reached the U.S. Supreme Court, a child was not permitted to attack the validity of the father's Florida divorce collaterally in another state since Florida law would only permit such an attack on the decree within the State of Florida by a stranger who would be prejudiced in regard to some pre-existing right. The child was held not to have such a "pre-existing right." *Johnson v. Muelberger*, 340 US 581, 71 S.Ct. 474 (1951).

⁵ *Estin v. Estin*, 234 US 541, 68 S.Ct. 1213 (1948); *Vanderbilt v. Vanderbilt*, 1 NY2d 342, 153 NYS2d 1 (1956) affirmed on certiorari to the U.S. Supreme Court, 354 US 416, 77 S.Ct. 1360 (1956); *Hudson v. Hudson*, 52 Cal. 2d 735, 344 P2d 295 (1959); *Weber v. Superior Court*, 53 Adv. Cal. 405, 348 P2d 572 (1960).

⁶ *Andrews v. Andrews*, 188 US 14, 23 S.Ct. 237 (1903).

⁷ The estimated average cost of a Nevada divorce for a New Yorker is \$3,000 including transportation and six weeks' residency. For Californians the cost would only be reduced by the lower transportation costs.

Secondly, even though a wife does not agree to participate in the divorce desired by her husband, and even if she is protected by the concept of divisible divorce whereby her fleeing husband can only terminate his present inability to remarry by the divorce, she is faced with the difficulty of obtaining support for herself and her children from a man who appears in all respects to be bona fide remarried with its attendant financial demands on him for the second wife and family.

Because many of these divorces in both cases are in fact void for actual lack of the requisite jurisdictional requirement of domicile, they may not be attacked in the first instance because of the actual participation of the defendant spouse, nor in the second instance because of the practical costs and problems of proving the lack of mental intent necessary for the plaintiff to establish domicile in the foreign state. For this reason they are frequently referred to as "valid void divorces," divorces which are technically void because of lack of jurisdiction but which are given the effects of validity because of the inability of anyone to effectively challenge and establish their true status. When attacks are made they are frequently successful, resulting in nullification of the second marriage and often bastardization of the children.

III. EVASIONARY MARRIAGE

A similar but more frequent problem exists regarding evasionary marriages in sister states. Unlike divorce, the U.S. Supreme Court has not spoken to the issue of what minimal contracts are required with a state in order to contract a marriage there. The result is that for most purposes, mere physical presence in another state, coupled with compliance with their marriage regulations is sufficient to contract a valid marriage. The stage is thus readily set for those states which wish to traffic in evasionary marriages. Unlike divorce, the validity of evasionary marriages is usually determined by the rules contained in the doctrines resolving the conflicts of law between sister states. Marriages are usually evaluated under the general doctrine that a contract valid where made is valid everywhere. As applied to marriage, this doctrine results in marriages valid where performed being generally recognized as valid everywhere. The two exceptions are those marriages which contravene established principles of Christian-Judeo morality and that which is expressly prohibited by an articulated public policy of the home state. Thus the general doctrine has the serious disadvantage of completely failing to consider the public policy of any other state, such as the state from which the parties have temporarily sojourned for the purpose of contracting the evasionary marriage and the state to which they normally will immediately return.⁸

An attempt to relieve this situation has been made through the Uniform Marriage Evasion Act which has been subscribed to by a small number of states.⁹ This provision addressed itself, however, primarily

⁸ See 49 Columbia Law Review 693 and 14 ALR2d 624.

⁹ The act has been adopted in five states with slight modification: Illinois, Louisiana, Massachusetts, Vermont and Wisconsin. The National Conference on Uniform State Laws withdrew the act in 1943, stating that it tended to result in confusion because so few states had adopted. (Handbook of the National Conference of Commissioners on Uniform State Laws, 1943, p. 64.)

to the imposition of restraints on marriage upon those who have been finally divorced, such as in New York State where the defendant to a divorce action may not remarry until after three years have elapsed and only then upon the consent of the New York Court. This has been interpreted to be an impediment which applies only to marriage efforts within the state unless an attempt to marry is undertaken in one of the few states which have adopted the uniform evasion act. In those states one is unable to contract a valid marriage if he was unable to do so within his home jurisdiction.

IV. PROPOSED SOLUTION

As a solution to the problems set forth above, and an end to the subordination of the public policy of California and other jurisdictions to that of sister states which traffic in marriage and divorce of out-of-state residents, it has been proposed that the California Legislature pass a resolution memorializing the United States Congress to enact a constitutional amendment for ratification by the several states, granting to the Congress power to prescribe uniform requirements for marriage and the resident requirements and grounds for divorce throughout the United States.

The purpose and effect of this amendment is only to establish minimal requirements for marriage and divorce which will be uniform in the several states, thereby keeping that small majority now trafficking in evasory marriages and divorces from subordinating the public policies of the majority of states to their own economically oriented policies. Such legislation would *not* in any way delegate to the Congress the right to legislate other domestic relations matters such as custody, paternity, and all other matters relating to family law. This proposal is advanced as the only solution to this problem since any attempt at state initiative through uniform statutes will be thwarted by the very small group of states which are creating the problem.

V. FINDINGS AND RECOMMENDATIONS

Findings

1. Present interpretation of the demands of the full faith and credit clause of the U.S. Constitution, coupled with present application of the conflict of laws principles, has resulted in the subordination of the public policy of the several sister states to the economically oriented policies of neighboring states which traffic in evasory marriages and migratory divorces.
2. Attempts to rectify this situation have been abortive since those states which profit by this situation will not join in any effort towards uniform acts which would establish minimal contacts with a state before marriage or divorce could occur there.
3. The only effective alternative appears to be an amendment to the United States Constitution which would delegate to the Congress authority to establish minimal residence requirements for marriage and divorce which will be uniformly applicable throughout the country.

Recommendation

1. The committee recommends that the California Legislature memorialize the United States Congress to enact a constitutional amendment which will authorize Congress to establish minimal residence requirements for marriage and divorce in the various states of this country.
2. Attempts to rectify this situation have been abortive since those states which profit by this situation will not join in any effort towards uniform acts which would establish minimal contacts with a state before marriage or divorce could occur there.
3. The only effective alternative appears to be an amendment to the United States Constitution.

Part 8

ELIMINATION OF NEED FOR STIPULATION TO APPOINT COURT INVESTIGATOR *

I. LEGAL BASIS

One of the most important tools available to attorneys and the court in the determination of a proper child custody award is the use of domestic relations investigators, as provided for by Code of Civil Procedure Section 582 (former Section 638.1). Section 263 provides, in part, that

In any county, or city and county, which is authorized by law to have domestic relations cases investigators, it shall be the duty of such domestic relations cases investigators, in any divorce action then pending wherein the parties thereto have minor children to investigate and to report to the judge of the court wherein such action is to be tried all pertinent information as to the care, welfare and custody of the minor children of the parties to the divorce action.

Welfare and Institutions Code Section 582 provides:

The probation officer shall upon order of any court in any matter involving the custody, status or welfare of a minor, or minors, make an investigation of appropriate facts and circumstances and prepare and file with the court written reports and written recommendations in reference to such matters.

In a significant opinion the Attorney General of California has ruled that under this section: (1) The superior court may require an investigation and report by the probation officer in any matter involving the custody, status, or welfare of a minor and is not limited to those matters arising under the juvenile court law; and (2) the report may be received in evidence over the objection of any or all parties. 27 Ops. Cal. Atty. Gen. 292 (1956).

II. EVIDENTIARY VALUE OF DOMESTIC RELATIONS REPORTS

The purpose of investigators of domestic relations cases is to assist the court by "providing the trial judge with detailed information concerning the existing physical, moral and emotional conditions under which a child is presently living or those under which he will be living if his present custody is changed." Pfaff, Domestic Relations Investigators, 36 L.A. Bar Bull. 192 (1961).

* This part of the final report is based on testimony presented to the Assembly Interim Committee on Judiciary in its hearings on domestic relations in Los Angeles, October 8-9, 1964.

With respect to the reports it authorizes, Code of Civil Procedure Section 263 provides, in part:

Such report shall be filed not less than 10 days before the date set for the trial of the divorce action with the clerk of the court wherein such action is to be tried, and not less than 10 days before the trial of such action a copy of the report shall be served on each party to the divorce action.

The report of the investigators shall be admitted in evidence upon the stipulation of both parties, and shall be competent evidence as to all matters contained therein.

Such investigator or investigators who have investigated the care, welfare and custody of the minor children as provided for in this section, shall be present at the trial of the divorce action of the parties who are the parents or custodians of such minor children, and may be called to testify by the judge or either party as to any matter which they have investigated. The testimony of such investigator shall be subject to questions direct and cross which are proper, and shall be competent as evidence.

But under the California Constitution, the power of decision vested in trial courts is to be exercised by a judge, and may not be delegated, to investigators or other subordinate officials or attachés of the court. *Washburn v. Washburn* (1942) 49 C.A. 2d 581, 122 P. 2d 96. Thus, it has been held that the investigator under Code of Civil Procedure Section 263 stands in no better position than an ordinary witness, and must be available for complete cross-examination on any matter which he or she reports. *Sanchez v. Sanchez* (1961) 55 C. 2d 118, 10 C.R. 261; *Fewel v. Fewel* (1943) 23 C. 2d 431, 144 P. 2d 592. The court cannot make its decision on the report or recommendation alone but must hear evidence submitted by the parties. *Stanberry v. Stanberry* (1947) 81 C.A. 2d 412, 184 P. 2d 16. It is reasoned that the investigator's report, not being required to be under oath or to be made part of the record, is not competent evidence and is not a proper foundation for an order. *Moon v. Moon* (1944) 62 C.A. 2d 185, 144 P. 2d 596.

However, the report of an investigator may be admitted in evidence upon the stipulation of both parties and then becomes competent evidence as to all matters it contains. See *Exley v. Exley* (1951) 101 C.A. 2d 831, 226 P. 2d 662; *Noon v. Noon* (1948) 84 C.A. 2d 374, 191 P. 2d 35. The report is advisory only and the trial judge has a right to disregard it (*Prouty v. Prouty* (1940) 16 C. 2d 190, 105 P. 2d 295), but this rarely occurs in practice.

Use of trained domestic relations investigators has been praised as "expediting the administration of justice and stabilizing family relationships." Pfaff, Domestic Relations Investigators, 36 L.A. Bar Bull. 192 (1961).

III. PRESENT PRACTICES

By reason of the present provisions of Code of Civil Procedure Section 263, which requires that the report of an investigator can be admitted in evidence only upon stipulation of both parties, it has been the custom of some courts, prior to the appointment of the investigator (and often as a condition of appointment) to require a stipulation from

counsel that the investigator's report may be received in evidence. Without a stipulation, the court refuses or is powerless to appoint an investigator except by the provisions of the Welfare and Institutions Code. Where counsel for arbitrary or personal reasons refuses to stipulate to the appointment of a court investigator, the court is prevented from proceeding with an investigation through use of its own, trained personnel even though an investigation is reasonable and necessary in a particular pending hearing. If the court wishes to be informed nevertheless, it must resort to the use of probation department personnel under Welfare and Institutions Code Section 582. Such personnel are not specifically selected and trained for making child custody investigations, and are not under judicial control as to policy and procedures. But their report can be admitted over objection. The method proposed which would permit the courts to use their own child custody investigators in any case where one party, or the court on its own motion, indicated there was a proper need, is to amend Code of Civil Procedure Section 263 to delete the passage "upon stipulation of both parties" presently necessary for the report to be introduced.

If determination of the best interests and welfare of children require an objective inquiry by a court investigator, trial courts would be well advised on their own initiative to assign investigators to ascertain the facts essential to an intelligent decision. If, after receipt of such investigative report, the attorneys so require, the investigator may be subpoenaed or required to be present at the trial of the action, to give testimony concerning such report, or their appearance can be waived.

Past experience has indicated that in the normal practice most attorneys will accept the reports of investigators without requiring their personal presence at the time of the hearing. Their reports may be received just as the affidavits or declarations of the parties are presently received, by stipulation of the parties or the discretion of the court. (See Code of Civil Procedure Section 2009; *Skouland v. Skouland*, 201 Cal. App. 2d 677, 20 Cal. Rep. 185; *Muller v. Muller*, 141 Cal. App. 2d 722, 297 Pac. 2d 789. See Witkin, Evidence 342-343, on use of declaration in evidence. It was suggested that if it should turn out that counsel insist upon the availability of the investigator for cross-examination, which limits the ability of such investigator to perform his field investigation in an already overburdened situation, then both the legal profession and the judiciary must press for additional investigators or social workers to assist the court in its vital task. The savings of court time, of the time of counsel and the litigants (exclusive of the advantages or benefits to children) can well justify a request for additional appropriation for this purpose.

IV. REMEDIAL PROPOSAL

Based on the prior material, it was proposed that Code of Civil Procedure Section 263 be amended empowering a court for good cause to appoint an investigator without the stipulation of the parties, where a court is so advised in the interests of justice.

V. FINDINGS AND RECOMMENDATIONS

Findings

1. Use of domestic relations case investigators under Section 263, Code of Civil Procedure, to aid the court in making a proper determination in child custody cases is a highly desirable method of bringing all available information to the attention of the court. Such investigators are members of the court's staff, selected and trained according to high standards to do a particular, specialized task.
2. Present use of such investigators, however, is limited to those cases in which there is a stipulation by both parties to the introduction of the report. Where a party for arbitrary or personal reasons refuses to enter into such a stipulation, the court is prevented from using its own expert personnel but must proceed under Section 582 of the Welfare and Institutions Code if it wishes to be informed concerning the circumstances prevailing among the several choices available to the court in determining custody. The report of the probation department personnel may be received in evidence over the objection of any or all parties.
3. The committee believes the court should be able to do directly with its own highly trained staff what it can do by a more cumbersome method if it desires or needs to be fully informed.

Recommendation

1. Since reports by probation department personnel under Section 582, Welfare and Institutions Code, can be introduced, over objection, the committee recommends that Section 263, Code of Civil Procedure, be amended to permit the similar use of a child custody investigation report by the domestic relations investigators, regardless of stipulation of the parties, the investigator to be available, on request, for examination by either party.

Part 8

APPENDIX A

A Résumé of the History, Purpose and Functions of Domestic Relations Investigators Attached to the Los Angeles Domestic Relations Court *

This résumé is based on materials prepared and published by the Honorable Roger Alton Pfaff, Judge Presiding in the Consolidated Domestic Relations and Conciliation Courts.

History

The Superior Court of Los Angeles County, in 1929, first inaugurated the practice of utilizing trained investigators in domestic relations cases, where custody of minor children was a contested issue. In the beginning two assistant probation officers were officially assigned to the court. Since that time, due to rapid population growth and an inevitable increase in domestic relations cases filed, the court's staff of investigators has of necessity been enlarged until at the present time a supervisor and eight full-time investigators are employed.

Court investigators are members of the court's own personnel system and participate in the same retirement plan as the classified civil service employees of Los Angeles County.

Purpose

Trained domestic relations investigators are primarily objective "factfinders" for the court, providing the trial judge with detailed information concerning the existing physical, moral and emotional conditions under which a child is presently living or will be living if its present custody is changed. Investigators' reports save valuable court time, eliminating the necessity of many witnesses appearing to testify, and in many instances avoiding a court trial completely. Tensions and bitterness between the parties are increased by public recitations in the witness box of real or alleged misconduct on the part of the other. By avoiding such formal court hearings, personal animosities are reduced and future amicable relationships between the parents are fostered, thereby providing a more harmonious and stable environment for the children.

In addition to expediting the administration of justice and stabilizing family relationships, such investigations provide a fine public relations program for the bench and bar. The chronic complaint of witnesses who are subpoenaed into court with a consequent loss of wages and frustrating delays is practically eliminated in most cases, the witnesses having been interviewed by the investigator, in most instances at their convenience.

Qualifications

Although no rigid eligibility qualifications have been established for investigators, the court has certain essential and basic requirements.

An investigator must be a college graduate with extensive investigative experience. Although a degree in the behavioral sciences is not mandatory, it is desirable. The present staff are all highly qualified in these respects, which largely accounts for the competent discharge of their duties and the respect given their reports by lawyers and judges.

Professional qualifications and experience, however, are not the only criteria. An investigator should be mature, understanding, patient, meticulous in work habits, discreet, objective, and impartial. Above all, he should be possessed of that most important attribute essential to the successful administration of justice—common sense.

Functions

The investigator is a factfinder for the court. His functions do not include family counseling or becoming involved in psychological or psychiatric therapeutic procedures.

The investigator is an officer of the court and clothed with considerable authority in such position. He is issued a special superior court badge and other credentials which permit him to inspect records and interview individuals. Private investigators do not have this authority.

The investigator is not an advocate of the respective claims of the contestants. His primary concern is the welfare of the minor children.

An investigator's expenses are paid by the County of Los Angeles. The only instance where one of the parties is permitted to pay traveling or living expenses is where both parties stipulate to such payment in court, which becomes a part of the official record.

Where an investigation is to be made in another county in California (other than in a county on the periphery of Los Angeles County, such as Orange, Ventura, or San Bernardino), the probation department in the other county is requested to perform such service unless the trip to the other county is the result of a stipulation between parties, and then is paid for by one of the parties. The word "periphery" means those cities within reasonable distance from the border of Los Angeles County.

Before expenses for any trip to another county (except those counties enumerated above) may be allowed, as a county charge, an order by the board of supervisors is required.

Procedures

Section 263, California Code of Civil Procedure, provides in part as follows:

"... In any county, or city and county, which is authorized by law to have domestic relations cases investigators, it shall be the duty of such domestic relations cases investigators, in any divorce action then pending wherein the parties thereto have minor children, to investigate and to report to the judge of the court wherein such action is to be tried all pertinent information as to the care, welfare and custody of the minor children of the parties to the divorce action.

"Such report shall be filed not less than 10 days before the date set for the trial of the divorce action with the clerk of the court wherein such action is to be tried, and not less than 10 days before

the trial of such action a copy of the report shall be served on each party to the divorce action.

"The report of the investigators shall be admitted in evidence upon the stipulation of both parties, and shall be competent evidence as to all matters contained therein.

"Nothing in this section shall be construed as limiting a domestic relations cases investigator's duty to assist the superior court appointing him in the transaction of the judicial business of said court."

Perhaps the most succinct and clearest way to explain the procedures followed in a contested child custody case where an investigator is appointed would be to delineate the chronological steps taken by attorneys, investigator, and the court.

(1) At the order to show cause hearing relating to child custody, attorneys frequently request the court to appoint a court investigator. This may be done if both attorneys stipulate to such appointment. The court should also inquire in every such case as to the necessity for such appointment. This should be a uniform practice, for in many instances such appointment is simply for delaying tactics on the part of one party to the action. In other cases a brief inquiry by the court will reveal that the issues do not merit the expense of such an investigation; that a short hearing by court or commissioner will solve the controversy.

In some cases the court, by restricting the investigator's report to the one specific facet of the custody conflict in issue, can eliminate the customary overall lengthy investigation and report.

Where one or both of the parties refuse to stipulate to a court investigator, yet the court feels that there should be an investigation in order to properly determine the case, the procedure should then be for the court to order an investigation by the probation department, pursuant to Section 582 of the Welfare and Institutions Code, which requires no stipulation on the part of attorneys.

(2) When the court determines to order an investigation the clerk will ascertain what investigator is available and the continuance date for the hearing, to provide sufficient time for the investigation and the preparation and filing of the investigator's report.

The court also, prior to appointment of the investigator, makes the following statement: "May it be stipulated that the investigator's report may be received in evidence without the necessity of the investigator being personally present at time of hearing." Invariably the attorneys so stipulate.

This stipulation is vital to the efficient administration of the investigative staff and in no wise prejudices either party. It is understood that this stipulation does not preclude either party from calling additional witnesses or the same witnesses interviewed by the investigator to augment or refute the report. Nor does it preclude having the investigator personally present if one of the parties demonstrates to the court that the report is seriously in error.

However, prior to demanding such stipulation, it occurred all too frequently that the party receiving an adverse report would subpoena the investigator (thereby causing him to lose a valuable day in the field investigating), not for the purpose of correcting errors in the report, but simply to harass, embarrass and discredit the investigator on trivial procedural details.

(3) In the civic center the attorneys and clients, immediately after the investigator has been appointed, take the court file and report to the secretary of the domestic relations investigations, where their clients complete information forms, which include the names of the three or four best witnesses to be interviewed. In branch court cases the forms are mailed directly to the attorneys by the secretary of the domestic relations investigations.

(4) After a case in a branch court has been assigned to an investigator, the secretary of domestic relations investigations secures the divorce file from the clerk's office and has it ready and available for the investigator. This saves the investigator time in procuring the file personally from the county clerk's office. With the information forms, court file, and folder with other pertinent information, including the names of the parties' attorneys, the investigator is ready to proceed.

(5) Over half of an investigator's work is in the field, interviewing witnesses and public and private agencies that may provide pertinent information bearing upon the case, the keynote of the entire investigation being directed toward the best interests of the children. Interviews are also held in the investigator's office, the investigator at all times endeavoring to arrange such interviews at the convenience of the witnesses.

At the inception of the proceedings releases are secured from the parties, enabling the investigator to interview and obtain information from public and private agencies, including the parties' doctors, school records, and in cases of emotional disturbances, psychologists and psychiatrists. All of this information not only saves valuable time but is of great assistance in preparing a comprehensive and accurate report.

(6) Armed with all the factual data in the case, the investigator dictates his report, setting forth concisely the facts found, the respective contentions of the parties, and the corroborative statements made by the parties' respective witnesses, together with information from public and private agencies, including schoolteachers, doctors, etc.

(7) Formerly these reports were placed in the court file, which is open to public inspection. This practice has been discontinued, the original report now being filed as an exhibit subject to being opened only by the court. However, a copy is sent to each party's attorney prior to the hearing date, as provided by law.

(8) Where one of the parties appears in *propria persona*, the court has established the policy of notifying such party that the investigator's report has been filed, and inviting him to read same in the domestic relations investigations office. This procedure should be strictly followed. Experience has shown that where a party to the divorce action secures possession of the investigator's report he too often harasses and badgers the witnesses reporting unfavorably, whereas most attorneys, as officers of the court, are much more discreet and circumspect in their use of such reports.

(9) A considerable number of cases assigned for investigation are requested after the interlocutory or final judgment of divorce has been entered. It was discovered that in far too many such cases several investigations had previously been made, the parents continuing a constant series of custody battles, using the children as legal brickbats, to harass the other. In other instances this legal maneuver is made with the hope of getting a new and different investigator appointed, with a different conclusion. It is also not an uncommon practice in divorce cases to find that there have been several substitutions of attorneys, the disgruntled party retaining new counsel who is unfamiliar with prior proceedings and too busy to inspect the voluminous file. In one such case four different investigators had been appointed over a two-year period.

The present practice is to closely question the advisability of authorizing a reinvestigation a short time after a hearing and determination of the question of custody has been made, and if an investigation is warranted the case is assigned to the investigator who previously reported on the matter. This not only saves time, but discourages "shopping" tactics.

(10) The investigator's report customarily restricts itself to the physical and material factors involved in the controversy over custody of minor children. In certain cases the principal area of exploration and investigation is the emotional stability of the parents or children. In such cases, referring one or both parents or child or children to a psychologist or psychiatrist for an examination and report to the court, provides a more satisfactory solution, one of the parties being ordered to pay for such examination. The court maintains an accredited list of psychologists and psychiatrists who will perform such examinations for a nominal amount.

(11) A special note should be made concerning the restriction on witnesses furnished by the parties to be interviewed. The rule is that each party is entitled to three witnesses, never more than four. This of course does not include independent witnesses interviewed, such as school officials, doctors, etc. Experience has shown that a party's three best witnesses will provide adequate information; additional ones are merely cumulative and corroborative. This rule, of course, does not preclude the investigator from exercising his discretion and interviewing additional witnesses, if the facts so indicate.

(12) The conclusion of the investigator is a matter of considerable importance, both to the investigator and the court. No matter how clear, concise and factual a report may be, if the conclusion appears to be unrealistic and motivated by emotional considerations or personal prejudice, the overall effect of what would otherwise be an excellent report is considerably diminished.

Section 138 of the California Civil Code does not give a mother an absolute, undisputed right to the custody of minor children. The law says, and rightly so, that other things being equal, if the child is of tender years, it should be given to the mother; if it is of an age to require education and preparation for labor and business, then to the father.

The principal concern throughout all custody proceedings, of both investigator and court, should be the best interests and welfare of the

child. A case in point will best illustrate the importance of this fundamental concept.

A mother was granted custody of three children three years ago—two daughters, now 14 and 12, and a boy now 9.

The father remarried a year ago and is living in a spacious home, he being employed in an executive position by a large corporation. He has been paying a total of \$550 child support and alimony per month. Mother and children live in a three-bedroom apartment.

The undisputed facts show that the mother has become a chronic alcoholic; permits the children to fend for themselves, and spends her support money at bars and on a ne'er-do-well divorced alcoholic who is not supporting his children of a prior marriage. He stays in the mother's apartment, frequently sleeping there, and the 14-year-old daughter testified she found them in bed, drunk and nude.

The father, alarmed at the situation, instituted proceedings to secure custody of the children. None of the children indicated they wanted to live with the father, all having a protective attitude toward their mother.

A psychologist, from whom the mother was taking treatment for alcoholism, verified the mother's condition, expressing hope there might be some chance for improvement, and suggested that leaving the children with her might aid in her rehabilitation.

The recommendation was accepted by a court commissioner, who volunteered that in his opinion granting custody to the father might aggravate the mother's condition.

It is readily apparent that the commissioner was not only completely ignoring the clear language of the statute, but was not acting in the best interests of the children. We all are concerned with the rehabilitation of weak and unfortunate individuals, but such rehabilitation should not be at the expense and to the detriment of minor children.

Part 9

CHILD CUSTODY DETERMINATIONS *

I. INTRODUCTION

Throughout history, to do justice and receive it have always been considered as fundamental aspirations of man. They are as elemental as the aspirations to live, to be free from the tyranny of other men, to exert power over man and nature, to love and be loved. One of the greatest problems encountered in the process of giving and receiving justice is the constant challenge to find the standards by which we can measure the adequacy of justice.

For many years our marriage and divorce laws have been under continuous criticism. One area of family law which has proven to be unsatisfactory, ineffectual and frustrating to the litigants, the courts and the legal profession is the law and practice as applied to child custody disputes. Constant search and effort has emphasized the need to find the essential truth concerning the best interests and welfare of children. Without truth, justice is denied. Justice must be accomplished not only for the parents, but equally important, for the children and society. Many of those who have experienced and studied the problems are convinced that if our child custody laws and procedures are to be an effective instrument of social justice, it is time that we adopt a realistic approach to the solution of custody disputes, adapting our laws to the facts of life, while utilizing the best known modern day techniques and procedures available. They believe that our child custody laws are in need of reevaluation and change.

II. OUR CHILDREN—CITIZENS OF TOMORROW

While emphasizing the problems of children affected by divorce, it must be noted that children of divorcing parents are far from being the only casualties of marriage failure. They may not even be the most serious casualties. It has been stated repeatedly that it is not so much *legal* divorce but *emotional* divorce which is the destroyer of children. In the broader sense, the problem is not necessarily limited to children of divorce. Parents, more than any other group of citizens, are in a strategic position to decide the development of our nation. They are the link between the past and the future.

The situation of past generations, such as the 19th Century, when progress was relatively slow, or when, by comparison, human society was static and the task of parents was relatively simple stands in contrast to our present society. Previously what parents learned from their parents was transmitted to their children. Today we find that social conditions, moral values, and the ways of everyday living are chang-

* This part of the final report is based on testimony presented to the Assembly Interim Committee on Judiciary at its hearings on domestic relations in Los Angeles, January 8-9, 1964.

ing very rapidly. Today the social and cultural changes in our society are of epochal consequence. We are living in a so-called Atomic or Nuclear Age, and although from generation to generation mankind has ever sought to achieve freedom and democracy as a basis for harmonious social living, such dreams and aspirations have never materialized. One might ask "What does all this have to do with our problems as parents?" Parents are in trouble because they are caught in a net of confusion which is characteristic of the transistory cultural and social period through which we are passing. We are anxious to live in peace and harmony. We have made repeated efforts to make the world safe for democracy and we have sacrificed greatly in two major world wars. In each critical period of history, we believe that we have achieved the right answers, but we seem constantly to fumble and instead of solving our conflicts, we create new ones. This is quite obvious both in domestic and international relations alike. The conflict between nations, races and creeds, between management and labor, between man and woman, between the generations, between parents and children, is full of confusion and contradictions. The problems which we experience with our children are in a sense quite similar to the problems on a national and international level, whether they be the problems between the United States and Russia, the white man and the colored, between management and labor, or other similar problems.

Raising children is an application of social living. While it is only natural that we tend to be concerned with our children, we should not lose sight of the fact that each generation of parents is the foundation of the future. It is difficult to establish whether we first need better individuals to form a better society, or better society to produce better individuals. Certainly we can say that the two factors work hand in hand; the training of children influences the future social order just as living conditions determines the forms of upbringing.

There are at least three million children of divorce under 18 years of age in the United States today, and the divorce courts are adding about 300,000 more children to this group each year. Perhaps 50 percent of the divorce cases which go through the nation's courts have minor children involved, averaging about two children per couple. The manner in which the courts deal with these victims of domestic catastrophe, has an impact, directly or indirectly, on a substantial proportion of our people. It presents a challenge to the stability of our social institutions and is assuming threatening significance.

III. THE PROBLEM

Lawyers and judges who deal with domestic relations problems are reasonably agreed that no more delicate or difficult problems exist than custody disputes. Under existing laws and procedures the factors to be considered are so variable and the situations so diverse, that the law has been forced to resort to somewhat meaningless generalizations in the formulation of rules. For example, all courts are agreed that the best interests and welfare of a child is a determinative factor. Likewise, the party to whom custody is to be awarded must be a "fit and proper person." Too often these so-called generalizations or cliches are used by our lawyers and judges with basically no real investigation or thought given to what actually is to the best interests of the child.

Moreover, there are often honest differences of opinion concerning a fit custodial parent or the best interests of children. Individual discretion or judgment is not always a sure guide to custody matters. When one considers the fact that our divorce judges have a wide and an almost uncontrolled discretion in these matters, the problem is compounded. The exercise of this discretion cannot be considered simply as a legal function, no matter how learned in the law a judge may be. We must recognize that the discretion exercised by a trial judge is far less a product of his learning than of his personality and temperament, his background and interests, his biases and prejudices, conscious or unconscious. Hence, it is both necessary and practicable to attempt to give more definite substance to the generalizations that creep into our laws and into our cases.

In seeking to change our laws and procedure for handling custody disputes, we desire to substitute substance and reality to modern day conditions while retaining flexibility and discretion to resolve the varied and diverse situations.

IV. THE PERPETUATED PREFERENCE FOR MOTHERS

The United States Supreme Court, in the case of *Prince v. Massachusetts*, 321 U.S. 158 stated:

"It is cardinal with me that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."

All state statutes recognize this custodial preference in parents since parents are the natural guardians of the person of their children. Parents, therefore, have a natural and, *prima facie*, legal right to custody. But our laws in California go further and state that "Other things being equal, when the child is of tender years, custody should be given to the mother and if the child is of an age to require education and preparation for living or business, then custody should be given to the father." In the average situation, no person disagrees with the fundamental fact that the most important person in a child's early life is the mother. It is she who, from the hour of the child's birth is most immediately concerned with the child. The child is most closely attached to his mother unless she fails to function. We are told that many of the patterns of a child's personality are formed by the age of two or three, even though the personality may continue to be influenced throughout life. Therefore, the quality and quantity of the mother's love, companionship and attention in the early years are vital and determinative. Understanding, sympathy, tenderness and attention nurture the child with the basic start in life. Nobody quarrels with these obvious characteristics and nobody doubts that in most instances where young children are involved, the mother will continue to be the custodial parent, unless she is unfit or incapacitated.

Increasingly today we find that there is apparent contradiction between the mother's professed interest in her children and her performance. We see mothers delegating more and more of their parenthood and very little is left of a direct relationship between mother and

children. Because of the increasing freedom of women in our society, and the need and desire to compete with men in the economic world, the increasing stress on financial security or survival, we see mothers relying more and more on day or nursery schools, temporary sitters, relatives or camps to take over their children's rearing. They offer mechanical entertainment as a substitute for shared activities, sitting the children down before the radio or television set, or sending them off to the movies. They crowd their children's days with lessons in music, dancing, or other activities, in every situation introducing a variety of outsiders. Private schools or boarding schools are sometimes thought to be the answers. If not, finishing schools (where they can be afforded) are often introduced. In each area of activity, the mothers seem to pile up superficial accomplishments, and often reject their children. Mothers, and parents generally, delude themselves that they are fitting their children to live a richer life, but in fact, these techniques are merely substitutes for the more important learning which children can acquire in no other way except by shared experience with their parents. How often have we seen children with a playroom full of toys, dolls, bicycles and various contraptions, and the child is totally "bored." In other words, childhood is a time of learning to live as an adult, and the child's way of learning is by way of identification with the parent or parents who have the greatest significance for him. It is not so much the words they say, but what they do and how they feel and the way they face their own lives as adults which are meaningful to the children. Out of these parent images the child or children unconsciously create their own attitudes, their acceptance or rejection of the responsibilities and privileges of adulthood. It is also apparent that to shelter a child from the expected defects of or difficulties of everyday living, or to surround him with delusion and spare him all frustration is to do him no service. He is born into a world with problems, surrounded by dangers, and while he needs physical protection and the protection of his family love, he also needs a gradual acquaintance with reality.

Tested by these standards and by these facts of life, mothers may not be the preferred or best choice as a custodial parent. The proposed statement of policy (Appendix A) seeks to vest in our courts the continued preference in favor of parents. But since the essential role that the modern-day mother assumes is substantially different from the years in which the custody standards were formed, one can seriously question whether the mother is entitled to the same perpetuated preference in the law. Too often we find indifferent or nondeserving mothers who do not meet the intelligent standard of a fit parent. To give her custody frequently amounts to habit or "sentimentality," but is actually harmful to a child. Should not the father have the same or equal status in law to assert his custodial right?

Perhaps in the earlier generations of our grandparents, America was unified by the drives to push back the frontier, found a new nation, welcome pioneers and freedom seekers from all over the world. Certainly we can look with pride to the prodigious feats of our participation in two major wars, making possible for the world, and the people in it, a better future. But with the vast diversity of our population, there has been lacking a firm sense of direction in rearing our chil-

dren, and often there has been outright failure. In this evaluation process, it is time that the rights of the children and society be given equal consideration.

V. RIGHTS OF THIRD PARTIES AS CUSTODIANS

It will be noted that in the proposed statement of legislative policy, attached hereto as Appendix A, it is provided that although custody *shall* in the first instance be awarded to either parent according to the best interests of the child, custody *may* also be awarded to persons other than the father or mother whenever that award serves the best interest of the child. Any person who had had *de facto* custody of the child in a stable and wholesome home and is a fit and proper person shall, *prima facie*, be entitled to an award of custody. Such proposed revision will conflict with and reverse existing law. The law has long recognized that parents are the lawful custodians of their minor children. The right to care and custody of a minor child is treated as one of the natural rights incident to parenthood. The corollary is that the law presumes that the best interests of the minor child will be best served by keeping the child in the custody of its parents or parent. As the Supreme Court of the United States stated in the case of *Meyer v. Nebraska*, 262 U.S. 390 (p.399):

“No court can for any but the gravest reasons, transfer a child from its natural parent to any other person . . . since the right of the parent . . . to establish a home and bring up children is a fundamental one and beyond the reach of any court. Therefore, invariably in all cases involving a contest between a parent and third party (usually a relative) it is the duty of the court to award custody of the child to the parent, unless the parent is found unfit or incompetent to have custody.”

What is wrong with such law? The assertion is that such law stresses a proprietary or property interest in children, and does not in every case conform to or assure the best interests of the children. As was stated by a leading Supreme Court case of the State of California (*Roche v. Roche*, 25 Cal.2d 141, 152 Pac.2d 999):

“In other words the child is regarded somewhat as a chattel and the property interests therein of the parent is made paramount to the best interests of the child . . . With the disruption of the home by divorce the need of the children of that home for the protection of their interests by the state may well become greater and the personal rights of the parents to the custody of the children should, and ordinarily, to some extent at least, must, yield to the welfare of the children.”

It does not make sense to require a court to brand or find a parent or parents to be unfit as a condition of a custody award to a third party. Perhaps a foster parent, a grandparent or a relative who had had physical custody of the child for a period of time is in fact the best choice for the child. Why should a court be deprived of the discretionary right to award custody to a third party if it is in the best interests of the child, without being required to find either or both

parents unfit? As was stated by Judge Schauer of the California Supreme Court, in his dissenting opinion of *Stewart v. Stewart*, 41 Cal. 2d at 453, 260 Pac.2d at 48:

“Neither the law, reason, justice nor socially desirable consequences require that a child’s natural parents be branded in a public and permanent judicial record as ‘unfit’ before custody (always temporary and subject to change, as a matter of law) can be awarded to one not a parent. On the contrary, such a finding will in many cases only result in unnecessary and irreparable harm to both parent and child.”

For several examples of situations where a third party custodial parent may well be considered and should be given *de facto* or *prima facie* right to custody, consider the following statement:

a. A mother and father are in the process of divorce when the mother dies unexpectedly, committing suicide, leaving an eight-month-old daughter to be placed in the care of a maternal grandmother, aged 50. Maternal grandmother raises this child for a period of six years. The father shows casual interest but contributes to the support of the child. Upon remarriage six years later, father seeks custody of his daughter. The relationship between grandmother and granddaughter is wholesome and the grandmother is desirous and anxious to continue raising her grandchild. The child makes good progress with her grandmother and grandfather. Father commences custodial proceedings. The court ruled in this case that it was helpless under the law to continue custody with the grandmother, but on the contrary, under the law, in the absence of a showing that the father was unfit, he must receive custody. The whole hearing was a degrading one involving efforts and attempt to drag up or conjure up evidence in an attempt to brand the father as unfit. The interests of the child were overlooked.

b. Take, for example, a more interesting case that hit newspaper headlines in 1961. An entertainer of repute had custody of two daughters of a prior marriage, ages 13 and 17. His wife, for a period of at least seven or eight years, acted and performed in the role of an excellent substitute stepmother with both girls loving her and having a good relationship with her. On the death of the father, the natural mother of the children came to California and sought custody. In these circumstances, can one justify a law which would give the natural mother preference and right to custody of these girls, irrespective of what is for the best interests of the children, including the complete disruption of their lives? Fortunately for these girls, guardianship was ordered for them and they chose the stepmother as guardian. On this basis the natural parent was denied custody.

We have two striking examples where the children’s custody should be awarded to a third party, but the law cannot accomplish this result without finding the parents unfit.

As harsh as the consequences may seem to parents and others, there are occasions when custody by persons other than parents can better

safeguard and further the best interests of minor children. The drama of divorce is of itself so compelling that parents tend to lose perspective and sight of basic values. It is not so much that parents have been unconcerned about their children during the traumatic experiences incident to divorce, but their concern for or responsibilities to the children have been pushed aside by intense preoccupation with their own struggle.

The vested or proprietary interest of the parent, stemming in part from the concept that "blood is thicker than water," should give way to the realities of the situation. The vital interests of the children and of society are entitled to an equivalent consideration at all times, even if this results occasionally in a custody award to a nonparent. It should not be assumed that a discretion so vested in our courts will be abused, and safeguards for the parents undoubtedly can be achieved. It would appear, however, that a change in basic attitudes in this area of controversy cannot be expected without legislative action, which is the proposal submitted for consideration.

VI. THE USE OF EXPERTS—IMPARTIAL EVALUATION OF CUSTODY DISPUTES VERSUS OUR ADVERSARY JUDICIAL SYSTEM

The prior discussion has centered on the substantive law as it relates to an award of custody to either parent or to third parties. We are continually reminded that the best interests and the welfare of our children are controlling in determining custody disputes, so long as the parent or parents or third parties are fit persons. The principles are simple. And yet, the law has been criticized for many years for not having been effective in dealing with child custody problems. The reasons are not hard to find. Parents, whether divorced or divorcing, who present their unresolved problems concerning their children to their attorneys and the courts rarely find complete or adequate solutions. The children are often caught, as innocent victims, in atmosphere charged with bitter emotions and a pulling and hauling from one temporary solution to another, and perhaps from one jurisdiction to another. In at least 85 percent to 90 percent of the divorce cases filed throughout the country, divorces are granted in default or uncontested hearings where property settlement agreements are presented for court approval. The agreement usually represents many hours of bargaining and compromise (primarily concerning property division and support claims), and the trial court generally grants the divorce and approves the agreement with only a few routine questions concerning whether the parties have understood the agreement and are satisfied therewith. Yet, in one of its most vital aspects, namely, the custody of children, the agreements are not inquired into. Custody of children is customarily granted with little or no evidence concerning the children or their welfare, since the court normally assumes that the parties have taken this into consideration in arriving at their settlement.

Experience has demonstrated that custody awards are never permanent or unchanging, but may be continually modified because of changing circumstances that affect the best interests of their children. Custody battles thus occur before and after a divorce and constitute an area of great difficulty and delicacy for the court. Disputes over custody and controversies over visitation rights often involve painful,

emotion-charged issues concerning the fitness of individuals to bring up children, the psychological and emotional reactions of a child to a proposed custody and visitation arrangement, and the desirability of a particular environment as affecting the stability and security of the child. Too often parties and their lawyers are forced to concede that the law, courts, and the procedures adopted, leave the parties in a state of confusion, frustration and resentment. One of the principal reasons that such dissatisfaction is expressed is that courts proceed in the same type of adversary proceeding as in the ordinary civil or quasi criminal case. Parents thus resume the role of adversaries with respect to their children, and often renew the same divorce battles with respect to each other. The children are helpless pawns. In the welter of conflicting charges, countercharges and recriminations, it is little wonder that a court has difficulty in finding the truth affecting the true welfare of the child. It is time that we realize that custody problems cannot and should not be handled in the traditional adversary type of proceedings.

A unified family court should be staffed and equipped to deal with all problems of the family, including custody matters. Such court should be staffed with personnel (as may be necessary or reasonable in a given community) including psychiatrists, psychologists, social workers, probation officers, investigators. If issues have been raised concerning the fitness of either parent, an investigator may be the answer to inquire into the existing physical, moral and emotional conditions under which the child is presently living. Investigators properly selected and trained as an arm of the court have proven their worth in expediting the administration of justice and in stabilizing family relationships, in many jurisdictions where used. Many lawyers will recommend such procedure to avoid battle where a reasonable solution can be reached.

The emotional or mental health of parents is clearly an important factor to be weighed in an award of custody, along with others, in determining the best interests of the child. With the advent of psychiatry and rapid strides in the field of mental health, no stigma should attach to raising the question of the emotional or mental fitness of either parent in custody proceedings. However, emotions and hostilities seldom rise higher than when the warring parents face each other over the custody of their children. Psychiatrists are sometimes called in, but they respond with reluctance because, in most instances, they are called to support or refute the case of an individual parent. They are infrequently called by the judge as an aid in making a wise and impartial decision for the welfare of the child, for the reason that such personnel are not available and no budgeted funds permit this procedure. When called as witnesses for either party, psychiatrists or psychologists become objects of attack in the so-called arena of battle and they justifiably resist such approach. More important, because of the cost factor most parents are precluded from employing expert help, guidance or opinion.

We must recognize that the need is for expert opinion from psychiatrists, psychologists and social workers as the need may indicate, attached to the court itself rather than to either side. These experts should be entitled to investigate and determine the circumstances of the family, to consult or test the children or any person having pertinent information or opinions concerning the welfare of the children.

These specialists or experts should have an unprejudiced opportunity to explore the custody situation with both parents and should have an obligation to provide, where necessary or reasonable, the psychological basis for decision in the sole interest of the child. The suggestion or recommendation is not revolutionary. No adoption is completed in any state without a very thoroughgoing investigation into the fitness of the prospective adopting parents. Even in criminal or quasi-criminal proceedings probation personnel inquire into the background of defendants before sentence is imposed. Should not we expect at least the equivalent in determining the destiny of our children? It is therefore proposed in the statement of policy that whenever good cause appears therefor, a court may require an investigation and report concerning the care, welfare and custody of minor children in divorce proceedings. It is likewise provided that a court may hear the testimony of any person or expert whose skill, inside knowledge or experience is revelant to a just or reasonable determination of what is the best physical, mental, moral and spiritual well-being of the child whose custody is at issue. Such testimony may be produced by either party or upon the court's motion.

VII. A FAMILY COURT AND THE SELECTION OF FAMILY COURT JUDGES

It has long been an accepted fact that the traditional adversary procedures of the law when used to resolve domestic conflicts tend only to increase and intensify antagonism and hostility in and among the members of the family. Without a properly equipped court and a specialized judiciary trained and skilled in the disposition of custody disputes, all the laws and procedures which we may adopt or legislate may be of little avail. For many years it has been urged that what we need is a family court which would compromise a new single integrated court established for the purpose of resolving all problems and conflicts arising from family relationships. In such court there would be facilities, including the social case work, conciliation services, counselling, probation, clinical psychiatric and psychological services, all able to assist the court. Judges of family courts must be selected on the basis of qualification. They must be specialists in human relations and family problems. Their primary point of view should not be the resolution of legal issues of opposing parties and counsel, but rather analysis and clarification of the human conflicts that have resulted in the case before them.

It is high time that our legal profession, and the population at large, be aroused concerning the seriousness of our problems. In California, and probably in most metropolitan jurisdictions, divorce or family disputes have long outnumbered all other civil actions combined. The statistics are staggering. Each year more than half a million marriages fail. The latest percentage is that one out of four marriages generally, and one out of two marriages between the ages of 18 and 26, result in divorce. Aside from the marriages that fail, there are hundreds of thousands of families who experience emotional divorce, and who are completely disorganized or disrupted without seeking a legal divorce. Broken families breed juvenile delinquency and personality maladjustment and crime, and threaten the family as the very foundation of our

society. At least 15 years ago, Reginald Smith presented a report on the topic of the American Bar Association, in 1948, supported by Judge Paul Alexander, a founder of the Family Law section:

“The cost of our present divorce system in terms of human tragedy has become too high to be tolerated any longer. The American Bar Association has always been sympathetic to the evolution of family courts. The time is ripe to give the movement a great forward push.”

VIII. MISCELLANEOUS

The proposed statute purports to deal with additional considerations in custody awards, such as the right of modification at all times in the best interests of the children, preferably with the same court, if possible, that heard the original issues. The rights of children who achieved an age of maturity sufficient to voice an intelligent preference is preserved. Even as these remedial or constructive measures are proposed, new problems confront us. One serious problem justifies mention: the problem of interstate enforcement of custody disputes. With the tremendous population surge and the frequency with which families move about from state to state, increasingly it is found that the majority of state courts do not consider themselves bound to enforce foreign custody decrees, but will redetermine custody in the best interests of the child so long as the parent seeking such determination is not in contempt of, or in willful violation of, the prior court order. How to deal with the interstate enforcement of such custody decrees presents a real challenge to assure stability.

IX. CONCLUSION

The proposed revisions or changes in child custody laws or procedure do not involve any startlingly new concept. Nor do the suggestions present any magic formula. But they are realistic and of a constructive nature. The purpose is to put into effect, laws and procedures that assure for all children (including children of divorce) the best available tools and opportunity to become emotionally mature parents or citizens of tomorrow. It is not denied that the task is vast, complicated by the conflicting jurisdictions of the individual states, by the lack of enthusiasm for this phase of law and the lack of funds. It is beyond doubt but that the day is coming to improve family law and raise it to the dignity and respect to which it is entitled.

It has been said that beyond nourishing food, clothing and shelter, children need little further that is material. But their needs of the spirit, including love and just treatment, although simple, are absolute. If these needs are not met, and we deprive them of the consideration and justice they deserve, nothing else can serve in their place. On the other hand, if these needs are met, nothing else matters.

The proposed legislative changes in our laws are urged in order that we can give the forgotten and harassed victims of divorce, our children, the maximum opportunity as citizens of tomorrow.

X. FINDINGS AND RECOMMENDATIONS

Findings

1. There is a substantial segment of professional opinion among those who are frequently involved in child custody determinations which feels present law and practice as applied to child custody disputes is particularly unsatisfactory, ineffectual and frustrating to litigants, the courts and the legal profession. This professional opinion advocates a more realistic approach to the solution of custody disputes, utilizing modern knowledge, techniques and procedures to update statutes which were formulated with what is now deemed to be an unwarranted stress on a parent's proprietary or property interest in their children.
2. As between parents there is the view that mothers have been given an unwarranted preference by the present California custody statute which is harmful to the children in an important minority of the cases.
3. The increased freedom of women in our society, the need and desire of some women to compete with men in the economic world, and the evidence that many women spend no more or not as much time with their children as their former husbands could, suggests that since the essential role which the modern-day mother assumes is substantially different from what it was in the years when present custody standards were formulated, the philosophy behind those statutes should be reexamined.
4. The increased incidence of parents with legal custody establishing their children in situations where the *de facto* custody is in another indicates that study should be made of the disruptive effects of removing a child from an established, stable and wholesome environment in order to uphold the preferential claim of a parent which the court is unwilling or unable to declare unfit.
5. Greater use of impartial professional opinion in custody disputes, particularly as this could be accomplished within the framework of a true family court, warrants further study, especially to ascertain the extent to which the interests of children are presently protected within the scope of an adversary proceeding.

Recommendation

1. The committee recommends that an intensive study be made of child custody determinations in this state, with particular emphasis upon the five areas discussed in the preceding findings.

Part 9
APPENDIX A

PROPOSED STANDARDS AND CONSIDERATIONS IN DETERMINING
OR MODIFYING CHILD CUSTODY ORDERS

In actions for divorce, separate maintenance, or any other proceeding where there is at issue a dispute as to the custody of a minor child, the court may, during the pendency of the action, at the final hearing or any time during the minority of children, make such order for the custody of such minor children as may seem necessary or proper. In awarding the custody, the court is to be guided by the following standards, considerations and procedures:

- (1) Custody *shall* be awarded to either parent according to the best interests of the child.
- (2) Custody *may* be awarded to persons other than the father or mother whenever such award serves the best interests of the child. Any person who has had *de facto* custody of the child in a stable and wholesome home and is a fit and proper person shall *prima facie* be entitled to an award of custody.
- (3) If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, his wishes as to custody shall be considered and be given the due weight by the court.
- (4) Whenever good cause appears therefor, the court may require an investigation and report concerning the care, welfare and custody of the minor children of the parties. When so directed by the court, investigators or professional personnel attached to or assisting the court shall make investigations and reports which shall be made available to all interested parties and counsel at least 10 days before hearing, and such reports may be received in evidence if no objection is made and, if objection is made, may be received in evidence provided the person or persons responsible for such report are available for cross-examination as to any matter which has been investigated.
- (5) The court may hear the testimony of *any person* or expert, produced by any party or upon the court's own motion, whose skill, insight, knowledge or experience is such that his testimony is relevant to a just and reasonable determination of what is to the best physical, mental, moral and spiritual well-being of the child whose custody is at issue.
- (6) Any custody award shall be subject to modification or change whenever the best interests of the child require or justify such modification or change, and wherever practicable, the same judge who made the original order shall hear the motion or petition for modification of the prior award.
- (7) Reasonable visitation rights shall be awarded to parents and to any person interested in the welfare of the child in the discretion of the court, unless it is shown that such rights of visitation are detrimental to the best interests of the child.

Part 10

ESTABLISHMENT OF FOREIGN DIVORCE DECREE *

I. THE PROBLEM

Under present practices, when a foreign divorce decree establishes support provisions and there is a supplemental action commenced in this state, the judgment of divorce of the foreign court is first established at an order to show cause hearing wherein temporary orders are sought. Subsequently the same decree must be reestablished in a second hearing on the contested trial calendar or as a default. This second establishing of the same decree is simply a waste of the attorney's and the court's time.

II. REMEDIAL PROPOSAL

All attorneys seem to agree that a foreign judgment in a divorce case should be heard once and for all at the original hearing, usually at an order to show cause hearing in conjunction with the complaint to establish a foreign decree, and that the determination be final at that time. Either it should be established or it shouldn't, and one hearing by a judge should be sufficient.

Accordingly, it is proposed that Section 1913.5 be added to the Code of Civil Procedure to provide that if in any action to enforce support provisions of a judgment of a court of another state of the United States, there is a hearing on an order to show cause why relief *pendente lite* should not be granted, and at such hearing the existence of such judgment is proved, its existence is thereby conclusively established for the purposes of such action and shall not again be litigated in later stages of the action.

III. FINDINGS AND RECOMMENDATIONS

Findings

1. The present duplicating procedure of establishing foreign divorce decrees at order to show cause hearings for relief *pendente lite* and subsequently repeating that procedure at a hearing on the contested trial calendar or as a default is a needless waste of judicial and attorney time, needlessly increasing the cost of litigation.

Recommendation

1. The committee recommends that an amendment to the Code of Civil Procedure be enacted to provide for a single establishment of sister-state decrees at the initial hearing which will be conclusive in all subsequent stages of the action.

* This part of the final report is based on testimony presented to the Assembly Interim Committee on Judiciary at its hearings on domestic relations in Los Angeles, October 8-9, 1964.

Part 11

MANDATORY APPEARANCE OF DEFENDANT AT INTERLOCUTORY HEARINGS *

I. THE PROBLEM

Many defendants appear at an order to show cause hearing wherein an order is made for temporary custody, child support, and/or alimony. The defendant complies with these orders. Subsequently, no answer having been filed by the defendant, his default is entered. A number of weeks or months thereafter the case is set down as a default hearing and an interlocutory decree is entered. In many cases the interlocutory decree varies substantially from the *pendente lite* order and awards valuable property, real and personal, to the plaintiff.

When the interlocutory judgment is served upon the defendant he immediately, in consternation, rushes to an attorney, complaining that he had no idea that such was to be the order of the court. Or that he had an entirely different understanding with his wife. Or that he thought that the *pendente lite* order settled their property rights. The attorney then files a motion to vacate and set aside the interlocutory decree, on the grounds that it was entered by fraud, mistake, surprise or inadvertence. In most cases the motion is granted. All of this involves a tremendous waste of time both to counsel and to the court.

II. PROPOSED SOLUTIONS

The difficulties described above could be largely avoided by requiring that where a *pendente lite* order has been made after filing of the divorce complaint, and the defendant has defaulted, before any default hearing for an interlocutory decree may be had the plaintiff must mail to the adverse party, at his or her last known address, a notice of the time and place of the default hearing, at least 10 days before said hearing, and a statement that by statute the defendant's appearance is required at that hearing.

A similar arrangement has been established in the new Wisconsin Family Code. Section 247.125 requires that the party in default in divorce actions is to be personally served before trial with an order to appear upon the trial, unless he or she is a nonresident of the state or the court shall for other good cause otherwise order.

A Wisconsin jurist writing about the new Wisconsin Family Code said:

“Among the purposes of having both parties present is that both can be apprised then and there of the judgment granted, to receive the admonishment (of the court) as to the effective date of

* This part of the final report is based on materials submitted to the Assembly Interim Committee on Judiciary during the course of its study of marriage and divorce problems.

the judgment of divorce, if granted, and their conduct in the meantime; if there are children of the marriage, to go into the matters of custody and support, and how any arrearage on temporary orders is to be disposed of." Dreehsler, *The Family Code*, 33 *Wisc. Bar Bull.* 9, 14 (April 1960).

An alternative proposal is to require only that a written notice of the interlocutory hearing be mailed to the defendant without requiring his appearance.

III. FINDINGS AND RECOMMENDATIONS

Findings

1. An excessive number of interlocutory judgments in divorce matters are set aside and reheard, resulting in great loss of time and money for clients, attorneys and the courts.
2. A primary cause of this situation appears to be the fact that many persons erroneously believe the disposition of property, custody of children, alimony and support provided for in *pendente lite* orders will remain unchanged in the interlocutory decree.
3. Divorce is a vital event in a couple's lives and a vital event to the society wherein they live.

Recommendation

1. The committee recommends that further study be made regarding the proposal that defendants be required to be present at the interlocutory hearing unless excused by order of the court. Such study should explore the extent to which the proposal might be expected to reduce the incidence of requests for vacations of interlocutory decrees, and the extent to which the presence of the parties at the hearing will facilitate the court's task of deciding upon custody, visitation, property division, alimony and support. The efficacy of merely requiring an additional written notice to the defendant prior to the interlocutory hearing should be included in such a study.

Part 12

DISCLOSURE OF ATTORNEY'S FEES TO COURT WHEN SEEKING FEE PAYMENT ORDER FROM ADVERSE PARTY *

I. BACKGROUND OF THE PROBLEM

For a number of years judges, court commissioners, the State Bar, family law committees on both the state and county level, and individual attorneys have been struggling with problems arising from private agreements for fees and requests of the court to award fees from an adverse party. There are two aspects to the situation: first, the requirement that an attorney who makes an agreement with his client (usually a wife) for payment of his fees, and then seeks a court order asking an award of fees from the adverse party (usually the husband), without disclosing the arrangements to the court; and, secondly, the 1893 decision of the California Supreme Court which strongly suggests that where a wife has agreed to pay her attorney, the husband cannot be ordered to do so. The State Bar has had numerous complaints about certain unethical practices, many of which are unfortunately well founded, whereby an attorney will prepare an affidavit for the plaintiff in a divorce case to file, alleging that she has no arrangement with her attorney for the payment of court costs or fees, and then immediately thereafter have that client sign a retainer agreement providing for fees on a contingency or other basis. There appears to be no question that such practices are a fraud upon the court and are most certainly unethical. The Los Angeles court is changing its affidavit to provide for specific representations both by the client and the attorney as to this matter, but it appears that it would be good practice to have a state law to provide that such disclosures be made, to remove the present Supreme Court holding which is a deterrent to full disclosure, and perhaps to provide a criminal penalty for violation of the new disclosure statute.

The present difficulty is largely based on an old but still standing California Supreme Court decision, *Mudd v. Mudd*, 98 Cal. 320 (1893) which strongly suggests that where a wife has agreed to pay her attorney, or if he agrees to take her case gratuitously, the court cannot order the husband to compensate her attorney. Actually, the *Mudd* case involved an agreement by the attorney to represent the wife without fee, but the court goes beyond those facts, stating at page 322:

"The object of the above section of the code is to enable the wife to properly present her cause of action or defense to the court, and if she can do this, either by reason of the fact that she has a

* This part of the final report is based on testimony received by the Assembly Interim Committee on Judiciary at its hearings on domestic relations in Los Angeles, October 8-9, 1964.

sufficient separate estate, or has the custody and management of a sufficient portion of the community property, the court would not exercise a proper discretion in directing the husband to defray her expenses in the action. So, too, if her attorney has made an agreement with her that he will take charge of her case in court for a definite amount of money, or gratuitously, the necessity of calling upon the husband for money therefor is removed."

The court seems to base its decision upon the idea that, since the wife can only be awarded fees where the award is "necessary," if the wife has already obtained the services of an attorney by her own agreement to pay, it is not "necessary" to order the husband to make the payment, and such an order is improper. Thus the word "necessary" is taken to mean that the services (or goods) to be paid for by the husband could not possibly be obtained unless he pays for them.

This seems much too strict an application of the word "necessary," employing the word in a sense which has been rejected in analogous situations. For example, to obtain *pendente lite* support under Civil Code Section 137.2, the wife must also show that such payments are "necessary." Often the wife has run up grocery bills and other obligations for living expenses prior to the order to show cause. In such cases, the argument accepted in the *Mudd* case might again be asserted—that is, if the wife has already obtained the groceries on the basis of her own promise to pay and without an order that the husband pay, how can it be "necessary" to make such an order?

Yet, we know the court may require the husband to pay such bills or even to reimburse the wife if she has already paid them, e.g., *Larsen v. Larsen*, 101 CA2d 862, 865 (1951).

Of course, there are circumstances where the husband's payment of fees or support for the wife will not be considered "necessary," as where the wife's separate *income* is sufficient to meet all of her expenses, including the fees or other payments in question. *Loeb v. Loeb*, 84 CA2d 141, 144-154 (1948).

But where the wife's income is not sufficient to meet her expenses and fees, the court may order those items paid by the husband, even though there is another possible source of payment. Thus, even though the wife has substantial separate property, to the extent that her *income* is insufficient to meet her expenses and pay her fees, the husband will be ordered to pay her fees and provide for her support, even though the wife could have sold her property to meet those needs, e.g., *Larsen v. Larsen*, 101 CA2d 862, 866 (1951); *Westphal v. Westphal*, 122 Cal. App. 379, 382 (1932).

It seems plain, therefore, that the word "necessary" in the various subsections of Civil Code Section 137 dealing with alimony, child support and fees does not require a showing that there is no other possible way these needs could be met, as the *Mudd* case suggests.

The fact that the wife has promised to pay her attorney does not mean that it is not "necessary" to order her husband to do so. For example, the wife may have intended to pay the fees by invading her principal, or by reducing her expenditures for rent and food below a reasonable standard for her situation, steps the case law would not require her to take.

Moreover, the *Mudd* case puts the wife's counsel in a most difficult position. Suppose, for example, the husband is the sort who may well leave the country without complying with the court's order to pay fees. The attorney may never be paid, unless he has an agreement with the wife. But if he asks the wife in advance for such an agreement, he jeopardizes her chance to obtain an award of fees from the husband, unless he conceals the agreement from the court which certainly is not an ethical or desirable result.

Ironically enough, this dilemma also faces an attorney for a wife who has income of her own. Perhaps the attorney will be able to convince the court that her income is insufficient to meet her expenses and also pay his fee, but he must face the possibility that he will not be successful, and that the court may not require the husband to pay fees. If the wife has agreed to pay fees, she might well forfeit her chance to make her husband pay them. On the other hand, if there is no such agreement, the attorney may go unpaid entirely, if the wife is not inclined to pay him voluntarily. Perhaps *quantum meruit* recovery from the wife is an answer. But this would seem risky, at best. The wife may well insist that it was never contemplated that she would compensate her attorney, and the attorney would have to admit that he never told her she must pay if the husband did not. If, in fact, he did make such a statement to the wife, and she agreed, there would seem to be a contract which would come within *Mudd*, and, thereby, prevent her from seeking fees from the husband. Accordingly, if the attorney wants to avoid the *Mudd* case, he may have to refrain from telling the wife he expects her to pay if the husband does not, and, if he does fail to tell her this, he may have difficulty recovering from her on a *quantum meruit* theory.

It seems that the approach suggested by the language of the *Mudd* case would be bad law, would produce unfair results and should not be followed. Of course, if this sort of agreement came before the Supreme Court now, the *Mudd* approach might well be rejected without the necessity of legislation. But, with *Mudd* on the books, until a new and contrary decision comes down, it is hard to see how a conscientious attorney for a wife can recommend or even permit her to agree to pay fees, so long as there is any chance of obtaining an order requiring the husband to pay them.

II. PROPOSED SOLUTION

The court should be fully informed of whatever arrangement counsel has with his client for payment of his fees when request is made of the court to order the adverse party to respond with payment of attorney fees. The attorney should be able to fully inform the court of his fee arrangement with his client without having detriment imposed upon him for making full disclosure. Many courts are presently awarding fees notwithstanding full disclosure of arrangements which an attorney has with his client, but they are doing so in violation of the ancient but still standing mandate of the Supreme Court.

It was therefore proposed that whenever an attorney asks for an award of attorney fees he should be required by state law to make a full disclosure of past and contemplated fee arrangements with his

client. This requirement could be established by rule of court, but this procedure would not provide uniformity throughout the state.

It appears necessary for the State Legislature to remove the present holding of the 1893 *Mudd* decision by statutory enactment. For this purpose it was suggested that an addition to Civil Code Section 137.3 be enacted embracing the following principle:

“No payment by a party of attorneys fees or costs, or agreement by a party to pay such fees or costs, shall prevent an order under this section that the other party shall pay such fees or costs or shall reimburse the party making such payment.”

Of course, there are attorneys who take advantage of wives by obtaining their agreement to pay fees and then charging unconscionable amounts, often in addition to those awarded by the court and paid by the husband. Presumably these attorneys do not care about the *Mudd* case, or else rely upon concealing the agreement from the court. They would probably continue their practices under the proposed amendment, although perhaps they would, at least, disclose the agreement to the court, which would, itself, be an advantage. Perhaps such arrangements should be subject to court approval, like fees in probate matters. In any event, continuing the *Mudd* rule is no solution. That approach only encourages the concealment that makes unfair practices easier to accomplish.

III. FINDINGS AND RECOMMENDATION

The committee, having made a study of the foregoing problem, decided to take no further action at this time.

Part 13

SERVICE OF NOTICE AFTER FINAL DECREE UPON ATTORNEY OF RECORD

I. PRESENT LAW AND PURPOSE

Civil Code Section 147 now requires that any notice of modification proceedings, which arises out of a prior order or decree, and after the granting of a final decree of divorce, *shall not be valid* "unless any prior notice otherwise required to be given to a party to the action be served in such manner as such notice is otherwise permitted by law to be served, upon the party himself. For such purpose service upon attorney of record shall not be sufficient."

The purpose of providing for personal service on a party to a domestic relations proceeding after a final decree, as required by the present Section 147, Civil Code, enacted in 1963, is presently viewed by a segment of the bar to eliminate a frequent nuisance to an attorney of record.

II. PRESENT DIFFICULTIES

A segment of the bar, the exact portion being unknown, feels a much greater nuisance has been created for all members of the bar by the present statute which eliminated service on the attorney of record and substituted personal service on the adverse party. It is asserted that in many cases personal service is reduced to service permitted on the county clerk which is asserted to be no service at all in fact. By not requiring notice of such proceedings to the attorney of record he is not entitled to have a copy of the order to show cause or motion served upon him.

It is also asserted that the language of the statute raises ambiguities and uncertainties, such as whether service upon the party is sufficient if compliance is had with Code of Civil Procedure Section 101, subsection 2, providing that service may be personal upon a party by leaving the notice or other paper at the residence of the party between the hours of 8 in the morning and 6 in the evening, with some person of not less than 18 years of age; if the residence is not known, then by delivering the same to the clerk of court or the judge if there is no clerk, for such party. Does the code section require personal service of an order to show cause in the remodification upon the party as though the original summons and complaint were to be served? If the party has left the state, is jurisdiction completely lost? Is the party seeking modification, a resident of this state, prevented from seeking further modification where there is a total inability to serve the party in this state?

It is to be noted likewise under Code of Civil Procedure Section 285.1 that after a final decree of divorce has been entered, an attorney may withdraw from the case but must give notice of the last residence

address of the party. Would service by mail upon this address be sufficient for purposes of this section?

III. REMEDIAL PROPOSAL

On the basis of the above considerations, it was proposed that Section 147 be repealed pending further study and clarification of the section by a committee of the State Bar Conference or by the Legislature.

IV. FINDINGS AND RECOMMENDATION

The committee, having made a study of this area, decided to take no further action at this time.

Part 14

FILING DOMESTIC RELATIONS CASES INVOLVING CHILDREN UNDER 16 IN CENTRAL DISTRICT *

I. THE PROBLEM

Experience has indicated to many attorneys that there is a category of divorce cases where there is a good chance of reconciliation when the parties first come into court, before there is any hearing. When these situations occur in branch courts, where conciliation services are not available, the opportunity to explore the feasibility of reconciliation is frequently lost because the parties do not want to travel to the central district after having come into the branch court. There appears to be some desire to attempt a reconciliation in these cases, although it may be minimal. But that desire is defeated by the physical burden of adjourning to the central district.

II. PROPOSED SOLUTION

In Los Angeles County there are over 200 referrals to the conciliation court each month from commissioners and judges at order to show cause hearings. The data acquired on this group indicates that over half of these referred couples voluntarily file a petition for reconciliation and that the reconciliation of such petitioning couples is larger than any other group. However, 75 percent of such court and commissioner referrals were from the civic center and only 25 percent were from the 10 branch courts. It appears that a large number of potential reconciliations are not occurring because the couples at the order to show cause hearing are not being exposed to the conciliation court as they would be if they were physically present in the same location as the conciliation court. It is suggested, therefore, that at least in those situations where there are children under 16, the parties be required to appear at the central district where their proximity to the conciliation court will enhance the possibilities of their electing to utilize it. It is pointed out that through the utilization of commissioners sitting as judges *pro tempore* and the ability to shift cases among commissioner courts, that OSC (order to show cause) hearings are handled more quickly in the central district and there is greater uniformity of decisions, rulings, and orders.

This proposal is based on the ground that a conciliation court system can only be successfully operated at the central district court and that dispersal of counselors as roving conciliators among branch courts is impractical, inefficient, unproductive of reconciliations, and would create unnecessary and tremendous additional costs of operation. The

* This part of the final report is based on testimony presented to the Assembly Interim Committee on Judiciary in its hearings on domestic relations in Los Angeles, October 8-9, 1964.

opposing view disputes these assertions and seeks to have counselors assigned to the branch courts.

A further suggestion was to concentrate all domestic relations cases in the central district which would facilitate establishment of a domestic relations department which would utilize a permanent group of judges regularly sitting in these cases, thereby bringing all couples into close proximity to the conciliation court as well as achieving greater uniformity.

III. FINDINGS AND RECOMMENDATION

The committee, having made a study of this proposal, decided to take no further action thereon at this time.

Part 15

LIMITATIONS ON ALIMONY IN CHILDLESS MARRIAGES OF SHORT DURATION *

I. THE PROBLEM

One of the causes for delays in bringing divorce actions to trial is the fact that judges frequently do not award alimony to a plaintiff-wife where the marriage is childless and of two or three years' duration. Therefore there have been attempts to obtain temporary alimony orders followed by delaying tactics to stall the divorce proceedings for 12, 14, or 16 months in order to get as much money from the defendant-husband as possible.

II. PROPOSED SOLUTION

Where orders have been made limiting the duration of temporary alimony in these cases, it has been found by experience that a settlement is promptly reached by the husband and wife and the divorce case proceeds as a default. It is proposed, therefore, that legislation which would limit alimony to a specific period not to exceed six months would largely offset the frequent criticism that alimony is awarded where none is justified. Such a statute would include language to indicate that the limitation is not applicable while there is an affirmative finding by the court that facts exist indicating that the party from whom the extended alimony payments are sought has by his conduct been responsible for serious financial or physical loss or damage to the petitioning party.

III. FINDINGS AND RECOMMENDATION

The committee, having made a study of this proposal, decided to take no further action thereon at this time.

* This part of the final report is based on testimony presented to the Assembly Interim Committee on Judiciary in its hearings on domestic relations in Los Angeles, October 8-9, 1964.

Part 16

CONTINUING STUDY OF MARRIAGE, FAMILY LIFE, AND DIVORCE PROBLEMS IN CALIFORNIA

I. DISCUSSION

The need for continuing a major study and reevaluation of California's marriage and divorce laws, with a view towards remedial statutory legislation, has been amply demonstrated in the various parts of this final report.

The Governor as well as this Legislature has expressed serious concern with this vital area of our society, as indicated in the Governor's message to the Assembly of March 4, 1964, and the enactment of House Resolution 46 on May 21, 1964. (See Appendix A and B respectively.) The Legislative Advisory Committee on Family Life and Law was appointed August 6, 1964, and is comprised of many of the outstanding citizens of this state. (See Appendix C.) Their recommendations are anxiously awaited by the Judiciary Committee and should prove to be a helpful source for solutions to many of these complex problems.

II. FINDINGS AND RECOMMENDATION

Findings

1. Marriage, family life, and divorce problems continue to be a major area of concern in California. The number of people affected, and the potential disruption to the stability of future generations, constitutes a serious threat to our society.
2. The incidence of family instability and inadequacy, as reflected in the voluminous number of judicial proceedings which are instituted as a result of family failure, warrants a thorough study of our existing judicial structures and procedures, as well as our statutory enactments, to ascertain methods and laws which will ameliorate present deficiencies.

Recommendation

1. The committee recommends continuance of its present study of marriage and divorce laws, with adequate staff and resources to permit a complete and comprehensive examination.

Part 16
APPENDIX A

STATE OF CALIFORNIA

GOVERNOR'S OFFICE
Sacramento

March 4, 1964

*To the Members of the Assembly,
California State Legislature:*

Last January 8 in a statement before the Assembly Judiciary Committee, I said that I planned to follow its hearings on California's domestic relations law very closely with a view to possibly asking that you expand this committee study to include a citizens' advisory committee composed of judges, lawyers, clergymen, sociologists and psychologists.

I said at that time that it appeared that divorce, with its tragic by-products of crime, alcoholism, and dependency upon the state, is an ever-growing problem in California. The testimony offered at your Judiciary Committee hearings certainly supports that premise.

I am therefore asking the Assembly to take steps to expand the Judiciary Committee's study.

I believe members of your Judiciary Committee will agree with me that, although there is apparent need for change in our divorce laws, we should not act hastily. Before we can intelligently recommend change, we must first have serious and purposeful investigation into the declining stature of the married state.

In reviewing testimony given before the committee, and in private conversations with judges and lawyers, with sociologists and educators, I find general agreement that we lack a reliable body of knowledge of the forces that are at work in the field of domestic relations.

Statistics developed before your Judiciary Committee seem to show clearly how divorce erodes the very foundation of our society—the family. The statistics indicate that some 75 percent of our juvenile delinquents and more than 50 percent of the inmates of our penal institutions come from broken homes.

These are shocking statistics. They tell of an erosion of our precepts and institutions which are so dependent on the endurance, stability and sanctity of the home.

Consider them in another light—the drain on our dollar resources. A four-year prison term costs the taxpayers of California three times more than it does to educate a child through four years of high school.

Add to this the cost of welfare aid to child victims of broken marriages. In 1962 we spent \$192.5 million on aid to needy children, most of which can be directly traced to our growing divorce rate.

The dollar cost of divorce—apart from legal fees, alimony, child support and court costs—is overwhelming.

I know that for you, elected representatives, hardly a day goes by without complaints about the cost of welfare, mental health, and school dropouts and their cumulative effect on our society. I get these too. We form commissions and councils to investigate these social problems, but we investigate them for the most part as individual problems. Not enough is known about the basic causes of dependency of which these problems are but byproducts.

There are no easy answers. That is an inescapable fact. I believe that for the health, sanity, and future of our society we must undertake the monumental task of seeking answers to these pressing problems.

What the Judiciary Committee has done thus far is just a beginning. A great deal of research is necessary before the Legislature can enact laws in this delicate and personal area of human relations.

Neither the husband nor the wife, as parties to a divorce, are the most damaged of the many victims. The most damaged are their children, this state's, this nation's future. Seven million American youngsters under the age of 18 live in one-parent homes. What is their future?

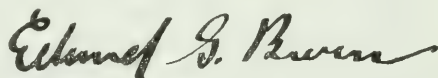
For too many of them, it is one of quitting school, wandering our streets and ending up in our juvenile halls. For others, it is the beginning of the path to a cell in one of our penal institutions. To others, deprived of love, firm guidance and understanding, it is but a way to a life of continual insecurity. In some cases, it leads to abject poverty and complete dependency upon the state for minimal survival.

If our concern here is truly to build a better, more stable society, we have an inescapable duty to make a serious inquiry into this festering social problem.

Great civilizations have faltered and ultimately perished and vanished from the earth through moral decadence. These were civilizations without our capacity to communicate. We must utilize our talents and facilities to probe and expose the core of this growing social problem.

I urge you to take the steps available to you to undertake this research.

Sincerely,

A handwritten signature in dark ink, reading "Edmund G. Brown". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

EDMUND G. BROWN, *Governor*

Part 16
APPENDIX B

March 9, 1964

ASSEMBLY JOURNAL

The following resolution was offered :

By Assemblymen Willson, Young, Dannemeyer, Bagley, Danielson, Foran, Johnson, Marks, Petris, Song, Stanton, Stevens, Waldie, Whetmore and Z'berg.

House Resolution No. 46

*Relative to the creation of a Special Legislative Advisory Committee
on Family Life and Law*

WHEREAS, A need for examination and analysis of existing laws in the field of domestic relations was realized at the 1963 Regular Session; and

WHEREAS, Pursuant to that realization several resolutions were introduced to accomplish such purpose; and

WHEREAS, As a result of several conferences and hearings on the general problems which appear abundant in this field; and

WHEREAS, It is the desire of this Legislature to seek the resolution of social problems and combat the evils apparent; and

WHEREAS, There was action taken by the Assembly Interim Committee on Judiciary at its hearing on January 9, 1964, at Los Angeles which called for the creation of an advisory committee; and

WHEREAS, The function of such advisory committee would be to assist the Assembly Interim Committee on Judiciary to find solutions for identified problem areas with a view toward developing a legislative program to strengthen family relations; and

WHEREAS, The Governor has shown great concern for this matter as evidenced by his public statements and considers it to be one of the urgent areas in need of study and reform; now, therefore, be it

Resolved by the Assembly of the State of California, That the Assembly Interim Committee on Judiciary is authorized to create a Special Legislative Advisory Committee on Family Life and Law to assist and advise the Assembly Interim Committee on Judiciary in its deliberations as to the field of domestic relations. The number of members of the special committee shall be designated by the Assembly Interim Committee on Judiciary. The members of the special committee shall be appointed by the Speaker of the Assembly. The special committee shall report its findings and recommendations to the Assembly Interim Committee on Judiciary which shall report thereon to the Assembly not later than the fifth legislative day of the 1965 Regular Session, including its recommendations for appropriate legislation.

The Members of the special committee shall serve without compensation but each member shall be allowed actual expenses incurred in the discharge of his duties, including travel expenses. The members of the special committee shall serve without compensation or expenses. The

Assembly Interim Committee on Judiciary shall provide the special committee with the necessary staff, equipment and supplies to carry on its work. ~~All expenses of the special committee including the expenses of its members shall be paid from any money appropriated either for the expenses of the advisory committee or for the expenses of all advisory committees created to assist and advise Assembly Interim committees.~~

The existence of the committee shall terminate 90 days after the termination of the 1965 Regular Session of the Legislature.

Resolution read, and referred by the Speaker pro Tempore to the Committee on Rules.

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Additional portions indicated by *italic type*.

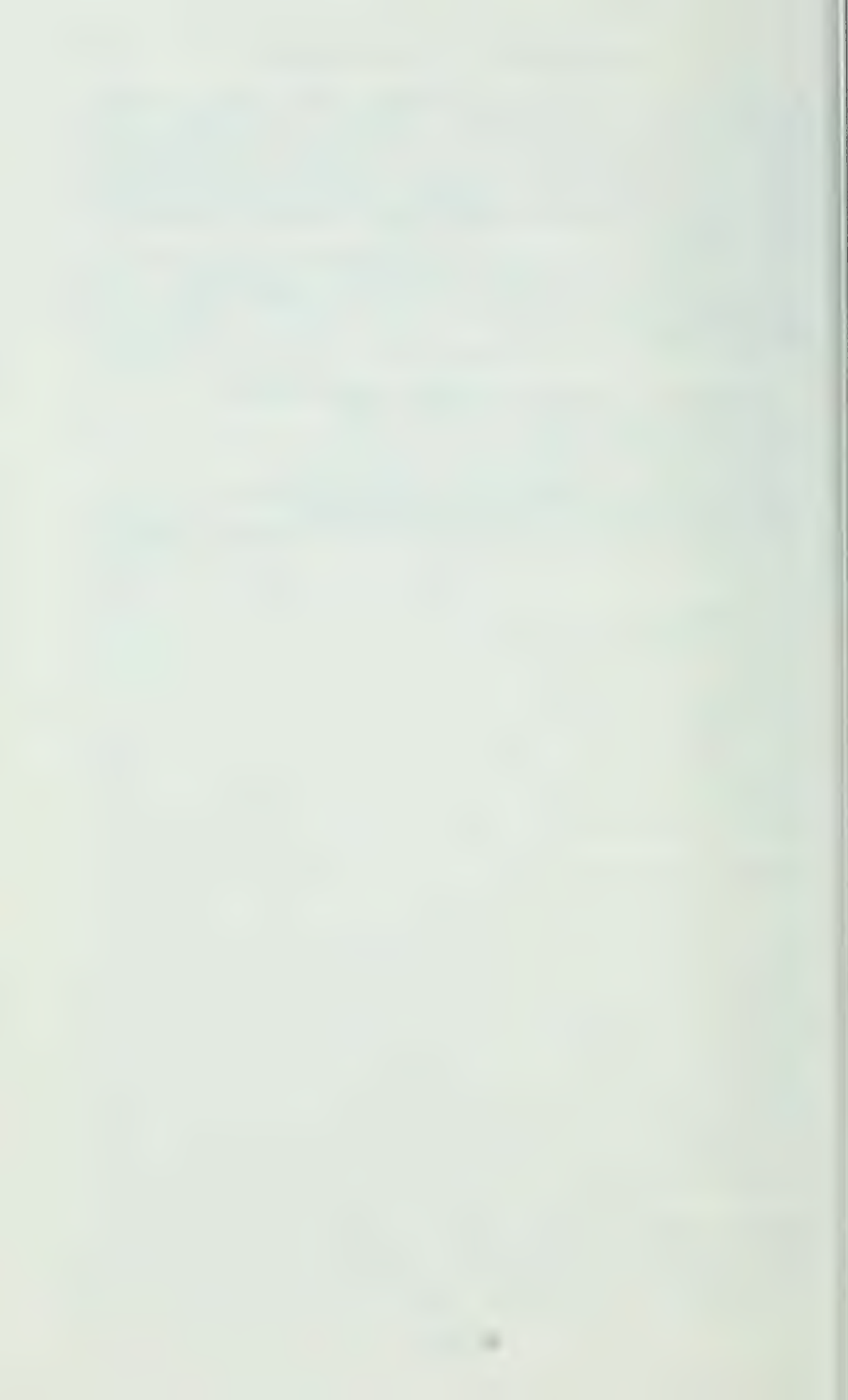
Introduced March 9, 1964.

March 9—Referred to Committee on Rules.

April 27—From committee: Be adopted, as amended.

April 28—Read and amended. To third reading.

May 21—Read and adopted, page 1258 of the Assembly Journal.



Part 16
APPENDIX C

LEGISLATIVE ADVISORY COMMITTEE ON FAMILY LIFE AND LAW

Appointed August 6, 1964

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REPORT OF THE

ASSEMBLY INTERIM COMMITTEE ON MILITARY AND VETERANS AFFAIRS

1963-65

To the 1965 General Session
of the California Legislature



MEMBERS OF THE COMMITTEE

Walter W. Powers, *Chairman*

William E. Dannemeyer, *Vice Chairman*

Tom Carrell

Charles E. Chapel

George Deukmejian

Mervyn M. Dymally

Joe A. Gonsalves

Paul J. Lunardi (*Resigned*)

STAFF

Louis R. Negrete, *Consultant*

Rose Cypert, *Secretary*

Published by the
ASSEMBLY

OF THE STATE OF CALIFORNIA

HON. JESSE M. UNRUH
Speaker

HON. JEROME R. WALDIE
Majority Floor Leader

HON. CARLOS BEE
Speaker Pro Tempore

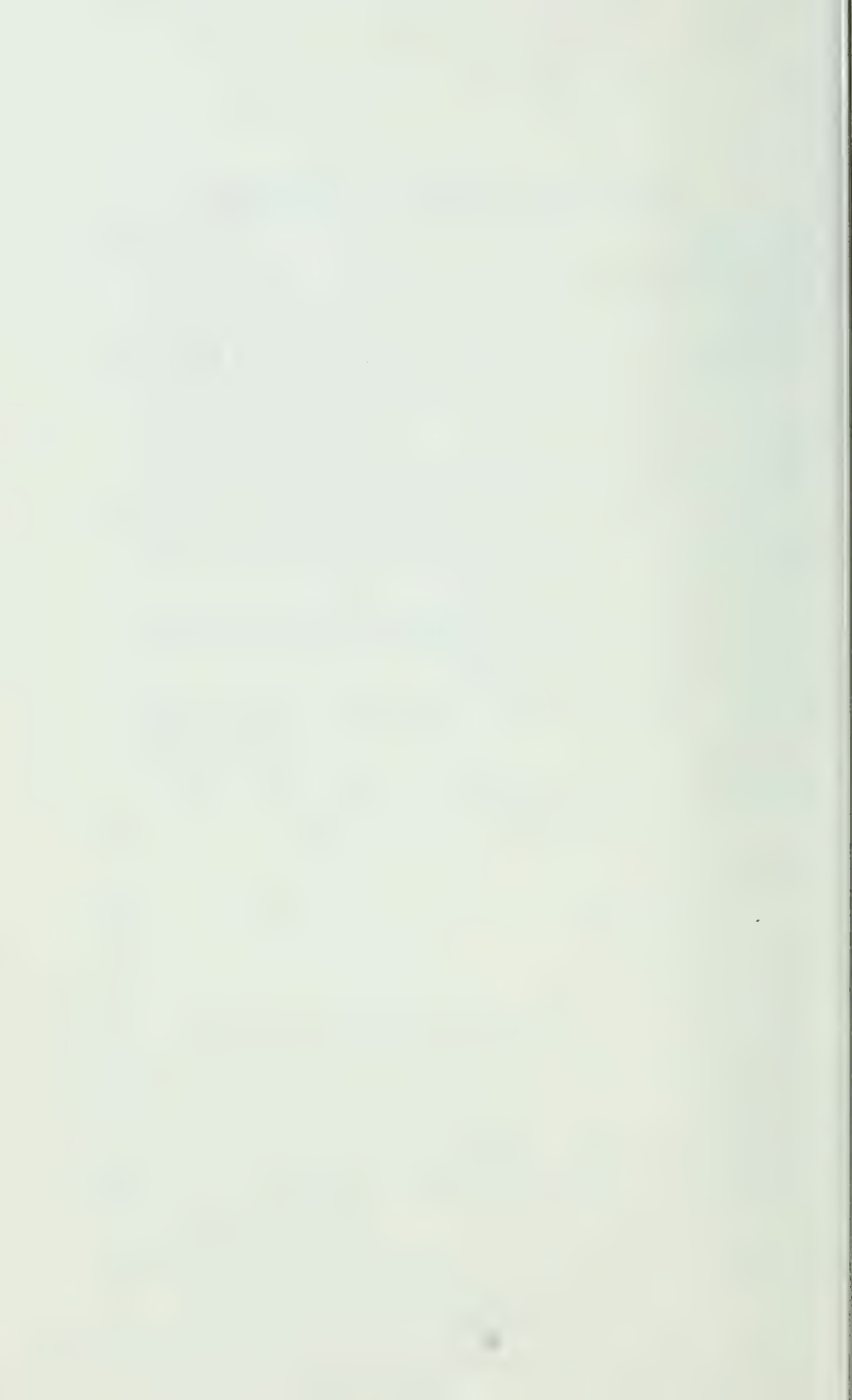
HON. ROBERT MONAGAN
Minority Floor Leader

JAMES D. DRISCOLL
Chief Clerk



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LETTER OF TRANSMITTAL

January 5, 1965

HON. JESSE M. UNRUH
Speaker of the Assembly, and
Members of the Assembly
Assembly Chamber—State Capitol
Sacramento, California

Gentlemen:

Pursuant to House Resolution No. 500 of the 1963 Regular Legislative Session, the Assembly Interim Committee on Military and Veterans Affairs submits its final report covering its functions and activities during the 1963-65 interim.

Assemblyman Paul J. Lunardi resigned as Chairman of the Committee on December 20, 1963, upon his election to the State Senate, and Assemblyman Walter W. Powers was appointed chairman May 15, 1964, to fill this vacancy.

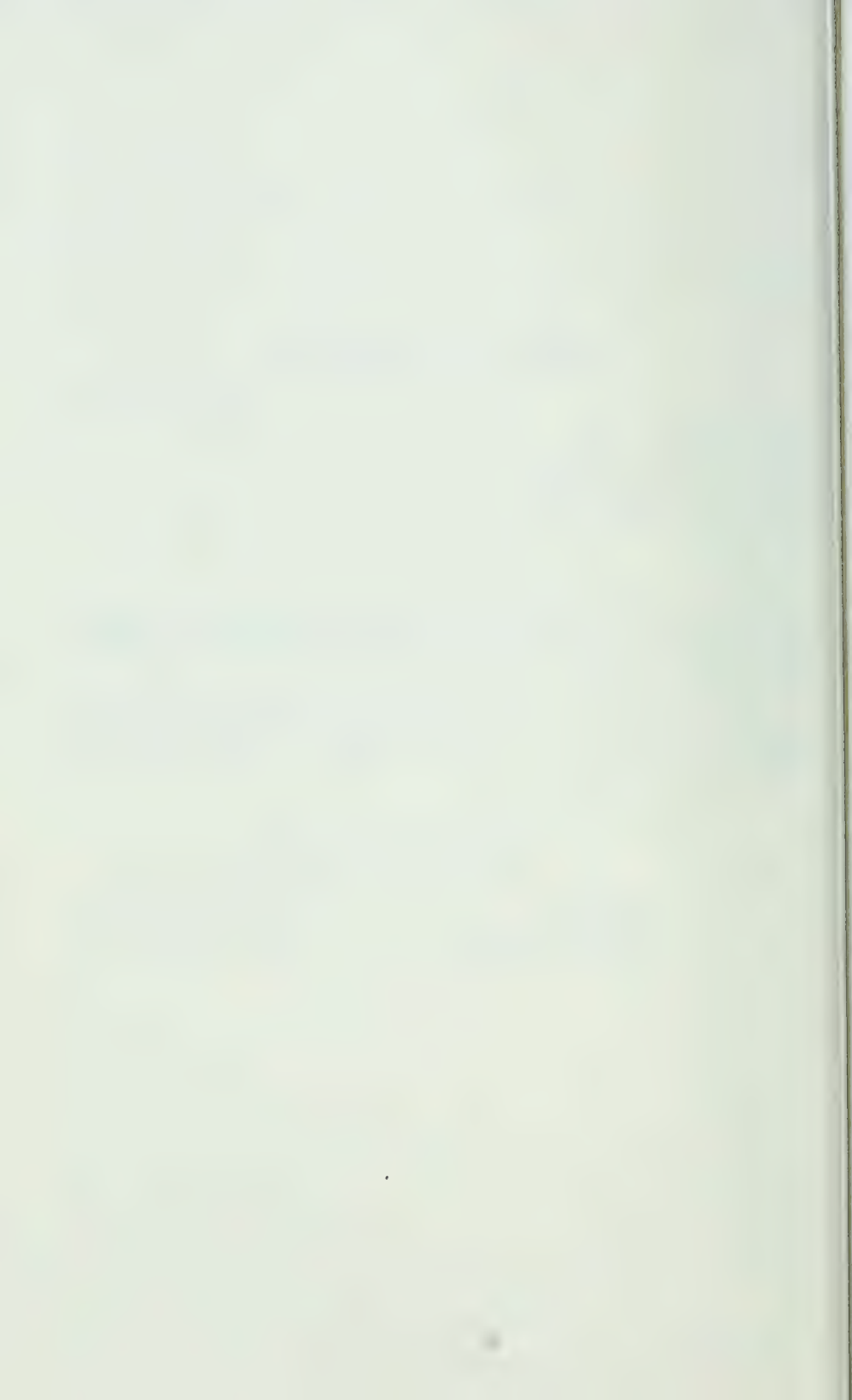
Respectfully submitted,

WALTER W. POWERS, *Chairman*

WILLIAM E. DANNEMEYER, *Vice Chairman*

TOM CARRELL
CHARLES E. CHAPEL
GEORGE DEUKMEJIAN

MERVYN M. DYMALLY
JOE A. GONSALVES



HOUSE RESOLUTION NO. 500

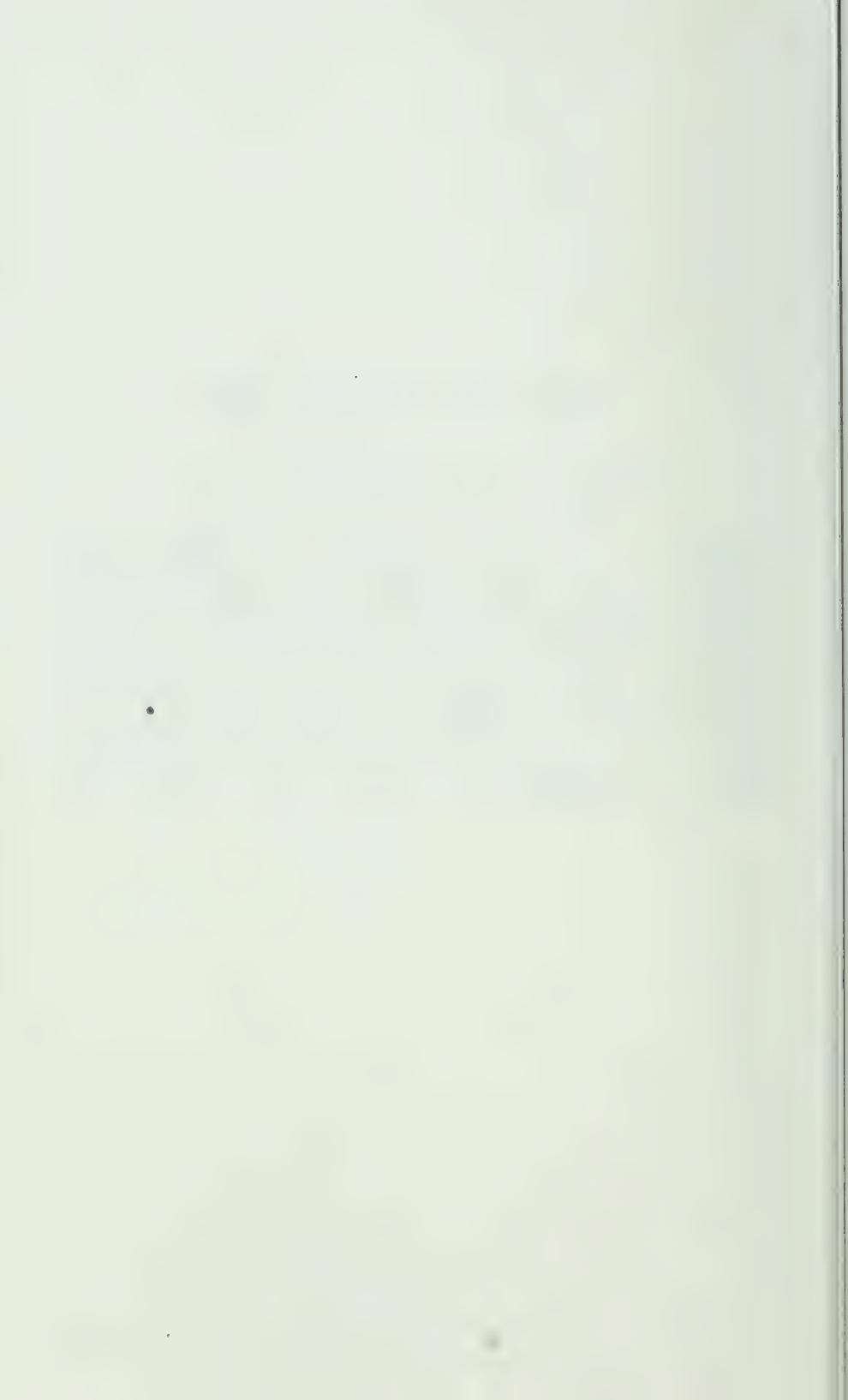
(Assembly Journal, June 11, 1963, page 5231)

Relative to constituting certain standing committees of the Assembly as interim committees

Resolved by the Assembly of the State of California, As follows:

1. The following standing committees of the Assembly are hereby constituted Assembly interim committees and are authorized and directed to ascertain, study and analyze all facts relating to (1) the subjects and matters assigned to them by this resolution; (2) any subjects or matters referred to them by the Assembly; (3) any subjects or matters related to (1) or (2) which the Committee on Rules shall assign to them upon request of the Assembly or upon its own initiative:♦

(o) The Committee on Military and Veterans Affairs is assigned the subject matter of the Military and Veterans Code, uncodified laws relating to veterans and the military, and other matters relating to military and veterans affairs.



A.B. 1563 RELATING TO THE REPEAL OF THE PROVISION PROHIBITING THE DEPARTMENT OF VETERANS AFFAIRS, UNDER THE VETERANS FARM AND HOME PURCHASE ACT OF 1943, FROM ACQUIRING A HOME IN WHICH A VETERAN HAS AN INTEREST OF RECORD

INTRODUCTION

The committee met on November 8, 1963, at the City Hall in Whittier, and on December 5, 1963, at the State Building in San Francisco, to consider Assembly Bill No. 1563, which would repeal Section 987.15 of the Military and Veterans Code.

FINDINGS

The prohibition against the refinancing of homes as provided by the Military and Veterans Code should be modified. The committee noted that Governor Brown signed Senate Bill No. 81, May 13, 1964, which provides for a system of priorities for a limited program of refinancing of homes by the Department of Veterans Affairs. This program should be allowed time to demonstrate its effectiveness.

RECOMMENDATION

No legislation.

SCOPE

Testimony was received from the Department of Veterans Affairs and from representatives of various veterans' organizations concerning the desirability of repealing the present code provision.

Section 987.15 of the Military and Veterans Code prohibits the Department of Veterans Affairs from refinancing homes in which veterans have an interest of record. Prior to 1958, such authority was provided in Section 986.6 of the Military and Veterans Code. Concurrently with the addition of Section 987.15 in 1958, Section 986.6 was amended to remove authority insofar as home properties were concerned, leaving in the statutes authority to refinance farm properties.

Mr. John Handsaker, Administrative Deputy Director of the Department of Veterans Affairs, sent the committee a letter in which he stated, "Before they were discontinued, applications for refinancing were two-to-one over those for new or original purchases. Thus, to reopen the Cal-Vet program to refinancing would exhaust our available resources within two years and guarantee that additional bond issues would be needed beginning with the next general session of the Legislature."

Mr. Walter Thompson, testifying in behalf of the Veterans of Foreign Wars, stated before the committee that his organization is opposed to the bill because the present available funds would be depleted.

Mr. W. R. Smaker of the California Association of Service Officers, in a letter to the committee, stated that, "The prohibition of refinancing (Section 987.15) should never have been placed in the code. The administration of the farm and home program falls under the pervasion of the board and the director (985.3) Sections 70, 84 and 700. Consequently, finding a solution to the farm and home problems was their responsibility. The conditions which prompted this change in 1957 were purely administrative problems, and were not problems which called for action of the Legislature. It was a situation where the board and the director did not apply their administrative duty to administer the farm and home program and passed it on to the legislators. Why the Legislature accepted this problem is not understood. Why it was not referred back to the board for solution is unknown."

Assemblyman Phillip Burton, author of A.B. 1563, testified in favor of the bill. He stated, in part, "To me, it seems unfair that these veterans who previously had not been able to take advantage of our Cal-Vet program are not given this opportunity to do so. I don't think that any of us contemplated that a whole section or category of veterans would be denied the right to take advantage of this program, and I think that this amendment, the eliminating of the present restriction, therefore permitting veterans to get loans to refinance their homes would be a step in the right direction."

"As I understand the law, Mr. Farber and the appropriate authorities in his department either have or could be granted the authority, as I stated earlier, to set up priorities to see to it that equity was done, but certainly I think we are all in agreement that the present situation is inequitable, and I think that some change in the law is in order and should be accomplished."

A.B. 2813, RELATING TO THE REPEAL OF THE PROVISION PROHIBITING THE DEPARTMENT OF VETERANS AFFAIRS, UNDER THE VETERANS FARM AND HOME PURCHASE ACT OF 1943, FROM ACQUIRING A HOME IN WHICH A VETERAN HAS AN INTEREST OF RECORD

INTRODUCTION

The committee met on November 8, 1963, at the city hall in Whittier, and on December 5, 1963, at the State Building, in San Francisco, to consider Assembly Bill No. 2813, which would repeal Section 987.15 of the Military and Veterans Code.

FINDINGS

The prohibition against the refinancing of homes by the Legislature should be modified. The committee noted that Governor Brown signed Senate Bill No. 81, May 13, 1964, which provides for a system of priorities for a limited program of refinancing of homes by the Department of Veterans Affairs. This program should be allowed time to demonstrate its effectiveness.

RECOMMENDATION

No legislation.

SCOPE

A.B. 2813 is identical to A.B. 1563, also before the committee. The same oral and written testimony, pro and con, were heard regarding A.B. 2813 at the same time as A.B. 1563 was being considered.

A.B. 2704, RELATING TO THE PURPOSE OF THE CALIFORNIA VETERANS EDUCATIONAL INSTITUTE

INTRODUCTION

An opportunity to testify on this bill was given at the committee hearing in Whittier, on November 8, 1963. The testimony on the bill was heard at the December 5, 1963, hearing in San Francisco.

FINDINGS

The committee found that the intent of the present regulation is sufficiently clear. Veterans receive state support until they have completed a course of study that enables them to assume a productive role in society.

Veterans who are continuing their job training for any entry level position of any occupational field are not affected by the Administration's curtailment of this program. The present program also allows exceptions for hardship cases arising from economic factors as determined by the Department of Veterans Affairs.

The committee felt that once the state had provided the veteran with the education and training to qualify for employment, then the veteran should be able to pay for additional training out of his earnings. This permits widows and dependents of disabled or deceased veterans to receive more state support. This arrangement permits state support to go to those most in need.

The committee felt that the present program should be allowed time to demonstrate its effectiveness before any changes are made.

RECOMMENDATION

No legislation.

SCOPE

A.B. 2704 would amend Section 981 of the Military and Veterans Code to broaden the statement of purpose concerning the California Veterans Educational Institute to declare that the purpose of the Institute is to provide opportunities for veterans to "maintain," as well as to continue, their education.

The California Veterans Educational Institute provides educational opportunities for veterans whose educational program is interrupted by war service. The State of California assists them to the maximum of \$1,000 towards either tuition or subsistence, or a combination of both, to complete their educational program which was interrupted.

The words "and maintain" are intended to restate the policy of the Legislature as encouraging veterans to keep abreast of the times with current technological advances as they happen within a special field by attending noncredit courses beyond the college degree.

Mr. Martin Iorns, Manager of the Division of Educational Assistance, Department of Veterans Affairs, stated before the committee that the problem is not one of more words but of more dollars, and that the division's annual appropriation must cover two programs: veterans education and educational assistance for dependents. The children of the veterans who died or were totally disabled as a result of active service are now coming of school age and the division is having to shift its funds towards that program and to cut back on the veterans program.

Assemblyman Charles W. Meyers, author of A.B. 2704, testified in support of the bill.

Since the last hearing on A.B. 2704, Governor Edmund G. Brown signed the 1964-65 Budget Bill after making cuts in the budget adopted by the Legislature. Among those items deleted from the budget was Item 287, an appropriation of \$1,225,683 for educational assistance to Korean veterans in the Department of Veterans Affairs.

"It is now more than 10 years since the end of the Korean War", the Governor said in his press release announcing the new budget. "The veterans of that war have had ample opportunity to take advantage of the educational benefits of our program. There has been a significant decline in applications, allowing this cutback in expenditures. We have allowed for hardship cases arising from work interruption or economic factors. The approved appropriation totals \$1,904,800 for dependents and \$600,000 for veterans. I did not reduce the educational program for dependents of veterans."

The Governor pointed out that veterans in California still are receiving benefits which rank among the finest in the nation. In all, the Governor said he has signed into law 101 bills for veterans, none of which deleted a right or a benefit.

A.B. 2707, RELATING TO THE CONVERSION OF A DOMICILIARY BUILDING AT THE VETERANS HOME TO A FACILITY FOR INTERMEDIATE AND LONG-TERM NURSING HOME CARE FOR VETERANS ELIGIBLE FOR ADMISSION TO THE HOME

INTRODUCTION

An opportunity for testimony on A.B. 2707 was given at the committee hearing in Whittier, on November 8, 1963, and at the hearing in San Francisco, on December 5, 1963.

FINDINGS

Since the administration is considering the conversion of an empty building into a useful facility at the Veterans Home, legislation is not necessary. It was suggested to the committee that the possibility be explored of turning the operation of the State Veterans Home over to the federal government.

RECOMMENDATION

No legislation.

SCOPE

A.B. 2707 would add Section 1050 to the Military and Veterans Code. Section 1050 would require the Department of Veterans Affairs, subject to appropriation therefor, to convert a domiciliary building at the Veterans Home to a facility which would provide intermediate and long-term nursing home care for veterans eligible for admission to the home. The department would also be required to provide for adequate staffing for such facility.

There are approximately 400 vacant beds in the domiciliary facilities at the California Veterans Home. One entire building is unoccupied with some vacancies existing in each of the other six domiciliary sections. Studies have already been made by the Department of Veterans Affairs to determine the cost of converting the vacant domiciliary building to intermediate-type care. A request for \$378,000 for this purpose was included in the department's capital outlay budget request for 1963-64 fiscal year. The item was not approved in the budget. A similar request for \$315,450 was made in the 1964-65 prebudget conference between the Department of Veterans Affairs and the Department of Finance. The request was deleted pending outcome of federal legislation which would provide federal funds on a matching basis for the construction of state homes for veterans.

The Department of Veterans Affairs, the California Association of Veterans Service Officers, as well as various veterans' organizations, testified before the committee. Resolutions favoring A.B. 2707 were received from the delegates to the 43rd annual convention of the Department of California, Veterans of Foreign Wars of the United States, and from the 1962 annual department convention of the Disabled American Veterans.

In a memorandum to the committee, Mr. Handsaker, Administrative Deputy Director of the Department of Veterans Affairs, stated that as of June 1, 1964, there were 75 names on the waiting list for intermediate care, and the number of names on the hospital waiting list was 153.

In a letter to the committee, Mr. Handsaker further stated that, "While this bill is superfluous, as far as the Department of Veterans Affairs is concerned, it may exert some influence in having the item placed in the budget."

No testimony was presented opposing A.B. 2707.

A.B. 2984, RELATING TO THE CREATION OF A SOUTHERN CALIFORNIA VETERANS HOME IN THE DEPARTMENT OF VETERANS AFFAIRS

INTRODUCTION

Testimony relating to A.B. 2984 was heard at the committee hearings in Whittier, on November 8, 1963, and at San Francisco, on December 5, 1963.

FINDINGS

The federal government, through the U.S. Veterans Administration, has the primary responsibility to provide hospital care for veterans. While the need for additional hospital beds cannot be denied, there may be alternative federal programs which should be pursued before the expenditure of state moneys in this area can be justified. The possibility of additional funds to the U.S. Veterans Administration to expand hospital facilities should be exhausted. The committee felt the evidence indicated that the federal government was upholding its responsibility of providing hospital care for veterans and, therefore, the state should not enter into that area.

The testimony presented to the committee did not warrant building a state veterans home in southern California at this time, since there is ample space at the existing home in Yountville.

RECOMMENDATION

No legislation.

SCOPE

In southern California there are hospitals operated by the U.S. Veterans Administration located at Long Beach, San Fernando, Sepulveda and at the Veterans Administration Center in Los Angeles. The Long Beach hospital has 1,600 beds, including 1,239 medical, 299 surgical, and 62 psychiatric. The San Fernando hospital has 519 beds, including 175 medical, 44 surgical and 300 T.B. The Sepulveda hospital has 956 beds, including 107 medical, 107 surgical, 701 psychiatric, and 41 T.B. The V.A. Center hospital has 5,999 beds, including 1,011 medical, 457 surgical, 1,981 psychiatric, and 2,550 domiciliary.

The waiting list of accepted applicants for each V.A. hospital as of January 7, 1964, follows. No service-connected illness or ailments are on the waiting list. Cases of an emergency nature are not on a waiting list.

The Long Beach hospital has a waiting list of 296, including 154 medical and 142 surgical. The San Fernando hospital has no waiting list. The Sepulveda hospital has a waiting list of 264, including 4 medical and 260 psychiatric. The V.A. Center in Los Angeles has a waiting

list of 1,345, including 1,086 psychiatric, 164 domiciliary, 69 medical, and 26 surgical.

The totals by type of care on the waiting list are 227 medical, 168 surgical, none T.B., 164 domiciliary and 1,346 psychiatric. Total of all cases on waiting list is 1,905. The greatest need is in psychiatric cases.

The California Department of Veterans Affairs maintains the position that the provision of hospital facilities for veterans is primarily a responsibility of the federal government. The veterans' organizations maintain the position that providing a home for the veterans is a dual responsibility of state and federal government.

The state maintains the Veterans Home of California in Napa County, for aged and disabled honorably discharged veterans who served during a time of war and who are eligible for admission to a facility of the U.S. Veterans Administration. Applicants to the state home must also be bona fide residents of California for five years immediately prior to applying for admission and must be financially unable to pay for care outside the facility. The facility provides three types of care: domiciliary, intermediate (nursing), and hospital care.

The State Veterans Home at Yountville has approximately 2,400 beds, including about an 865 bed hospital, together with the intermediate-type care (nursing home care), the balance of which is domiciliary. At the present time, there are over 400 vacant beds in the domiciliary section at Yountville. There is one complete barracks which houses approximately 200 that is vacant and unoccupied. As of June 1, 1964, the total on the waiting list for the State Veterans Home at Yountville is 228, including none for domiciliary, 75 for intermediate care and 153 for hospital care.

A.B. 2984 would amend various sections of the Military and Veterans Code to create a southern California Veterans Home within the Department of Veterans Affairs, prescribe its powers, duties, responsibilities, and organization, and make an appropriation for the construction thereof, out of the General Fund. The new southern California veterans home would be similar in nature to the Veterans Home in Yountville.

Congress has enacted legislation which would provide an additional dollar a day for support of each veteran receiving nursing home care in a state veterans home and at the same time appropriate \$5,000-000 a year for five years to assist the several states to construct state home facilities for furnishing nursing home care to veterans. The federal grant would be available until the end of the second fiscal year following the fiscal year for which they are appropriated. Not more than 10 percent of the funds appropriated for any fiscal year would be used to assist in the construction of nursing home care facilities in any one state. The amount of the grant requested for a state project may not exceed 50 percent of the estimated cost of construction of such project.

Federal participation in the cost of the state home is meeting one-third of the operating expenses at present. Federal assistance is currently \$912.50 per member per year, or \$2.50 per member per day. Since 1958, the cost of operating the State Veterans Home has been

over \$4,000,000 per fiscal year. The estimated operating cost for 1963-64 is \$5,116,445.

The Department of Public Health estimates that a southern California veterans home would cost approximately \$15,832,060. The estimated program proposes 250 beds for acute medical and surgical cases, 400 beds for intermediate nursing home care cases, and 500 beds for residential cases. Rehabilitation service would be provided. The average age of patients and residents would be approximately 65. The cost estimate includes basic and master plan area, fully air-conditioned construction, equipment, architect's fees, construction superintendents, budgetary contingency and change order contingency. The cost estimate does *not* include site acquisition costs, offsite improvements, parking areas, or landscaping. The cost estimates are based on the experience of the department in the administration of the Hospital Planning and Construction Program which provides state and federal funds for similar-type projects.

The Department of Public Health also estimates the annual operating cost for the southern California facility would be \$7,750,000.

Suggested locations for a southern California veterans home have been near the Medical School of Loma Linda University in San Bernardino County, or Riverside County, San Diego County, or Long Beach City.

The testimony of the veterans organizations emphasized the need for a veterans home in southern California for the following reasons: Yountville is too far, the greatest majority of the veteran population resides in southern California and veterans hospitals are overcrowded. The psychological factor of having the hospital close to the veteran's family and relatives was stressed as a primary factor in hospital treatment.

In a letter to the committee from the Department of Medicine and Surgery of the Veterans Administration, it is pointed out that authority has been granted to construct additional hospitals in East Los Angeles and San Diego. Each of the hospitals will have approximately 1,040 beds and will probably result in some reduction or elimination of obsolete facilities at the existing Los Angeles Center hospital.

The Los Angeles hospital is expected to be completed about December 1967 and will include 240 beds for treatment of patients with psychiatric conditions. Based on present tentative schedules, the San Diego hospital will be completed during 1969. This hospital will include 480 beds for treatment of patients with psychiatric conditions.

SECTION 699.5 OF THE MILITARY AND VETERANS CODE: THE CONTRACT SERVICES PROGRAM

INTRODUCTION

Hearings on Section 699.5 of the Military and Veterans Code were held on August 6, 1964, at the State Building in Los Angeles, and on August 20, 1964, at the State Veterans Home, Yountville. The purpose of the hearings was to determine whether the administration's elimination of contract services still provides the level of service to California veterans which prevailed prior to 1960.

This study was conducted pursuant to the recommendation in the 1959-61 Report of the Assembly Interim Committee on Military and Veterans Affairs.

FINDINGS

The evidence and testimony presented to the committee clearly indicates that the Department of Veterans Affairs has maintained the level of service to California veterans which prevailed prior to the elimination of the contract services program.

The committee had little evidence before it other than opinion regarding any reduction in the level of such services since 1960.

It was also apparent that the discontinuance of the contract services program eliminated duplication of service and saved the California taxpayer close to \$2,000,000 in the last four years.

RECOMMENDATION

The committee recommends that the activities of the Department of Veterans Affairs be further reviewed at the next interim session to insure the continued high level of service.

SCOPE

ORIGIN OF THE CONTRACT SERVICES PROGRAM

The bill which created Section 699.5 of the Military and Veterans Code was introduced in a regular session of the Legislature in 1943 by Assemblyman C. Don Field of Los Angeles County, then Chairman of the Committee on Governmental Efficiency. It was signed into law by Governor Earl Warren and filed with the Secretary of State on June 7, 1943.

This addition to the code authorized the Veterans Welfare Board (Department of Veterans Affairs) to assist every veteran of any war of the United States in presenting and pursuing such claims as the veteran may have against the United States, arising out of war service and in establishing the veteran's right to any privilege, preference, care, or compensation provided for by the laws of the United States or of this state.

It further authorized the board to contract, under certain circumstances, with any organization of veterans which had regularly for a

period of five years preceding the date of such contract maintained an established committee or agency rendering similar services to veterans. Such contract could only be made after the board had determined that veterans could be adequately served through such arrangements. An appropriation of \$150,000 was made to cover the cost of this operation for the ensuing biennium.

The board (in February 1944) entered into temporary trial contract with the California Departments of the American Legion, the Disabled American Veterans, and the Veterans of Foreign Wars. Allotments were made of funds sufficient to augment the established and previous services of these organizations to June 30, 1944.

In the original contract it was agreed that the Veterans Welfare Board would not subsidize any services then being provided by the veterans' organizations or contribute to the upkeep of their current structure, but that the funds would be used solely for the purpose of increasing their service work beyond the scope of the then present structure up to a certain monthly, maximum limitation. During this five months' testing period, the organizations moved slowly in increasing personnel. The total expended was \$13,741.66, as follows:

American Legion -----	\$8,073.08
Disabled American Veterans -----	2,539.00
Veterans of Foreign Wars -----	3,129.58

Rapid demobilization of the armed services began in 1945. The Legislature appropriated an additional \$300,000 to support veterans claims and rights service for the biennium. For the first time the contracts were considered on a participating basis to cover all employees, with the organizations and the state matching dollar for dollar up to a monthly maximum of one-twelfth of the contract amount.

In early 1946 the organizations petitioned the Veterans Welfare Board to amend these contracts, increase the monthly maximum allowances, and change the terms of matching basis from dollar for dollar to a basis of 70 percent state funds and 30 percent organization funds. The Legislature was then in an extraordinary session and an appropriations bill had been introduced to supplement the Veterans Claims and Rights Service Fund by \$250,000 without regard to fiscal years.

The state's fiscal system had been changed from biennial to annual budgeting and an appropriation of \$500,000 was included in the Governor's Budget for veterans' claims and rights service for fiscal year 1947-48. The California Veterans Board, meeting in Santa Cruz on July 24, 1948, unanimously agreed that the following rules be adopted and applied to the budgets and contracts submitted by the organizations:

1. The State of California will contribute only to those salaries and wages of personnel whose full, employable time is spent on service and rehabilitation work with the contracting veterans' organization at the department level.
2. Service officers of veterans' organizations may be stationed in service centers or other agencies supported by community chest funds and their salaries submitted to the Department of Veterans Affairs.
3. The budgets of the contracting veterans' organizations shall be based on presently established and filled positions and no expansion.

sion shall be recognized under the terms of this contract for the ensuing year.

The board also adopted the following resolution:

That the State of California, Department of Veterans Affairs, will contract with the American Legion, Veterans of Foreign Wars, and Disabled American Veterans for the fiscal year 1948-49 on a matching basis of 75 percent State of California funds and 25 percent of the respective organization, for salaries and wages only of those employees specified in the budget presented, whose full, employable time is spent on service and rehabilitation work with the contracting veterans' organizations at the department level.

After applying the above rules and regulations to the budgets as submitted by the three organizations, it was determined that sums would be allotted to the three organizations in the following, approximate amounts:

American Legion	\$273,588.75
Veterans of Foreign Wars	131,979.38
Disabled American Veterans	94,431.87

The appropriation for 1952-53 provided an additional \$16,000 to allow state participation in the service program of the American Veterans of World War II (AMVETS) for a period of eight months. An appropriation of \$574,000 for fiscal year 1953-54 was considered by the California Veterans Board to earmark \$24,000 for a full year's operation for AMVETS.

In 1958 the appropriation was increased to \$596,700 to permit participation of the Jewish War Veterans. The contract with this organization included only the Los Angeles operation to the extent of \$16,-097.60 of state funds. The balance of \$6,600 was returned to the General Fund.

During the 1959 session, the Legislature amended the budget bill by inserting an item of \$596,700 to be expended under provisions of Section 699.5; thus continuing an appropriation for claims and rights service. In signing the budget bill, Governor Edmund G. Brown reduced this amount to \$407,950 with the stipulation that contracts between the Department of Veterans Affairs and the organizations would terminate on December 31, 1959, and thereafter the same level of service as a minimum was to be made available direct to veterans service by the Department of Veterans Affairs. Thus, \$298,350 was contracted for with the veterans' organizations for six months only, and \$109,600 was earmarked for state operation of the program from January 1 through June 30, 1960. Of the latter amount, \$61,000 actually was expended.

During the period of the contractual arrangement with the veterans' organizations, the State of California expended \$7,524,567.82, distributed as follows:

American Legion	\$4,267,140.89
Veterans of Foreign Wars	1,877,576.75
Disabled American Veterans	1,176,678.59
AMVETS	175,831.76
Jewish War Veterans	27,339.83

In this same period, expenditures by the organizations were as follows:

American Legion -----	\$2,229,248.83
Veterans of Foreign Wars -----	733,532.42
Disabled American Veterans -----	555,766.25
AMVETS -----	71,286.22
Jewish War Veterans -----	13,469.97
	<hr/>
	\$3,603,303.70

The total cost, then, to the State of California and the organizations from February 1, 1944, to December 31, 1959, was \$11,127,871.52.

The question has been asked as to how the organizations raised their matching funds. Methods varied. In almost all instances, a per capita portion of membership dues was earmarked for claims and rights service, generally referred to by them as "Rehabilitation" or "Rehab."

Other fund raising included subventions from the national body of the organization; contributions of individuals and chapters of the organization; sale of rehab. stamps or decals; salvage operations; sales of plaques, ties, and Christmas cards; baby contests; poppy, forget-me-not and white clover sales just before Memorial Day, or other patriotic national holidays. These are offered only as examples, as many other devices were used from year to year.

The services provided by the organizations were those outlined in Section 699.5 of the Military and Veterans Code, but most of the cost involved representation before the Veterans Administration rating boards and contacts with veterans in Veterans Administration hospitals. In addition to appearing before the Veterans Administration, the organizations then offered representation before the United States Civil Service Commission, Bureau of Immigration and Naturalization, Social Security Administration, Bureau of Federal Employees Compensation, Defense Department, and related agencies. However, all of these services, except for that of the Veterans Administration, have now been eliminated, though still provided by the Department of Veterans Affairs.

Another question asked was whether the money went directly into claims and rights work in the portion intended by the state, or was it primarily devoted to administrative and personnel costs. For the most part, the answer is in the affirmative to both parts, since approximately 90 percent of costs were for salaries and wages of personnel directly involved in claims and rights service or its exclusive administration. As a result of surveys conducted in the early years by the Department of Veterans Affairs in cooperation with the State Personnel Board, Department of Finance, and the Legislative Auditor, certain discrepancies did develop in the use of these funds, which resulted in the policy action taken by the California Veterans Board in 1948. After that date adequate safeguards were put into practice, and these were supported by monthly fiscal and activity audits.

As the costs of the program under the contract agreements grew steadily higher, that portion which the organizations were responsible for mounted in like ratio. For the American Legion and the Veterans of Foreign Wars, this meant deficit financing on their part, requiring them to draw upon accumulated reserves of their departments which had been built up over more than 20 years.

Approximately 70 percent of new claims initiated by county service officers in California convey power of attorney of the veteran or dependent to the California Department of Veterans Affairs. A county service officer indicated that the state's service is superior to that ever offered by the organizations. The appointees to the state's claims and rights service have qualified under state civil service examination, where they demonstrated a greater knowledge of veteran laws, regulations, and procedures than did their competitors. In return, they have better job security and standardized salaries at a higher level than those enjoyed by the veterans' organization employees. Morale is good.

From February 1944 through calendar year 1959, 17 contracts were entered into by the department with the American Legion, with the Disabled American Veterans, and with the Veterans of Foreign Wars. Eight contracts were negotiated with AMVETS and two with the Jewish War Veterans.

To be eligible for contract a veterans' organization chartered by Congress must have maintained at its own expense an established committee or agency representing veterans before a California regional office of the Veterans Administration for a period of five years. If not a chartered organization, but recognized by the Veterans Administration, it must have maintained such representation before a California regional office of the Veterans Administration for a period of 12 years. This second provision applied only to the Jewish War Veterans.

The number of applications for assistance serviced under the auspices of the contract program during the last three complete fiscal years of its operation by each veterans' organization is as follows:

	1956-57	1957-58	1958-59
American Legion -----	311,697	316,798	297,077
DAV -----	89,519	95,533	91,293
VFW -----	154,324	150,543	126,177
AMVETS -----	24,823	20,179	19,858
JWV -----			15,094
	<hr/> 580,363	<hr/> 583,053	<hr/> 549,499

No comparable data can be provided for the direct claims and rights service program of the department, since reportable data is not comparable. The organizations reported the number of services performed; such as, interviews—office, telephone, hospital, and other; applications for hospitalization filed; applications for outpatient treatment filed; veterans claims filed—initial, reopened; dependents claims filed—initial, reopened; insurance forms filed; applications for vocational and rehabilitation training file; miscellaneous claims filed; rating actions; Veterans Administration files reviewed; personal intercessions, not rating board—Veterans Administration, other.

The Division of Service and Coordination veterans claims and rights service reports are based on work measurement rather than number of services. This new system was adopted upon the recommendation of the Organization and Cost Control Division of the Department of Finance after a one-year study.

The question is presented as to current trends and the number of applications relating to similar requests for assistance. Department re-

ports show a slight ascendancy during the past two years, pointing toward a plateau for a few years because of non-service-connected pension applications for World War I veterans of advanced age, then a temporary descent for a few years, followed by gradual increase in workload as World War II veterans' ages make such pensions attainable.

For the purpose of comparing the contract services with state direct operation, the department shows the following state costs for the last 4½ years of the contract period:

1955-56	-----	\$573,879.17
1956-57	-----	574,000.00
1957-58	-----	574,000.00
1958-59	-----	590,097.60
July 1959-December 1959	-----	298,350.00
		<hr/>
		\$2,610,326.77

Actual data on the cost of claims and rights service for the first 2½ years of direct operation is detailed below with estimates for the last 2 years, since no distinction has been made in recent budgets and fiscal records between the claims and rights service and the other functions administered by the Division of Service and Coordination:

January 1 to June 30, 1960	-----	\$58,333.40
Fiscal year ending June 30, 1961	-----	134,827.70
Fiscal year ending June 30, 1962	-----	149,065.51
*Fiscal year 1962-63 and 1963-64	-----	400,000.00
		<hr/>
		\$742,226.61

* Estimated

This represents a saving to the state of \$1,868,100 for the last 4½ years, as compared with the 4½ years preceding.

During the hearings on this matter, the issue was raised of whether state civil service workers are able to establish the same personal relationship with veteran applicants as is established by representatives of veterans' organizations. The testimony indicated that because state civil service employees are better paid, have better working conditions and better fringe benefits, they are in a better position to devote greater attention to each individual client.

The issue of whether the Department of Veterans Affairs is able to provide proper representation for clients before the Veterans Administration, either on the regional level or before the Veterans Appeals Board in Washington, D.C., was also raised. The evidence clearly indicated that the Veterans Administration has given the Claims and Rights Section of the California Department of Veterans Affairs every right of representation that it has given to any veterans' organization. The evidence also indicated that the rate of successful appeals by the department is well above the national average. However, the Board of Veterans Appeals does not break down statistics on certification or disposition of appeals by individual service organizations.

It was pointed out to the committee that provisions have been made for rendering service to veterans in state or federal hospitals by representatives of the Department of Veterans Affairs.

Testimony was heard from Department of Veterans Affairs and the major veterans' organizations in California.

APPENDICES

APPENDIX A

WITNESSES APPEARING AT HEARINGS

1. Mr. John Handsaker, Deputy Director, Department of Veterans Affairs.
2. Mr. W. Keith Garrison, California Association of Veterans Service Officers.
3. Mr. H. J. Johnson, Manager, Division of Farm and Home Purchases, Department of Veterans Affairs.
4. Mr. Walter Thompson, Commander, Veterans of Foreign Wars.
5. Mr. Martin Iorns, Manager, Division of Educational Assistance, Department of Veterans Affairs.
6. Mr. Pete Ostrander, The American Legion.
7. Mr. Cliff Coleman, The American Legion.
8. Mr. Harry Wentworth, Department of California, Disabled American Veterans.
9. Mr. William Smaker, California Association of Service Officers.
10. Colonel Carroll Peeke, Editor, California Legionnaire.
11. Mr. James L. Kehoe, American Veterans of World War II and Korea.
12. Mr. Albert G. Driggs, Veterans of World War I.
13. Hon. Phillip Burton, State Assemblyman.
14. Hon. Charles W. Meyers, State Assemblyman.
15. Mr. Herman J. Pitetti, Adjutant, San Francisco Fire Fighters Post 97.
16. Mr. Vic Keyak, citizen.
17. Dr. E. B. Roessler, Director, Northern Area University of California Extension.
18. Mr. John Flynn, Representative, American Legion.
19. Mr. Joseph M. Farber, Director, State Department of Veterans Affairs.
20. Mr. James W. Cowan, Manager, Division of Service and Coordination, State Department of Veterans Affairs.
21. Mr. Orville W. Rice, Department Service Officer, Veterans of World War I of U.S.A.
22. Mr. H. R. Rainwater, Legislative Officer, Department of California, Veterans of Foreign Wars.
23. Mr. Frank Stephens, Rehabilitation Director and Legislative Director, American Veterans of World War II, AMVETS.
24. Mr. Manuel Val, Representative, State Department of Veterans Affairs.
25. Mr. Jack Kramer, Department Commander, Disabled American Veterans, State of California.
26. Mr. Irving Klein, Member, California Veterans Board.
27. Mr. Charles A. Wood, Sacramento County Veterans Service Officer.
28. Mr. Dean Hooper, Administrative Assistant, State Department of Veterans Affairs.

APPENDIX B

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 1563

Introduced by Mr. Burton

February 28, 1963

REFERRED TO COMMITTEE ON MILITARY AND VETERANS AFFAIRS

An act to repeal Section 987.15 of the Military and Veterans Code, relating to veterans.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 987.15 of the Military and Veterans
2 Code is repealed.
3 ~~987.15. The department shall not acquire a home in which~~
4 ~~the veteran has an interest of record except in the following~~
5 ~~instances:~~
6 (a) ~~Where the application is for aid for the construction of~~
7 ~~a home upon unimproved real property owned by the ap-~~
8 ~~plicant.~~
9 (b) ~~Where, after July 2, 1957, the veteran had no interest~~
10 ~~of record in the property at the time of filing his application~~
11 ~~and thereafter secured interim financing pending the process-~~
12 ~~ing and approval of his application by the department.~~
13 (c) ~~Where the application has been filed with the depart-~~
14 ~~ment prior to July 2, 1957. Twenty percent of all funds avail-~~
15 ~~able for expenditure under this article, or so much thereof as~~
16 ~~may be necessary, shall be used by the department for the ac-~~
17 ~~quisition of homes in behalf of veterans who have filed applica-~~
18 ~~tions prior to July 2, 1957, and whose applications are con-~~
19 ~~sidered active by the department, for the acquisition of homes~~
20 ~~in which they have acquired interests of record, until such time~~
21 ~~as all applications of this nature have been granted.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1563, as introduced, Burton (Mil. & Vet. Aff.). Veterans.

Repeals Sec. 987.15, M. & V.C.

Repeals provision prohibiting Department of Veterans Affairs, under Veterans Farm and Home Purchase Act of 1943, from acquiring home in which veteran has interest of record.

APPENDIX C

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 2813

Introduced by Mr. Meyers

April 25, 1963

REFERRED TO COMMITTEE ON MILITARY AND VETERANS AFFAIRS

An act to repeal Section 987.15 of the Military and Veterans Code, relating to veterans.

The people of the State of California do enact as follows:

1 SECTION 1. Section 987.15 of the Military and Veterans
2 Code is repealed.

3 987.15. The department shall not acquire a home in which
4 the veteran has an interest of record except in the following
5 instances:

6 (a) Where the application is for aid for the construction of
7 a home upon unimproved real property owned by the ap-
8 plicant.

9 (b) Where, after July 2, 1957, the veteran had no interest
10 of record in the property at the time of filing his application
11 and thereafter secured interim financing pending the process-
12 ing and approval of his application by the department.

13 (c) Where the application has been filed with the depart-
14 ment prior to July 2, 1957. Twenty percent of all funds avail-
15 able for expenditure under this article, or so much thereof as
16 may be necessary, shall be used by the department for the
17 acquisition of homes in behalf of veterans who have filed ap-
18 plications prior to July 2, 1957, and whose applications are
19 considered active by the department, for the acquisition of
20 homes in which they have acquired interests of record, until
21 such time as all applications of this nature have been granted.

LEGISLATIVE COUNSEL'S DIGEST

AB 2813, as introduced, Meyers (Mil. & Vet. Aff.). Veterans.

Repeals Sec. 987.15, M. & V.C.

Repeals provision prohibiting Department of Veterans Affairs, under Veterans Farm and Home Purchase Act of 1943, from acquiring home in which veteran has interest of record.

APPENDIX D

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 2704

Introduced by Mr. Meyers

April 24, 1963

REFERRED TO COMMITTEE ON MILITARY AND VETERANS AFFAIRS

An act to amend Section 981 of the Military and Veterans Code, relating to veterans' education.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 981 of the Military and Veterans Code
- 2 is amended to read:
- 3 981. There is in the state government an educational insti-
- 4 tution known as the California Veterans' Educational Insti-
- 5 tute, which is under the management and control of the De-
- 6 partment of Veterans Affairs. The purpose of the institute is
- 7 to provide opportunities for veterans to continue *and main-*
- 8 *tain* their education.

LEGISLATIVE COUNSEL'S DIGEST

A.B. 2704, as introduced, Meyers (Mil. & Vet. Aff.). Veterans' education.

Amends Sec. 981, M. & V.C.

States purpose of California Veterans' Educational Institute to be for purpose of maintaining as well as continuing education.

APPENDIX E

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 2707

Introduced by Mr. Meyers

April 24, 1963

REFERRED TO COMMITTEE ON MILITARY AND VETERANS AFFAIRS

An act to add Section 1051 to the Military and Veterans Code, relating to the Veterans' Home of California.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1050 is added to the Military and Vet-
- 2 erans Code, to read:
- 3 1050. Subject to appropriation therefor, the department
- 4 shall provide for the conversion of a building at the home from
- 5 domiciliary use to a facility to be used to provide intermediate
- 6 and long-term nursing home care for veterans eligible for ad-
- 7 mission to the home. The department shall also provide for the
- 8 adequate staffing of such facility.

LEGISLATIVE COUNSEL'S DIGEST

A.B. 2707, as introduced, Meyers (Mil. & Vet. Aff.), Veterans' Home of California.

Adds Sec. 1050, M. & V.C.

Requires Department of Veterans' Affairs, subject to appropriation, to convert domiciliary building at home to facility providing intermediate and long-term nursing home care for veterans eligible for admission to home.

APPENDIX F

CALIFORNIA LEGISLATURE, 1963 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 2984

Introduced by Assemblyman Meyers

April 26, 1963

REFERRED TO COMMITTEE ON MILITARY AND VETERANS AFFAIRS

An act to amend the heading of Chapter 1 (commencing with Section 1010) of Division 5 of, and Sections 1010, 1011, 1012, 1012.1, 1013, 1014, 1018, 1019, 1023, 1024, 1025, 1026, 1030, 1030.1, 1031, 1032, 1033, 1034, 1035, 1035.1, 1036, 1037, 1038, 1039, 1041, 1042.1, 1043, 1045, 1046, 1047, 1048, 1049 of, the Military and Veterans Code, relating to California veterans' homes, and making an appropriation therefor.

The people of the State of California do enact as follows:

1 SECTION 1. The heading of Chapter 1 (commencing with
2 Section 1010) of Division 5 of the Military and Veterans Code
3 is amended to read:

4
5 CHAPTER 1. CALIFORNIA VETERANS' ~~HOME~~ HOMES
6 OF CALIFORNIA
7

8 SEC. 2. Section 1010 of said code is amended to read:

9 1010. As used in this chapter:

10 (a) "Home" means the *Northern California Veterans'*
11 *Home of California or the Southern California Veterans'*
12 *Home.*

13 (b) "Department" means the Department of Veterans Af-
14 fairs.

LEGISLATIVE COUNSEL'S DIGEST

A.B. 2984, as introduced, Meyers (Mil. & Vet. Aff.). Southern California veterans home.

Amends various secs., M. & V.C.
Creates a Southern California veterans home in the Department of Veterans Affairs, prescribes its powers, duties, responsibilities, and organization, and makes an appropriation for the construction thereof.

APPENDIX F—Continued

1 (c) "Veteran" means a member of ~~the~~ *a home provided for*
2 *by this chapter.*

3 SEC. 3. Section 1011 of said code is amended to read:

4 1011. There is in the Department of Veterans Affairs a
5 *Northern California Veterans' Home of California*, which is
6 situated at Veterans' Home, Napa County, *and a Southern*
7 *California Veterans' Home, which is situated at Veterans'*
8 *Home, _____ County.*

9 SEC. 4. Section 1012 of said code is amended to read:

10 1012. The ~~home~~ *homes are* for aged and disabled persons
11 who served in the armed forces of the United States during
12 a war period as defined by law; who were discharged under
13 honorable conditions from such service, and who are eligible
14 for hospitalization or domiciliary care in a veterans' facility
15 in accordance with the rules and regulations of the United
16 States Veterans Administration, and who have been bona fide
17 residents of this State for 10 years immediately preceding the
18 date of application. The property of the ~~home~~ *homes* shall be
19 used for this purpose. The provisions of this section shall not
20 be retroactive.

21 SEC. 5. Section 1012.1 of said code is amended to read:

22 1012.1. Prior to the admission of a veteran as a member of
23 ~~the~~ *a home*, and at any time during which a veteran is a mem-
24 ber of ~~the~~ *a home*, the department may investigate the veter-
25 an's financial status to insure that the veteran is unable to
26 pay for necessary hospital or domiciliary care outside of the
27 home. The department may contract with any other state
28 agency to conduct such an investigation in its behalf.

29 SEC. 6. Section 1013 of said code is amended to read:

30 1013. All property conveyed to and accepted by the State
31 under the provisions of Chapter 101, Statutes of 1897, and
32 any other property conveyed to and accepted for ~~the~~ *a home*
33 shall be the property of the home the same as though the de-
34 scription of such property and acceptance thereof were herein
35 set forth.

36 SEC. 7. Section 1014 of said code is amended to read:

37 1014. The ~~home~~ *homes* shall be under the management and
38 control of the department and, subject to the policies adopted
39 by the California Veterans Board and the direction of the
40 Director of Veterans Affairs, shall be administered by the
41 Commandant, Veterans' ~~Home~~ *Homes* of California, known
42 as the Manager of the Division of Veterans Homes.

43 SEC. 8. Section 1018 of said code is amended to read:

44 1018. The commandant, executive officer, chief surgeon,
45 quartermaster or supply officer, adjutant, chaplain, physicians
46 and surgeons, dental officers, hospital administrative officer,
47 and the utilities officer in office shall remain in office as pro-
48 vided in the State Civil Service Act. Thereafter the comman-
49 dant shall appoint, subject to civil service, qualified persons to
50 fill such offices. *The commandant shall also appoint deputy*

APPENDIX F—Continued

1 *commandants and deputy executive officers to administer the*
2 *homes and shall appoint, subject to civil service, such other*
3 *qualified persons necessary to administer the homes.*

4 SEC. 9. Section 1019 of said code is amended to read:

5 1019. Officers of the ~~home~~ *homes* shall take the oath of office
6 required of state officers, shall file a bond in form and amount
7 approved by the department, and shall reside at the ~~home~~
8 *homes* providing quarters are available. Officers may be re-
9 moved by the Director of Veterans Affairs for cause as pro-
10 vided in the State Civil Service Act.

11 SEC. 10. Section 1023 of said code is amended to read:

12 1023. The department may sue and be sued in any of the
13 courts of this State. All property held by the department
14 shall be held in trust for the State and for the use and benefit
15 of the ~~home~~ *homes*. The commandant shall manage the ~~home~~
16 *homes*, and administer ~~its~~ *their* affairs, and subject to the
17 direction of the Director of Veterans Affairs adopt rules and
18 regulations for the government of the ~~home~~ *homes*, in con-
19 formity as nearly as possible, to the rules and regulations of
20 the United States Veterans Administration for their facilities.

21 SEC. 11. Section 1024 of said code is amended to read:

22 1024. The department may conduct such investigation as
23 may be required to determine the total value of the property
24 and assets of any veteran applying for admission to ~~the a~~
25 *home*, and may contract with any other state agency to con-
26 duct such an investigation in its behalf.

27 SEC. 12. Section 1025 of said code is amended to read:

28 1025. The ~~home~~ *homes* shall be open at any time to the
29 inspection of the Director of the United States Veterans Ad-
30 ministration or his authorized representative.

31 SEC. 13. Section 1026 of said code is amended to read:

32 1026. The records, reports, and accounts kept by the ~~home~~
33 *homes* shall conform, as nearly as possible to the requirements
34 of the United States Veterans Administration.

35 SEC. 14. Section 1030 of said code is amended to read:

36 1030. The department shall report to the Governor before
37 the first day of January of each year stating all receipts and
38 expenditures, the condition of the ~~home~~ *homes*, the number of
39 veterans received and discharged during the preceding fiscal
40 year, and such other matters touching upon the management,
41 conduct, and interest of the ~~home~~ *homes* as the department
42 deems proper, or as are required by the Governor.

43 The department shall also make any other reports which the
44 Governor requires. All reports shall be verified by the Director
45 of Veterans Affairs and shall be certified by the commandant.

46 SEC. 15. Section 1030.1 of said code is amended to read:

47 1030.1. The department may enter into contracts with the
48 United States or any agency thereof, any governmental agency,
49 any person, or any corporation for the performance of services
50 or manufacture of articles by disabled members of the ~~home~~

APPENDIX F—Continued

1 *homes*. The proceeds of any such contract, less the actual op-
2 erating expenses, shall be paid to the individual disabled vet-
3 erans who perform the services or labor.

4 SEC. 16. Section 1031 of said code is amended to read:

5 1031. All moneys received by the State from the United
6 States for the use of the ~~home~~ *homes* shall be placed to the
7 credit of and shall augment the current appropriation for the
8 support of the ~~home~~ *homes*.

9 SEC. 17. Section 1032 of said code is amended to read:

10 1032. The department shall fix a schedule of wages for
11 veterans who are employed at the ~~home~~ *homes*, subject to the
12 approval of the Director of Finance.

13 SEC. 18. Section 1033 of said code is amended to read:

14 1033. All bills and charges against the ~~home~~ *homes* for sup-
15 plies, salaries, or other expenses, from state appropriations
16 shall be prepared and audited in the manner provided by law
17 and warrants therefor shall be paid out of any money available
18 for such purposes according to the directions of the comman-
19 dant approved by the Department of Finance.

20 SEC. 19. Section 1034 of said code is amended to read:

21 1034. Except money received from this State for disburse-
22 ment, all moneys received by the ~~home~~ *homes*, or by any offi-
23 cer of the ~~home~~ *homes*, including pension and other moneys
24 belonging to veterans and other trust moneys, shall be im-
25 mediately paid to the executive officer of the ~~home~~ *homes*. On
26 or before the 10th day of each month the executive officer of
27 the ~~home~~ *homes* shall forward to the State Treasurer all moneys
28 in his possession, except pension and other moneys belonging to
29 veterans, trust moneys, the post funds, and the emergency
30 fund, hereinafter mentioned, together with a statement of the
31 sources from which the same have been received. The moneys
32 shall be deposited by the State Treasurer to the credit of the
33 General Fund of the State; provided, however, that abate-
34 ments of support expenditures shall be credited to the support
35 appropriation current at the time of collection.

36 SEC. 20. Section 1035 of said code is amended to read:

37 1035. Any balance of moneys of any veteran held by the
38 ~~home~~ *homes*, or by ~~its~~ *their* authority, shall, upon the death of
39 the veteran, where undisposed of by will, executed prior to the
40 date of the veteran's admission to ~~the a~~ *a* home, be held as a
41 trust fund to be paid by the ~~home~~ *homes* upon proof deemed
42 to be proper to the commandant, directly and without probate,
43 to the spouse, dependent children, or dependent father or
44 mother of the veteran; provided, that the commandant is
45 hereby empowered to disburse funds of any deceased veteran
46 for payment of such funeral expenses.

47 If no spouse, dependent children, or dependent father or
48 mother are discovered within five years after the death of the
49 veteran, or if the spouse, dependent children, or dependent
50 father or mother discovered within such time are not entitled

APPENDIX F—Continued

1 to the whole thereof, the moneys not paid to the spouse, de-
2 pendent children, or dependent father or mother, and undis-
3 posed of by will executed prior to the date of the veteran's
4 admission to ~~the a~~ home or by will executed thereafter, leaving
5 such property to the spouse, dependent children, or dependent
6 father or mother, shall be paid to the post fund of the ~~home~~
7 *homes* which fund shall be used for the common benefit of the
8 veterans under the direction of the commandant.

9 SEC. 21. Section 1035.1 of said code is amended to read:

10 1035.1. If any member of ~~the a~~ home dies, any balance of
11 money or personal property held by the home shall be dis-
12 tributed in the manner prescribed in this chapter, and any
13 will executed subsequent to the date of the veteran's admission
14 to the home shall not be valid as it relates to money or personal
15 property held by the home, except to the extent that such will
16 disposes of the money or property to the spouse, dependent
17 children, or dependent father or mother of the veteran.

18 SEC. 22. Section 1036 of said code is amended to read:

19 1036. The veterans may voluntarily deposit money with
20 ~~the a~~ home, which the home shall receive and keep without
21 charge as a trust fund.

22 SEC. 23. Section 1037 of said code is amended to read:

23 1037. The money belonging to a veteran and voluntarily
24 deposited with ~~the a~~ home may be withdrawn, in whole or
25 in part, at the will of the veteran. Any balance remaining
26 upon his death, undisposed of by will, executed prior to the
27 veteran's admission to the home, and not paid to his spouse,
28 dependent children, or dependent father or mother pursuant
29 to a will or within the time and in the manner hereinbefore
30 provided, shall be paid to the post fund.

31 SEC. 24. Section 1038 of said code is amended to read:

32 1038. All money deposited with ~~the a~~ home for a veteran
33 shall be paid to him on demand, upon his discharge from or
34 voluntary leaving the home. If such money is not so demanded
35 at the time of discharge or leaving or within a period of five
36 years thereafter, or demanded by the spouse, dependent chil-
37 dren, dependent father or mother, devisees, or legatees in case
38 of his decease after his discharge or voluntary leaving, the
39 same shall be paid to the post fund.

40 SEC. 25. Section 1039 of said code is amended to read:

41 1039. All moneys received by ~~the a~~ home under specific
42 trust agreements shall be paid into the post fund five years
43 after the trust agreement terminates if not claimed by the
44 spouse, dependent children, dependent father or mother, de-
45 visees, or legatees of the veteran as hereinabove provided.

46 SEC. 26. Section 1041 of said code is amended to read:

47 1041. If the personal property of a veteran is unclaimed
48 for a period of one year after the date of his death or the date
49 of his discharge or voluntary departure from ~~the a~~ home, the
50 commandant ~~of the home~~ may proceed by public auction or

APPENDIX F—Continued

1 private sale to sell the property. The sale shall take place at
2 a public place in the home, and notice of sale shall be posted
3 in such place at least 10 days previous to the date of sale. The
4 proceeds of sale shall be credited to the post fund.

5 SEC. 27. Section 1042.1 of said code is amended to read;
6 1042.1. If any check is drawn upon any trust fund of ~~the~~
7 a home and remains unclaimed, or is not cashed, for a period
8 of one year, it shall be canceled and the amount thereof shall
9 be turned over to the executive officer and be deposited to the
10 credit of the post fund and used for the common benefit of the
11 members of the home.

12 SEC. 28. Section 1043 of said code is amended to read:
13 1043. With the exception of officers and employees and
14 their families, no person shall be admitted to reside in ~~the a~~
15 home, who is not eligible under Section 1012.

16 SEC. 29. Section 1045 of said code is amended to read:
17 1045. Nothing in this chapter shall prevent the State from
18 transferring the property and management of the ~~home~~ homes
19 to the United States for a home of similar character.

20 SEC. 30. Section 1046 of said code is amended to read:
21 1046. If it appears necessary or proper that a guardian of
22 the estate of a veteran be appointed, the court in its discretion
23 may, upon application of the commandant, acting through his
24 designated officer, appoint ~~the a~~ home as guardian of such es-
25 tate and cause letters of guardianship of such estate to be
26 issued to the home.

27 For the purposes of this chapter, the ~~home~~ is homes are
28 made a ~~corporation~~ corporations and, acting through an officer
29 designated by the commandant, may act as guardian of es-
30 tates, assignee, receiver, depository or trustee, under appoint-
31 ment of any court or by authority of any law of this State,
32 and transact business in such capacity in like manner as an
33 individual, and for this purpose may sue and be sued in any
34 of the courts of this State.

35 The ~~home~~ homes shall be appointed as guardian, assignee,
36 receiver, depository or trustee without bond. The officer desig-
37 nated by the commandant shall be required to give a surety
38 bond in such amount as may be deemed necessary from time
39 to time by the commandant, but in no event shall the initial
40 bond be less than ten thousand dollars (\$10,000) which bond
41 shall be for the joint benefit of the several estates, the com-
42 mandant, and the State of California. The ~~home~~ homes shall
43 receive such reasonable fees as shall be allowable for its ex-
44 penses for filing fees, attorneys' fees, and bond premiums. The
45 court shall allow to ~~the a~~ home at the time of its appointment
46 as guardian of an estate an amount which the court estimates
47 would be the bond premium for the estate if a separate bond
48 were required for the estate. The fees paid to the home may
49 be used as a trust account from which may be drawn expenses
50 for filing fees, attorneys' fees and bond premiums in all es-

APPENDIX F—Continued

1 tates it undertakes to administer. Whenever the balance re-
2 maining in such trust account shall exceed a sum deemed
3 necessary by the commandant for the payment of the filing
4 fees, attorneys' fees and bond premiums incurred in the vari-
5 ous estates, such excess shall be paid annually into the post
6 fund of the ~~home~~ homes.

7 The ~~home~~ homes when acting as guardian of a veteran may
8 deposit the funds of the estate in the special deposit fund of
9 the ~~home~~ homes, and may invest and reinvest such funds in
10 securities which are legal investments for savings banks in
11 this State.

12 SEC. 31. Section 1047 of said code is amended to read:

13 1047. The commandant shall maintain a post fund which
14 shall be used, at the discretion of the commandant subject to
15 the approval of the Director of Veterans Affairs, to provide
16 for the general welfare of the ~~home~~ homes and ~~its~~ their mem-
17 bers to include but not limited to providing for operations of
18 the post ~~exchange~~, ~~motion picture theater~~, ~~library~~, ~~band ex-~~
19 ~~changes~~, ~~motion picture theaters~~, ~~libraries~~, ~~bands~~, and to pay
20 for newspapers, chapel expenses, welfare and entertainment
21 expenses, sport activities, celebrations, and to pay for any
22 necessary insurance to protect property of the fund or the
23 post ~~exchange~~ ~~exchanges~~, or any other activity for the benefit
24 of the ~~home~~ homes or ~~its~~ their members.

25 SEC. 32. Section 1048 of said code is amended to read:

26 1048. The post fund shall include any profits from opera-
27 tions of the post ~~exchange~~ ~~exchanges~~, all donations to the
28 fund, and any money from the estates of deceased members
29 which have been held for five years and unclaimed by the
30 heirs.

31 SEC. 33. Section 1049 of said code is amended to read:

32 1049. The post fund may be used to establish or operate a
33 post ~~exchange~~ ~~exchanges~~ which may conduct any lawful en-
34 deavor which in the judgment of the commandant will benefit
35 the members of ~~the~~ a home. The commandant may establish
36 the post ~~exchange~~ ~~exchanges~~ to operate at a profit.

37 SEC. 34. The sum of ----- (\$-----) is hereby ap-
38 propriated out of any moneys in the State Treasury in the
39 General Fund to the Department of Veterans Affairs to con-
40 struct the Southern California Veterans Home.

APPENDIX G

MILITARY AND VETERANS CODE

DIVISION 4. VETERANS' AID AND WELFARE

Chapter 1. Department of Veterans Affairs

Section 699.5. The department may assist every veteran of any war of the United States and the dependent of every such veteran in presenting and pursuing such claim as the veteran or dependent may have against the United States arising out of war service and in establishing the veteran's or dependent's right to any privilege, preference, care, or compensation provided for by the laws of the United States or of this State. The department may cooperate and, with the approval of the Department of Finance, contract with any organization of veterans chartered by the Congress of the United States and authorized by the Veterans Administration to pursue claims before federal agencies and which has regularly, for a period of five years next preceding the date of such contract, maintained an established committee or agency, in a Veterans Administration regional office in the State of California, rendering similar services to veterans and dependents as the services referred to in this section and pursuant to such contract may compensate such organization for services within the scope of this section rendered by it to any veteran or dependent. The department also may cooperate and, with the approval of the Department of Finance, contract with any other organization of veterans authorized by the Veterans Administration to pursue claims before federal agencies and which has regularly, for a period of 12 years next preceding the date of such contract, maintained an established committee or agency, in a Veterans Administration regional office in the State of California, rendering similar services to veterans and dependents as the services referred to in this section and pursuant to such contract may compensate such organization for services within the scope of this section rendered by it to any veteran or dependent. No such contract shall be made unless the department determines that, owing to the confidential relationships involved and the necessity of operating through agencies sympathetic towards their problems, the services cannot satisfactorily be rendered otherwise than through the agency of veterans or dependents involved will be served if such contract is made.

APPENDIX H

COMPARATIVE MEMBERSHIP FIGURES OF VETERANS ORGANIZATIONS IN CALIFORNIA

<i>Organization and commander</i>	<i>Membership July 1964</i>	<i>Percentage of California Veterans</i>	<i>Membership July 1963</i>	<i>Membership July 1962</i>
American Legion ----- Harry C. Dennis Fresno	127,409	4.9%	134,000	133,078
Veterans of Foreign Wars ----- Allen J. Martin La Puente	52,000	2%	48,000	50,064
Veterans of World War I ----- Cloye Williams Alhambra	24,500	1%	23,000	unknown
Disabled American Veterans ----- Jack P. Kramer Monterey Park	14,620	$\frac{1}{2}$ of 1%	14,000	13,406
AmVets ----- Thad Males Paso Robles	2,000	1/10 of 1%	2,200	2,000
Jewish War Veterans ---- Hyman Manber San Bruno	1,800	1/10 of 1%	1,800 est.	1,640
United Spanish War Veterans ----- Enoch Jones San Francisco	1,450	1/10 of 1%	1,790	unknown
Military Order of Purple Heart ----- Edward Alunno San Jose	775	1/20 of 1%	1,000 est.	675
Total -----	224,000	9%	226,000	225,000 est.

The combined total of the membership in the eight veterans' organizations approximates 224,000. It should be noted, however, that these are individuals and thus the figures do not take into consideration the multiple memberships held by some veterans. If only one of each three held membership in a second organization, it would reduce the total to about 150,000. It is believed that multiple memberships are even more common than the one-in-three ratio, but no confirmation can be obtained. Present figures indicate there are approximately 2,600,000 veterans in California, of whom about 1,500,000 are California veterans under the definition of California laws.

APPENDIX I

BUDGET ANALYSIS OF CLAIMS AND RIGHTS

Since the 1958-59 fiscal year, the last complete one during which the state contracted with veterans' organizations for claims and rights service, a total of 23 employees have been added to the staff of the Division of Service and Coordination.

Except for the assistant information officer, let us assume the remainder of 22 employees devote full time to claims and rights. In order to be fair to the organization in making a comparison of costs we will also assume all 22 employees are paid at the highest step of their salary ranges.

	<i>1-1-64</i>	<i>Year</i>
2 Supervising veterans representatives	@ \$870-960	\$21,960
11 Veterans representatives	@ \$753-829	\$103,752
9 Clerks	@ \$486	\$52,488
22 Employees 1963-64 fiscal year		\$178,200
Add full difference in operating costs between the 1958-59 and 1963-64 fiscal years		\$26,742
		<u>\$204,942</u>

Therefore comparing the state's costs during the 1963-64 fiscal years with the cost of veterans' organization contracts during the 1958-59 fiscal year indicates a saving of \$391,758 to the state. Had there been an increase in subsidy to the organizations during the intervening years, the saving would be even greater.

APPENDIX J

APPEALS ROSTER—STATE OF CALIFORNIA—JULY 1, 1963—JUNE 30, 1964

SAN FRANCISCO

Allowed	13
Denied	49
Remanded (returned to VA for changes)	11
Administrative decision	5
Allowed	22

LOS ANGELES

21 percent of total of 62 considered, excluding 5 acted on administratively.	
Denied	90
Remanded (returned to VA for changes)	11
Administrative decision	0

19 percent of total of 112 considered.

O

CALIFORNIA LEGISLATURE

1963-1965

VOLUME 25

NUMBER 4

Report of the
ASSEMBLY INTERIM COMMITTEE ON
NATURAL RESOURCES, PLANNING, AND PUBLIC WORKS

PART II
REGIONAL PLANNING IN THE LAKE TAHOE BASIN
FILLING OF SAN FRANCISCO BAY
CONTROL OF OUTDOOR ADVERTISING
ADMINISTRATION OF TIDE AND SUBMERGED LANDS
OLD SACRAMENTO STATE PARK
LAND ACQUISITION POLICIES AND PROCEDURES
RECREATIONAL BOATING
RIDING AND HIKING TRAILS

MEMBERS OF THE COMMITTEE

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BURT M. HENSON, *Vice Chairman*

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E. RICHARD BARNES
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O. JAMES PARDAU, *Consultant*

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CLYDE BLACKMON, *Research Assistant*

GWEN MURRILL, *Committee Secretary*

PAULA OLSON, *Secretary*

JANUARY 1965

Published by the

ASSEMBLY

OF THE STATE OF CALIFORNIA

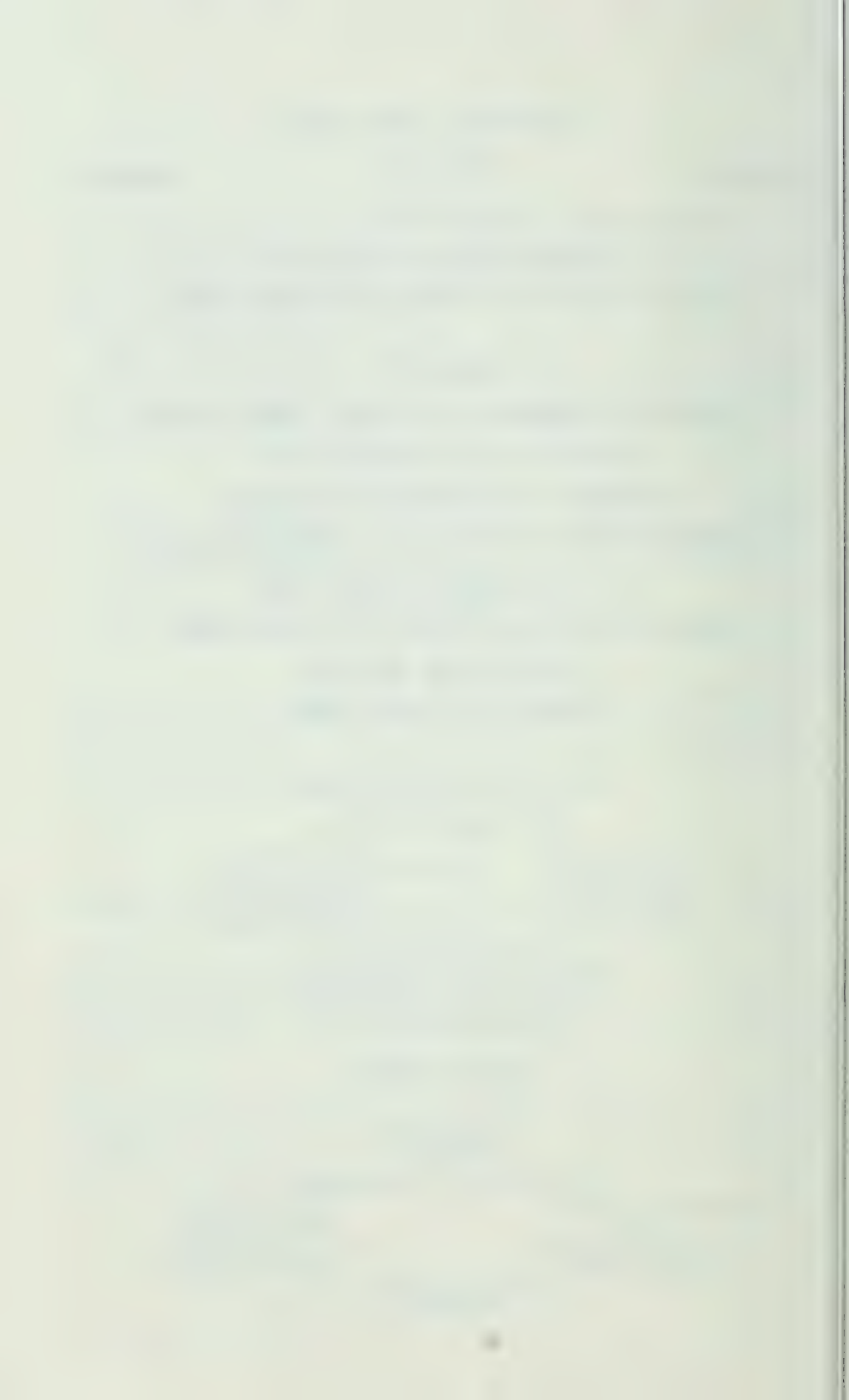
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Majority Floor Leader

HON. CARLOS BEE
Speaker Pro Tempore

HON. ROBERT MONAGAN
Minority Floor Leader

JAMES D. DRISCOLL
Chief Clerk



LETTER OF TRANSMITTAL

CALIFORNIA STATE LEGISLATURE
ASSEMBLY COMMITTEE ON NATURAL RESOURCES,
PLANNING, AND PUBLIC WORKS

January 5, 1965

HONORABLE JESSE M. UNRUH
Speaker of the Assembly, and
HONORABLE MEMBERS OF THE ASSEMBLY
State Capitol
Sacramento, California

Gentlemen:

The Assembly Interim Committee on Natural Resources, Planning, and Public Works submits herewith Part II of its report to the Legislature on 1963-65 Interim studies. This part of the report is devoted to the following subjects:

Regional Planning in the Lake Tahoe Basin (H.R. No. 464, 1963)
Filling of San Francisco Bay (H.R. Nos. 117, 538, 1963)
Control of Outdoor Advertising (H.R. No. 475, 1963)
Administration of Tide and Submerged Land (H.R. No. 512, 1963)
Old Sacramento State Park (A.B. No. 2097, 1963)
Land Acquisition Policies and Procedures (H.R. No. 460, 1963)
Recreational Boating (A.B. No. 1362, 1963)
Riding and Hiking Trails (A.B. 1877, 1963)

Each of these matters, while differing in scope and content, is of significance to the long-range development of California and is illustrative of the increasingly complex problems of responsible resources planning and management posed by the state's rapidly growing population.

The attached report presents a brief review of each problem and sets forth the general conclusions and recommendations of the committee for the legislation which seems indicated, and in certain instances includes suggested draft bills. These conclusions and recommendations are the result of a series of public hearings and additional research conducted during the interim period.

As outlined more fully in the attached report, your committee has reached the following general conclusions:

Regional Planning in the Lake Tahoe Basin. The Lake Tahoe Basin is in immediate danger of serious overexploitation, and in the absence of an effective long-range master plan and a bistate regional authority with meaningful enforcement powers, the destruction of the world-

famous amenities of this region will proceed through uncontrolled urban sprawl and pollution of the lake's uniquely clear waters.

Filling of San Francisco Bay. The basic problem is in developing an effective long-range master shoreline plan which recognizes all the values of San Francisco Bay, and a meaningful enforcement mechanism to see that it is carried out. Failure to develop such a plan and implementation authority will result in the destruction of the Bay as one of the great resources of the State of California.

Control of Outdoor Advertising. Interim study prior to adjournment of the 1964 Budget Session was a major contribution to passage of the Collier-Z'berg Act, providing for expanded control of outdoor advertising on the interstate highway system in California. Subsequent review has established the desirability of extending the provisions of this legislation to the entire state highway system.

Administration of Tide and Submerged Lands. The huge potential for exploitation and development of tide and submerged lands along the California coast makes essential the enactment of a uniform, comprehensive policy for their administration. Such a policy does not currently exist, and its development is dependent upon the results of numerous studies currently underway.

Old Sacramento State Park. As an integral part of the Sacramento Redevelopment Area, the Old Sacramento State Park will be a worthy addition to the State Park System.

Land Acquisition Policies and Procedures. Because of the increasing interdependence of state agencies, it appears that statewide planning and coordination of land acquisition would be better served by the creation of a single agency charged with this responsibility.

Recreational Boating. Because of the inequitable manner in which the program for refunding boat gasoline taxes operates, it would appear that these refunds should be discontinued. In addition, serious deficiencies are noted in the enforcement of state boating laws.

Riding and Hiking Trails. There is a clear need for institution of a riding and hiking trail program near urban areas, and work on such a program should begin immediately.

The committee expresses its deep appreciation to the many organizations, public officials, and private citizens who contributed so generously and responsibly to these studies, and they should feel a sense of participation in whatever long-range improvements result from their contributions to this work.

Respectfully submitted,

EDWIN L. Z'BERG, *Chairman*

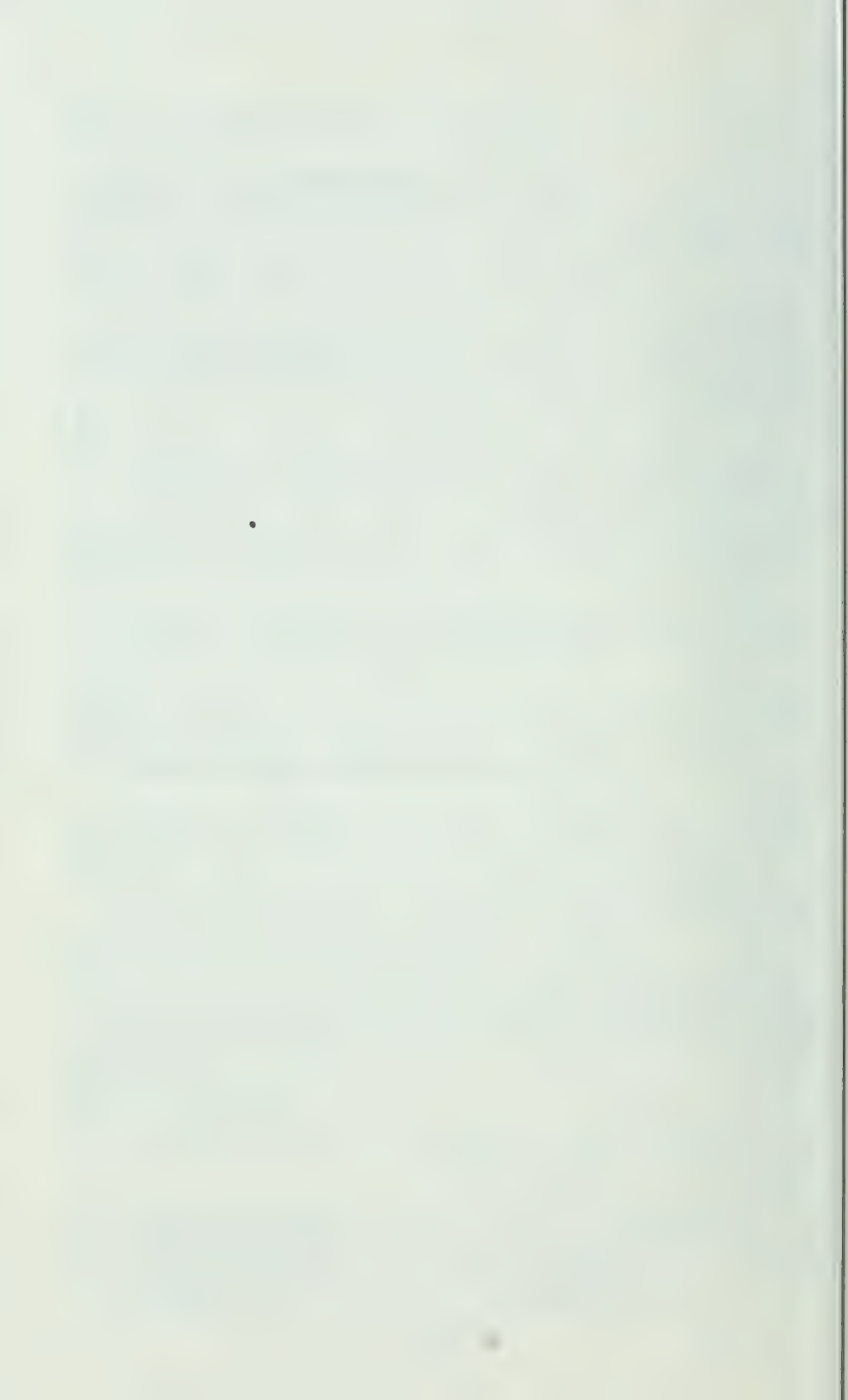
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REGIONAL PLANNING IN THE LAKE TAHOE BASIN

SUMMARY OF THE PROBLEM

Lake Tahoe, described by Mark Twain as "surely the fairest picture the whole earth affords,"¹ is one of the great natural resources of California—and the entire United States. Located at an elevation of 6,200 feet in a structural basin of the snowcapped, forest-covered Sierra Nevada Mountains on the border between California and Nevada, this magnificent body of water is 21 miles long and 12 miles wide, has an area of some 192 square miles, and is one of the highest and deepest fresh water lakes in the world. With a maximum depth of 1,645 feet and a mean depth of 990 feet, it contains the staggering total of 122 million acre-feet of water; by comparison, Lake Mead, formed by Hoover Dam, which is one of the largest artificial lakes in the world, contains an average of approximately 14 million acre-feet of water.

In its superb setting, and possessing the unique quality of being one of the clearest lakes in the world (only Lake Baikal in Russia and Crater Lake in Oregon are known to be comparable), it is not surprising that Lake Tahoe has become one of the most popular all-year mountain recreational attractions in the western United States. Of course, wherever such an incomparable lake were to be located, it is likely that it would see a steady increase in visitors and permanent residents as a natural consequence of exploding population and improved transportation means and facilities, coupled with the increasing leisure and financial resources at the disposal of the American people.

However, the Lake Tahoe Basin has been blessed or cursed, depending on one's point of view, with several additional factors which have uniquely contributed to the phenomenal recent and projected increase in its temporary and permanent population, and the accompanying rapidly accelerating rate of private and commercial development. Included in these factors are (1) the year-round attraction of legalized gambling in numerous resorts and casinos on the Nevada side of the lake, (2) the high-speed, high-volume transportation arterials leading into and out of the Lake Tahoe Basin, (3) the proximity to and easy access from the increasingly heavily populated San Francisco Bay region and Sacramento Valley, which provide a ready market for permanent home and cabin sites on the lake and a variety of commercial enterprises, and (4) the accelerating development of year-round facilities for such sports as snow skiing, water skiing, boating, golf, fishing, and swimming at many points in the basin.

In view of this increasingly heavy usage and exploitation, the Lake Tahoe Basin is a microcosm of the developing need for integrated resources planning and management which is becoming apparent throughout the State of California. With nearly every major resource

¹ *Roughing It*, p. 169.

present to some extent in the basin, which is a well-defined region by most standards, it is clear that most of the problems of future development and the preservation of values in the basin are inescapably regional in their significance. And if this development is to proceed in such a manner as to preserve some of the basin's original charm and beauty, and yet strike the proper balance with the private and commercial exploitation necessary to serve the permanent population of some one-half million and an annual visitor count in the millions estimated for the basin in the year 2000, it can be achieved only by the most careful and visionary planning and enforcement of land use, and unyielding protection of the values which are unique to this area.

However, the achievement of a truly workable approach to these development problems is immeasurably complicated by the profusion of governmental jurisdictions (one federal government, two states and five counties), districts, and administrative agencies in the basin, each of which exercises a varying degree of responsibility and authority for specific matters in the basin.

Accordingly, the Assembly Committee on Natural Resources, Planning, and Public Works was assigned the responsibility of determining the impact of development to date on the Lake Tahoe Basin, the status of regional planning, and the prospects for a regional approach to the long-range development of the basin.

In examining this matter, the committee felt that the following questions were of basic importance:

1. What has been the impact of development to date on the Lake Tahoe Basin?
2. Who holds the responsibility and authority for regional planning and development in the Lake Tahoe Basin?
3. What should be the role of the State of California and its agencies in regional planning and development in the Lake Tahoe Basin?
4. What is the status of regional planning in the Lake Tahoe Basin?
5. What is the necessity, desirability, and feasibility of establishing a regional multipurpose authority, with broad powers under the law to develop and enforce a regional master plan, which will ensure the optimum development and maximum preservation of the values which are unique to the Lake Tahoe Basin?

As the first phase of this in-depth study, the committee held an intensive two-day public hearing on September 10-11, 1964, at Lake Tahoe, during which it received carefully prepared testimony from a score of witnesses intimately familiar with development problems in the basin. The detailed statements were focused on the questions cited previously, and in accordance with committee policy were submitted prior to the hearing for advance review by the members. Subsequent to this hearing, the committee met in executive session to consider this testimony and other relevant information, and develop the report.

This report of the committee consists of findings and conclusions, and limited supporting information, concerning the fundamental problems, and recommendations for the most promising initial steps in its

solution. Because of the complex nature of basin problems and existing governmental relationships, it is anticipated that the actions arising out of the first phase of this study will mark only the beginning of efforts toward a solution, and that its ultimate form will be the result of further hard work by all basin interests. The committee expects to follow closely the progress of efforts to solve this problem, and stands ready to initiate any appropriate legislation in addition to that recommended in this report.

The committee wishes to acknowledge its sincere appreciation to the many individuals, organizations, and governmental agencies who have so thoughtfully and carefully examined this problem and expressed their views to the committee. It has been impressed by the deep interest and evident sincerity of the many witnesses who appeared before it, and they are to be commended for their concern over the initiation of a long-range program for the orderly and responsible development of the Lake Tahoe Basin.

FINDINGS AND CONCLUSIONS

This examination by the Assembly Interim Committee on Natural Resources, Planning, and Public Works of the status of long-range regional planning in the Lake Tahoe Basin is the first comprehensive review of this matter to be made by a policy committee of the California Legislature. However, the initiation of this study is particularly appropriate at this time because of the rapidly approaching crisis in the exploitation of basin resources and the noteworthy progress in the preparation of a long-range regional plan which has been made under the auspices of two unofficial organizations of basin interests in both states—the Lake Tahoe Area Council and the Tahoe Regional Planning Commissions of California and Nevada. The committee compliments the far-sighted public officials and private citizens who worked so diligently through these organizations to define the initial problems and sponsor the preparation of the Lake Tahoe 1980 Regional Plan, which has recently been completed and is now under review by basin interests.

Careful analysis and evaluation by the committee of the testimony presented in public hearing and other information available to it leads to the following findings and conclusions with respect to regional planning in the Lake Tahoe Basin.

1. Although it varies by location, the general impact of development to date in the Lake Tahoe Basin has been serious, and in some areas thoughtless exploitation has damaged the amenities beyond reasonable hope of recovery. In addition, if the growth in basin population continues at its present pace in the absence of a responsible pattern of controls, the basin faces the possibility of general and irreversible overexploitation. The most urgent problems arising from this situation are the need for the development and enforcement of a responsible land use plan, and an effective means of protecting the unique clarity of lake water from pollution and eutrophication.²

² A biochemical process in lake waters by which increasing biological activity (usually algal growth) resulting from added nutrients, frequently from sewage wastes, produces turbidity, a process which would destroy the unusual character of Lake Tahoe water.

2. Under existing law, the responsibility and authority for planning in the Lake Tahoe Basin is vested in the planning commissions and boards of supervisors or commissioners of the five basin counties. The Lake Tahoe Regional Planning Commission, which is composed of representatives of the county governing bodies and planning commissions, performs an advisory function only, and in this capacity made a substantial contribution to the preparation of the Lake Tahoe 1980 Regional Plan. In addition, there are a number of independent governmental agencies which are under no compulsion to make administrative decisions in conformance with the provisions of any land-use plan approved by the county planning commissions and governing bodies.

3. Pending the development of the characteristics of a possible regional authority, the committee concluded that there should be no modification of the existing statutory responsibilities of California state agencies with respect to the development and implementation of a regional plan for the basin. On the basis of the preliminary information presented to it, however, the committee expresses its concern over the state and local administrative organization and standards governing the control of water pollution of Lake Tahoe, and is hopeful that this matter will eventually be clarified.

4. As a result of the foresight and leadership displayed by public bodies and private interests through the Tahoe Regional Planning Commission and the Lake Tahoe Area Council, a Lake Tahoe 1980 Regional Master Plan has been prepared to guide the long-range development of the basin. This plan, which is presently being reviewed by the individual basin counties, appears to the committee to be a well-conceived approach to achieving the long-range crucial and necessary balance between exploitation and preservation of the varied resources unique to the basin. The committee agrees, however, that the ultimate effectiveness of this land-use plan will be measured by the degree to which its essential provisions are carried out. With respect to this, the committee expresses its concern over the possible compromise of one of the fundamental premises of the Lake Tahoe 1980 Regional Plan—namely, the West Shore Parkway—by the apparent insistence of the California Division of Highways and California Highway Commission on imposing a four-lane, controlled-access freeway in place of the parkway along the west shore of Lake Tahoe.

5. Because the complex pattern of governmental jurisdictions in the basin makes all but impossible the unified, comprehensive approach to basin management which is necessary to prevent overexploitation of the remaining amenities of this great resource, the committee finds a clear need for the creation of some kind of bistate, regional authority to govern basin development. This regional authority would have broad powers under the law for the development and enforcement of a regional master plan which will ensure optimum development and maximum preservation of the values which are unique to the Lake Tahoe Basin. General support was expressed at the public hearing of the committee for this regional approach to basin management, and a general desire was evident to proceed to the task of defining the most effective means by which this objective can be realized.

RECOMMENDATIONS

In view of the findings and conclusions of this committee, and the general support by basin interests of a regional approach to management of the Lake Tahoe Basin, the committee concludes that the most promising first step would be for the California and Nevada State Legislatures to provide the tools necessary for shaping the most effective course of action.

Accordingly, the committee makes the following recommendations.

1. The California State Legislature should give statutory recognition and sanction to the Tahoe Regional Planning Commission of California. This commission, which would continue to coordinate planning activities in the Lake Tahoe Basin with the Tahoe Regional Planning Commission of Nevada, would serve during the interim period prior to creation of the regional authority.

2. A Lake Tahoe Regional Authority Study Commission should be established to develop the character, statutory framework, and powers of the regional authority necessary to provide for comprehensive management of development in the Lake Tahoe Basin.

3. To provide a clear statutory basis for the construction of parkways by the State of California, the statutory authority for the designation, construction, and maintenance of parkways should be enacted.

WITNESSES APPEARING BEFORE THE COMMITTEE
OR SUBMITTING STATEMENTS

Brockway, Lake Tahoe, September 10-11, 1964

Hon. William S. Briner, Chairman, Tahoe Regional Planning Commission of California; Supervisor, County of Placer
George Gatter, Director, Preparation of Lake Tahoe 1980 Regional Plan
Dr. Malcolm H. Merrill, Director, California State Department of Public Health
Frank Stead, Chief, Division of Environmental Sanitation, California State Department of Public Health
Robert Webster, Chief, Division of Administration, California State Department of Public Health
W. W. White, Chief, Bureau of Environmental Health, Nevada State Department of Health and Welfare; Nevada Coordinator, California-Nevada Governors' Lake Tahoe Program
Deane Seeger, Executive Director, Lake Tahoe Area Council
Harry Marks, President, Lake Tahoe Area Council
Sherman McKissock, President, South Lake Tahoe Chamber of Commerce
Douglas Leisz, Forest Supervisor, Eldorado National Forest; representing Charles A. Connaughton, Regional Forester, United States Forest Service
Jack Halpin, Chief Deputy Director, California State Department of Finance
Hugo Fisher, Administrator of Resources, State of California
Hon. Ray Knisley, Member, Nevada State Legislature
Robert B. Bradford, Administrator, California Highway Transportation Agency; Chairman, California Highway Commission
John Legarra, Deputy California State Highway Engineer
Robert B. Bond, Executive Director, California-Nevada Interstate Compact Commission of California; representing Colonel A. M. Barton, Chairman, California-Nevada Interstate Compact Commission of California
Frank J. Hortig, Executive Officer, State Lands Commission; Chief, Division of State Lands, California State Department of Finance

Harvey F. Ludwig, President, Engineering-Science, Inc.

Judson Harmon, Engineering-Science, Inc.

Dr. Gordon Seck, Health Officer, County of Placer

Albert Marino, Chief, Environmental Health, County of Placer

Hon. E. A. Chappie, Supervisor, County of El Dorado

William Layton, Jr., Manager, Tahoe City Public Utility District

William F. Priday, General Manager, South Tahoe Public Utility District

David C. Dunlap, Attorney at Law; Chairman, Emerald Bay Committee, Sierra Club

Howard F. Fletcher, Sponsor, Friends of Emerald Bay Parks

C. H. Clark, Chairman, Committee to Save the West Shore of Lake Tahoe

William D. Evers, California Roadside Council

Ed Francis, General Manager, North Tahoe Public Utility District

Jim A. E. Wilson, President, Tahoe Paradise, Inc.

Wallace D. Cathcart, President, Fallen Leaf Lake Protection Association

Arthur L. Wood, President, Crystal Bay Development Company

R. T. Nahas, R. T. Nahas Enterprises

Ralph E. Kingston, Attorney at Law; Member, Board of Directors, Lake Tahoe Area Council; Member, Lake Tahoe South Shore Chamber of Commerce

FILLING OF SAN FRANCISCO BAY

SUMMARY OF THE PROBLEM

The impact of California's growing population on the environment is becoming increasingly apparent in many ways, and is posing increasingly complex and difficult problems of responsible resources planning and management. One of the most dramatic illustrations of those complex problems can be found in the accelerating plans for reclamation of tide and submerged lands in the San Francisco, San Pablo, and Suisun Bays. These plans, which are a direct result of the rapidly expanding population in the San Francisco Bay area and the demand for additional real estate for residential, commercial, and industrial use, bring into unusually sharp focus the urgent need for responsible, visionary, long-range regional planning which integrates all of the needs of the region, and strikes the proper balance between private and commercial exploitation of the bay and the recreational and aesthetic requirements of the public.

Although it is generally agreed that San Francisco Bay is a unique and valuable resource—one of the greatest of its kind in the world—and possesses many values other than use as real estate, the study process of filling the marsh, tidal, and submerged lands susceptible of reclamation has in the last one hundred years shrunk the bay from some 568 square miles to less than 325 square miles. And there are ambitious, unilateral plans on the part of the many grantees, lessees, and owners to fill much of these remaining lands. If this process continues in the absence of a responsible plan, in another generation the bay as a major element of the San Francisco Bay region will cease to exist.

This situation has developed as a result of the failure of public policy in California to recognize the importance of San Francisco Bay as a major resource in its own right and to enact a responsible, uniform, comprehensive policy to govern the disposition of state-owned tide and submerged land. As a result, much of the tide and submerged land in the San Francisco Bay has been granted, leased, or actually sold to a profusion of governmental entities and private organizations, with development governed by a wide array of terms and conditions. In view of this, it is not surprising that the greater proportion of planning for the future filling and/or development of the bay has been proceeding on a local, piecemeal, often provincial basis, unrelated to the needs of adjoining areas or the bay area as a whole.

However, public awareness and concern with respect to this situation has been rapidly increasing, and a number of public and private organizations have taken an active role in attempting to find a solution to this complex problem. Because of the many governmental agencies at the local, state, and federal level and the numerous private organizations and individuals who are concerned with the uses which are

made of San Francisco Bay, the present period is one of confusion while the essential dimensions of the problem are being defined.

The two major activities which are currently underway are a study by the San Francisco Bay Conservation Study Commission which was created by the 1964 session of the Legislature, and the preparation of a regional shoreline plan by the Association of Bay Area Governments, which is an informal organization of the nine counties and 80-odd cities in the San Francisco Bay region.

The Conservation Study Commission, which will report to the 1965 session of the Legislature, has been charged with the basic responsibilities of defining the public interest in San Francisco Bay, determining the broad effects of further filling, and recommending legislation which protects the public interest. In furtherance of these objectives, the commission has been holding weekly meetings since August 1964.

The Association of Bay Area Governments, which opposes state action until it has been demonstrated that local action is ineffective, has begun the preparation of a regional master shoreline plan for the entire San Francisco Bay region, and is building a professional planning staff for this purpose. It is anticipated that completion of this plan will take two to three years.

Because of the general concern on the part of numerous individuals and organizations, especially with respect to continuing reclamation in the interim period while the master plan is being developed, a number of bills were introduced in the 1963 and 1964 sessions of the Legislature, most of which would have restricted filling activities until a long-range solution to the problem has been developed. Opposition from private interests and the Association of Bay Area Governments, which was based on the premise that local action should be given the first opportunity to solve the problem, prevented passage of the legislation at both sessions of the Legislature.

As a result of the opposition to initial legislation in the 1963 General Session, this committee was directed to make a preliminary review of the problem prior to the 1964 Budget Session. The consequence of the initial hearing on this subject, which was held in San Francisco on October 22-23, 1963, was the introduction of additional legislation in the 1964 session, which resulted in creation of the Conservation Study Commission referred to previously. The committee had a second hearing in San Jose on July 9-10, 1964, in which special attention was given to planning for the south shoreline of San Francisco Bay.

In addition to the difficult tasks of defining the public interest in San Francisco Bay and determining the effects of further filling, the following fundamental questions must be resolved by the many investigations currently underway:

1. How can reasonable and meaningful restrictions be placed on all further filling projects pending completion and adoption of a responsible regional shoreline plan?

2. Will a meaningful master shoreline plan be developed and adopted which recognizes all the values of San Francisco Bay and displays a responsible balance between exploitation and preservation?

3. Will an effective means be developed for enforcement of the provisions of the master shoreline plan?

The answers to these questions are not clear at present, but there is reason to be hopeful that satisfactory progress will be made. To encourage continued progress and as a result of its review of this problem, the committee sets forth the findings and recommendations in this report. The committee expects to follow closely the efforts toward a solution of these difficult problems, and is prepared to initiate whatever legislation is required to effect a responsible long-range plan for the development of San Francisco Bay.

The committee wishes to thank the many public and private officials and organizations for the responsible manner in which they examined this problem and set forth their views to the committee. They are to be commended for their interest in the development and execution of responsible public policies in resources planning and management.

FINDINGS AND CONCLUSIONS

This review by the Assembly Interim Committee on Natural Resources, Planning, and Public Works of the problems posed by the unregulated filling of San Francisco Bay is one of several studies of various aspects of this complex matter which are currently underway by various public and private organizations. However, based on careful evaluation of the information available to it, the committee makes the following findings and conclusions.

1. As the result of past indiscriminate filling, the total marsh, tidal, and submerged land in San Francisco, San Pablo, and Suisun Bays susceptible of reclamation has shrunk in the last one hundred years from approximately 568 square miles to some 325 square miles.

2. There are plans by a number of grantees, lessees, and owners to fill much of the remaining unreclaimed marsh, tidal, and submerged land.

3. There has not been, and is not, a uniform, comprehensive state policy to govern the granting of tide and submerged lands, and as a result, grants have been made in the past on an individual, piecemeal basis, with little or no consideration given to the needs of the San Francisco Bay region as a whole. As a result, most grantees, lessees, and owners of tide and submerged lands are preparing development plans based on local needs and requirements, and in the absence of a long-range regional plan and new state policies governing the disposition and administration of ungranted lands, this process will continue.

4. San Francisco Bay is a unique and valuable natural resource—one of the greatest of its kind in the world—and possesses many values other than use as real estate. For example, fish, wildlife, boating, and scenery are values important to recreation and business in the bay area, and continued unregulated filling will have a presently unknown impact on each of these values by decreasing the volume and surface area of bay water and contributing to increased pollution. It is obvious that such a large body of water, possessing an irregular shoreline of nearly 300 miles, and strategically located in the heart of a vast agricultural-urban-commercial-industrial complex in a rapidly growing state, is a regional feature of the first magnitude. As such, its significance transcends the interests of any one of the nine counties and 80-odd cities

which line its shores, and the manner in which this great natural resource is used is of legitimate concern to the region, the state, and the United States. Because of its importance to the bay region as a whole, any changes in the nature and extent of the bay will have a presently unknown impact on the entire region, and the effect is little known on such considerations as navigation, tidal flow, flood control, earthquake hazards, pollution, fish and wildlife, mineral resources, recreation, climate, and scenic values. Completion of studies currently being conducted should begin to clarify some of these matters.

5. In view of these many and complex considerations, it is obvious that the long-range future of San Francisco Bay depends on responsible, comprehensive planning today which takes into account all of its many values and uses. To accomplish this, it is absolutely essential that a meaningful regional shoreline plan be prepared and adopted by all bay interests, and that its provisions are carried out by an effective enforcement mechanism.

6. Pending the development and adoption of the master plan, in the event local action does not produce a meaningful restriction of all filling activities it may be necessary for the state to impose a moratorium on all further filling projects. In addition, it may be necessary to initiate a program of reacquisition of certain previously granted tide and submerged lands.

RECOMMENDATIONS

In view of the findings and conclusions of this committee, it reaffirms its concern in the future development of San Francisco Bay and the interest of the state therein, and recommends that the Assembly, through this committee, continue to evaluate the progress of the Association of Bay Area Governments in the following specific areas:

1. Preparation of a long-range regional plan for the future development of San Francisco, San Pablo, and Suisun Bays, with special attention to the definition of the shoreline and the consideration given to land use, shoreline development, earthquake hazards, transportation, fish and wildlife, recreation, navigation, pollution, sewage disposal, tidal flow, mineral resources, and scenic values.

2. Development of an effective mechanism for implementation of the adopted regional shoreline plan.

3. Progress on voluntarily imposed moratoriums and the relationship of these adopted moratoriums to the needs of the long-range development of the bay area as reflected in the regional plan.

To ensure that the committee is fully and continuously informed in these areas, the Association of Bay Area Governments is requested to submit a quarterly report to the committee, commencing April 1, 1964, which sets forth the current status of progress in each area outlined above.

The committee further recommends that consideration be given to the various means by which legislation can restrict further filling of tide and submerged lands pending development and adoption of a regional shoreline plan. It is hoped that the report of the Conservation

Study Commission will include recommendations for a moratorium on further filling projects pending the development and adoption of a regional plan, and an effective mechanism for the approval of essential projects in the interim period.

Based on this continuing evaluation, and the recommendations of the Conservation Study Commission, the need for additional legislation will be determined.

WITNESSES APPEARING BEFORE THE COMMITTEE OR SUBMITTING STATEMENTS

Roderick Duncan, Administrative Assistant to Hon. Nicholas C. Petris, Assemblyman, Oakland
 Reuben Johnson, representing General Arthur H. Frye, Jr., Division Engineer, U.S. Army Corps of Engineers
 Hon. John Shelley, Congressman, San Francisco
 Hon. Charles W. Meyers, Assemblyman, San Francisco
 Hon. Richard J. Dolwig, State Senator, San Mateo County
 Hon. Carl A. Britschgi, Assemblyman, Redwood City
 Hon. Phillip Burton, Assemblyman, San Francisco
 Mel Scott, Research City Planner, Institute of Governmental Studies, University of California at Berkeley
 E. R. Stallings, County Manager, County of San Mateo
 Belden Nelson, Director of Parks, County of Marin
 Emmett Smith, representing Belford Brown, General Manager, San Francisco International Airport
 Robert Costello, City Attorney, City of Redwood City
 Frank J. Hortig, Executive Officer, State Lands Commission; Chief, Division of State Lands, California State Department of Finance
 William C. Dillinger, Conservation Program Officer, representing Walter Shannon, Director, California State Department of Fish and Game
 Hon. John McGinnis, Mayor, City of San Rafael; President, Association of Bay Area Governments
 Hon. Edward M. Gaffney, Assemblyman, San Francisco
 Hon. Joseph A. Egenberger, Jr., Mayor, City of Albany
 C. G. Smith, City Engineer, representing Hon. Al LaCoste, Mayor, City of Emeryville
 John C. Lilly, Vice President, San Francisco Bay Area Council, Inc.
 Charles Weber, Civil Engineer
 Schuyler Jeffries, Chairman, Bay Region Council, Junior Chamber of Commerce
 William Penn Mott, Jr., President, Save San Francisco Bay Association
 Dr. Paul T. Wilson, First Vice President, The Marin Conservation League
 Mrs. Emily Harris, Bay Area Chapter, Sierra Club
 Mrs. Ralph Jacobson, Leagues of Women Voters of the Bay Area
 Mrs. William Eastman, representing Mary Moffat, Executive Secretary, Committee for Green Foothills
 Robert H. Langner, Secretary, Northern California Marine Affairs Conference; Manager, Marine Exchange, San Francisco
 B. E. Peterson, Dredging Contractors Association of California
 Samuel W. Gardiner, President, Marin Canalways and Development Company
 D. B. Luten, President, Regional Parks Association
 F. R. Henrekin, Director, Industrial Development Commission, City of Vallejo
 Julius Von Nostitz, Associated Sportsmen of California
 Howard L. Dietterle
 Charles T. Travers, Manager, South Shore Land Office, Utah Construction and Mining Company; President, Board of Trustees, Reclamation District No. 2087
 Jack Baraff, Dolphin Swimming and Boating Club, Inc.
 Karl Belser, Planning Director, County of Santa Clara
 Michael H. Antonacci, Planning Director, City of San Jose
 Leo Ruth, Chairman, Civic Affairs Committee, Greater San Jose Chamber of Commerce
 Kent Pursel, President, Association of Bay Area Governments

Wilber Smith, Executive Director, Association of Bay Area Governments
Reino Liukkonen, Planning Director, County of San Mateo
Dick Wilkinson, Planning director, City of Redwood City
Richard Dunann, Senior Planner, Planning Department, County of Alameda
Robert M. Kaiser, Attorney at Law, San Jose
Dr. Ian Campbell, State Geologist; Chief, Division of Mines and Geology, State
Department of Conservation
Mrs. Sylvia McLaughlin, Secretary, Save San Francisco Bay Association
Dr. James P. Heath, Professor of Zoology, San Jose State College
Coleman Johnson, Vice President, Leslie Salt Company
Richard Stark, representing Albert B. McKee, Jr., President, Ducks Unlimited,
Inc.
Mrs. Margaret Boege, Vice Chairman, League of Women Voters of the Bay
Area
Willard Greenwald, Regional Manager, Region 3, State Department of Fish and
Game
George C. Shannon, District Manager, Estero Municipal Improvement District
Hon. Alfred E. Alquist, Assemblyman, Santa Clara County

CONTROL OF OUTDOOR ADVERTISING

SUMMARY OF THE PROBLEM

It is generally agreed that California is among the outstanding scenic areas in the country—and the world. The variety and extent of its scenic resources are a major attraction for the thousands of tourists who visit the state each year, and a source of continuing pleasure to its steadily increasing population.

However, this continuing population growth is demanding an ever increasing mileage of roads, highways, and freeways throughout California, and this in turn creates numerous other problems which can only be resolved through the development of responsible public policies.

One of these problems which has become a matter of increasing concern throughout the state is the proliferation of outdoor advertising along the rapidly expanding road, highway, and freeway network, a growth which is seriously eroding the scenic beauties of California's landscape, and by distracting motorists, creating a potentially serious hazard to traffic safety.

This concern was translated into a 1963 legislative proposal, supported by the Governor, to expand state regulation of outdoor advertising along the interstate and state highway systems. After careful review, the proposal was referred to this committee for detailed study during the interim period. Pursuant to the resolution directing this study, the committee held three intensive public hearings—in Los Angeles on October 15, 1963, in Palm Springs on October 16, 1963, and in San Diego on February 24–25, 1964—during which it received carefully prepared testimony from a large number of witnesses, including representatives of the outdoor advertising industry.

These hearings clearly established the need for expanded state control of outdoor advertising, and consequently the Governor placed this matter on special call at the 1964 Budget Session of the Legislature. The legislation which was introduced resulted in passage of the Collier-Z'berg Act, which established the principle of expanded control of outdoor advertising in California and applied strict controls to advertising along the interstate highway system. In addition, enactment of this legislation qualified California for an estimated \$8 million in additional federal highway funds.

With the principle of expanded state regulation of outdoor advertising clearly established by passage of the Collier-Z'berg Act, the committee held an additional public hearing in San Diego on September 1, 1964, to consider legislation applying the provisions of the Collier-Z'berg Act to the remainder of the state highway system.

The committee expresses its appreciation to the many individuals, organizations, and governmental agencies who carefully and responsibly reviewed this problem and presented their views to the committee, and they should feel a sense of participation in the development of public policies to restore and preserve the scenic resources of this state and contribute to increased traffic safety.

FINDINGS AND CONCLUSIONS

Based on the need to restore and preserve the scenic resources of California and contribute to increased traffic safety, the committee finds a clear requirement for expanded regulation of outdoor advertising along the state and interstate highway system in California. The committee concludes that this principle was recognized by the State Legislature with passage of the Collier-Z'berg Act, and that because the safety and well being of the traveling public should receive first consideration on all state thoroughfares, that subsequent legislation should extend the provisions of the Collier-Z'berg Act to the entire state highway system.

RECOMMENDATIONS

The committee recommends that the provisions of the Collier-Z'berg Act, which established the principle of expanded regulation of outdoor advertising along the interstate highway system, be extended to the entire state highway system in California. Legislation to accomplish this extension is included in this report.

PROPOSED LEGISLATION

Legislative Counsel's Digest

Outdoor advertising.

Amends various secs., B. & P.C.

Extends the provisions of the Collier-Z'berg Act regulating outdoor advertising adjacent to certain segments of state highways included in the national system of interstate and defense highways, so as to regulate outdoor advertising adjacent to all other state highways.

An act to amend Sections 5286, 5288, 5288.1, 5288.2, and 5288.4 of the Business and Professions Code, relating to outdoor advertising.

The people of the State of California do enact as follows:

SECTION 1. Section 5286 of the Business and Professions Code is amended to read:

5286. No advertising display shall be placed or maintained in any of the following locations or positions or under any of the following conditions or if the advertising structure or sign is of the following nature:

(a) If within the right-of-way of any highway.

(b) If visible from any highway and simulating or imitating any directional, warning, danger or information sign permitted under the provisions of this chapter, or if likely to be mistaken for any such permitted sign, or if intended or likely to be construed as giving warning to traffic, such as by the use of the words "stop" or "slow down."

(c) If within any stream or drainage channel or below the flood water level of any stream or drainage channel where the advertising display might be deluged by flood waters and swept under any highway structure crossing the stream or drainage channel or against the supports of the highway structure.

(d) If not maintained in safe condition.

(e) If visible from any highway and displaying any red or blinking or intermittent light likely to be mistaken for a warning or danger signal.

(f) If visible from any state highway which is a part of the national system of interstate and defense highways (and which highway is constructed upon right-of-way, the entire width of which was acquired subsequent to July 1, 1956), or any other state highway, and displaying any flashing, intermittent or moving light or lights, except that any such display lawfully maintained in existence on July 1, 1964, may be maintained in existence until July 1, 1969.

(g) If any illumination thereon shall be of such brilliance and so positioned as to blind or dazzle the vision of travelers on adjacent highways.

(h) If visible from any state highway which is a part of the national system of interstate and defense highways (and which highway is constructed upon right-of-way, the entire width of which was acquired subsequent to July 1, 1956), or any other state highway, and is erected or maintained in existence on July 1, 1964, may be maintained in existence until July 1, 1969.

SEC. 2. Section 5288 of said code is amended to read:

5288. (a) The regulation of advertising structures adjacent to any state highway included in the national system of interstate and defense highways, or any other state highway, as herein provided is hereby declared to be necessary to promote the public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in such highways, to preserve the scenic beauty of lands bordering on such highways, and to insure that information in the specific interest of the traveling public is presented safely and effectively, recognizing that a reasonable freedom to advertise is necessary to attain such objectives.

(b) Notwithstanding any other provisions of this chapter, no advertising display shall be placed or maintained within 660 feet from the edge of the right-of-way of, and the copy of which is visible from, any highway included in the national system of interstate and defense highways (and which highway is constructed upon right-of-way, the entire width of which was acquired subsequent to July 1, 1956), or any other state highway, other than the following:

(1) Directional or other official signs or notices that are required or authorized by law.

(2) Signs advertising the sale or lease of the property upon which they are located.

(3) Displays which advertise the business conducted or services rendered or the goods produced or sold upon the property upon which the advertising display is placed if the display is upon the same side of the highway and within 50 feet of the point on the property on which the business is conducted or services rendered or goods produced or sold.

(4) Signs erected or maintained pursuant to regulations of the director, and not inconsistent with the national policy set forth in Section 131 of Title 23 of the United States Code and the standards

promulgated thereunder by the Secretary of Commerce, advertising activities being conducted at a location within 12 miles of the point at which such signs are located.

(5) Signs erected or maintained pursuant to regulations of the director, and not inconsistent with the national policy set forth in Section 131 of Title 23 of the United States Code and the standards promulgated thereunder by the Secretary of Commerce, and designed to give information in the specific interest of the traveling public.

SEC. 3. Section 5288.1 of said code is amended to read:

5288.1. The provisions of Section 5288 shall not apply to those segments of the national system of interstate and defense highways *or the state highway system* which traverse and abut on commercial or industrial zones within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to and abutting on the national system of interstate and defense highways *or the state highway system* is subject to municipal regulation or control, or which traverse and abut on other areas where the land use, as of September 21, 1959, is clearly established by state law as industrial or commercial.

SEC. 4. Section 5288.2 of said code is amended to read:

5288.2. Any advertising display located within 660 feet of the edge of the right-of-way of, and the copy of which is visible from, any highway included in the national system of interstate and defense highways (and which highway is constructed upon right-of-way, the entire width of which was acquired subsequent to July 1, 1956), *or any other state highway*, lawfully maintained in existence on July 1, 1964, which is not within one of the classes specified in Section 5288(b) may be maintained in existence until July 1, 1969, unless required to be removed prior thereto by order of the director; provided that this section shall not apply to advertising displays adjacent to a landscaped freeway.

SEC. 5. Section 5288.4 of said code is amended to read:

5288.4. The director shall prescribe and enforce regulations for the erection and maintenance of advertising structures permitted by Section 5288 *adjacent to state highways included in national system of interstate and defense highways* consistent with the national policy set forth in Section 131 of Title 23 of the United States Code and the national standards promulgated thereunder by the Secretary of Commerce; provided that the director shall not prescribe regulations to conform to changes in federal law or regulations made after the effective date of this section without prior legislative approval.

Notwithstanding any other provisions of this chapter, no outdoor advertising shall be placed or maintained adjacent to any state highway included in the national system of interstate or defense highways in violation of the present Section 131 of Title 23 of the United States Code, or the present national standards promulgated thereunder by the Secretary of Commerce and the director shall prescribe and enforce regulations consistent therewith.

WITNESSES APPEARING BEFORE THE COMMITTEE OR SUBMITTING STATEMENTS

Mrs. Helen B. Reynolds, Executive Vice President, California Roadside Council
 Neil B. Pfulf, Director, Planning Commission, County of San Bernardino
 Mrs. Evelyn Gayman, Conservation Chairman, Desomount Club
 C. H. Dana, Vice President, Foster and Kleiser
 Mrs. Virginia Baldwin, Vice Chairman, Los Angeles Beautiful
 Beula Edmiston, Secretary, Southern California Chapter, The Nature Conservancy
 Henry Mayers, Los Angeles
 Herbert J. Powell, Southern California Chapter, American Institute of Architects
 Lewis Garrett, Southern California District Council of Laborers; Orange Belt
 District Council of Painters No. 48
 Ed Rankin, Public Information Officer, Braille Institute of America, Inc.
 Edward R. Cronan, Executive Secretary, California Electric Sign Association
 Albert Navsky, President, California Electric Sign Association
 Edward A. Burgess, Sign, Scene, Pictorial Painters, Display and Decorators Local
 No. 831
 Robert K. Kelley, Executive Secretary, California and Nevada Manufacturers of
 Carbonated Beverages
 Lee H. Crowder, Vice President, Los Angeles Office, National Outdoor Advertising
 Bureau, Inc.
 Mahlon E. Faust, United Outdoor Advertising Company
 John N. Tappe, A. Asch Company
 Leonard Shane, Western States Advertising Agencies Association
 Emerson Rhyner, Counsel, State Department of Public Works
 Milton Breivogel, Director of Planning, County of Los Angeles
 John P. Commons, Regional Planning Commission, County of Los Angeles
 Edward J. Wenig, Ojai, California
 Mrs. V. T. Gilchrist, Second Vice President, California Garden Clubs, Inc.
 William McCoy, City of Los Angeles
 A. L. Hutchinson, Assistant General Manager, Department of Traffic, City of
 Los Angeles
 John Rehfuess, Assistant City Manager, City of Palm Springs
 Arthur W. Goff, Pacific Outdoor Advertising Company
 Dr. Henry M. Weber, Desert Protective Council
 Herb Jensen, President, Palm Springs Hotel and Apartment House Association
 Robert E. Leonard, President, Southern California Outdoor Advertising, Inc.
 Milton W. Jones, Milton W. Jones Advertising Agency, City of Palm Springs
 Lonnie Hood, Manager, Chamber of Commerce, City of Palm Springs
 Hal Heywood, North Palm Springs Chamber of Commerce
 Mrs. Henry T. Read, President, California Garden Clubs
 Miss Durlene Nall, Deputy County Counsel, County of San Bernardino
 Robert G. Bear, President, Desert Protective Council
 Hugo Fisher, Administrator, Resources Agency
 Furman Roberts, Deputy City Attorney, City of Anaheim
 Charles D. Robison, Executive Manager, La Jolla Town Council
 Charles McAdams, Managing Director, California Hotel and Motel Association
 Fred Feiten, Executive Vice President, California Motel Association
 Bruce Warren, Acting Planning Director, City of Chula Vista
 Ray T. Blair, Jr., President, San Diego Traffic Council
 L. W. Clements, Vice President, Leucadia Civic Association
 Brian Wyckoff, Southern California Chapter, American Society of Landscape
 Architects
 J. D. Breuner, Business Manager, Building Trades Council, representing R. R.
 Richardson, Secretary, San Diego County Central Labor Council
 Donald Campbell, San Diego Chapter, American Institute of Architects
 Dan Hale, Manager, Public Relations Department, San Diego Office, Foster and
 Kleiser, a Division of Metromedia, Inc.
 Mrs. John Schneberger, Women's Civic Club
 Paul Howard, Legislative Chairman, Advertising Sales Club of San Diego
 Monroe Meyers, Citizens Coordinate, San Diego
 Norman Foster, President, San Diego Association of Advertising Agencies

Mahlon Faust, President, California Council of Outdoor Advertising
Gordon Garland, California Council of Outdoor Advertising
Jim Anderson, Advertising Director, Travelodge Motel Association
Lloyd Ruocco, San Diego
Palmer Chase, Public Information Director, United Community Services of San Diego County
Isadore Jacobson, President, Sign Contractors Guild of San Diego
Arthur Rivkin, President, San Diego Soft Drink Manufacturers Association
Mark Moore, President, San Diego County Industries Association
Milt Frampton, General Manager, Del Webb's Ocean House; President, San Diego Hotel-Motel Association; President, Mission Bay Lessees Association
Dean Hanna, Serra Mesa Community Council
Robert Page, Secretary Treasurer, International Alliance of Bill Posters and Billers Local No. 54
Mrs. Howard Allen, Sierra Club
Russell Stockwell, California Roadside Council
Paul Jensen, La Mesa
Dr. Clifford L. Graves, President, American Youth Hostels
Laurence Wilson, Planning Director, City of El Cajon
Harold R. Glaeser, President, Clairemont Town Council
Mrs. Elaine Hopkins, Chairman, Pomona Beautification Committee
Mrs. Austin Carlton, Solana Beach Women's Civic Club

ADMINISTRATION OF TIDE AND SUBMERGED LANDS

INTRODUCTION

High on the list of California's extraordinary variety and abundance of natural resources is a unique resource found in less than half of the other states, and in few instances is it found with the same potential for exploitation and wealth as it is in California. This resource—the tide and submerged lands lying in the bays and along the 1,200 mile coast of California—is of immense value and significance to the future development of the state.

The millions of dollars in revenue derived from oil and gas operations conducted in the Long Beach area have spectacularly demonstrated the importance of these lands from a purely economic point of view. In the future this aspect of the tide and submerged lands resource may be even more important. Speaking before the Fifth World Petroleum Congress in 1959, Mr. Frank Hortig, executive officer of the California State Lands Commission, estimated California's offshore oil potential at four billion barrels. But even that figure may prove to be too conservative. At the same meeting a representative of the oil industry estimated the potential at more than 11 billion barrels.

The potential of these tide and submerged lands for the production of other minerals has never been adequately investigated. However, there are indications that valuable deposits of phosphates and manganese lie off California's coast. As exploration and recovery techniques develop it is possible that the offshore area will be exploited for these and other minerals.

Resolution of the present dispute between California and the United States over the offshore lands will determine the degree of the state's economic interest. But even if the controversy should be resolved adversely to California, the tide and submerged lands would continue to have great economic significance for this state.

Of course the value of our tide and submerged lands should not be measured solely in terms of their mineral potential. As our knowledge and techniques develop, these lands will become increasingly important for the foodstuffs and fresh water that they can supply. Furthermore, under the pressure of an expanding population there will be increasing demand to make use of tide and submerged lands for industrial, residential, and recreational purposes. In fact the recreational possibilities alone—boating, swimming, fishing, and nature study areas, for example—may prove to be more important than any revenue which might be derived from oil or mineral production.

If California is to realize the full potential of these lands, a carefully conceived policy governing their development and administration must be formulated. The present controversy concerning land reclamation in San Francisco Bay and the protracted dispute over the

division of the Long Beach oil revenues clearly demonstrate that we have not had such a policy in the past. The degree to which such problems may be avoided in the future will depend in large measure upon our ability to unravel our past mistakes.

House Resolution No. 512 directed the committee to study the development and administration of tide and submerged lands held by various **political entities** under legislative grants in trust. The resolution placed responsibility upon the committee for the formulation of policy governing the administration and development of these lands by directing that the study seek the "establishment of appropriate conditions, trust provisions, and reservations for grants of tide and submerged land, past and prospective . . ." This study was initiated with a preliminary review of the entire problem at a public hearing in Anaheim on September 17-18, 1964. At this hearing the State Lands Commission, the Resources Agency and the State Office of Planning, each of which is engaged in studying various aspects of this problem, presented information to the committee and suggested certain courses of action which might be followed in formulating a comprehensive policy in this extraordinarily complex matter.

FINDINGS AND CONCLUSIONS

Analysis of the preliminary information available to it leads the committee to the following findings and conclusions.

1. The tremendous potential of California's tide and submerged lands for mineral exploitation, and their importance as a potential source of land for recreational, industrial, and residential development, make them one of the state's most extraordinary and valuable natural resources.

2. The full potential of these lands cannot be realized unless sound policies for their development and administration are formulated. The present dispute over the filling of San Francisco Bay and the recently resolved controversy concerning the division of Long Beach oil revenues indicate past deficiencies in the administration of these lands.

3. The provisions, conditions, and reservations contained in the various legislative grants in trust of tide and submerged lands vary widely, and in many instances do not ensure that the lands will be developed or administered to advance the total state interest.

4. The exact nature and extent of the state's interest in its tide and submerged lands has not been determined, and substantial additional knowledge, much highly technical in nature, concerning the present administration, physical characteristics, economic importance, and demand and use potential of these lands must be acquired.

5. In addition to this committee, during the 1963-65 interim period two other legislative committees, one study commission, and several state agencies have been engaged in the study of various phases of this problem. In view of the facts that (a) the development of a comprehensive policy for the administration of these tide and submerged lands must rest on a solid factual basis and must be coordinated and

integrated with the long-range development policies of the state, and (b) a large amount of technical, legal, and planning data must be developed before intelligent discussion of alternatives can proceed, it is the feeling of the committee that a coordinated program must be established to gather this information and eliminate duplication of efforts. At such time as sufficient information is available, this committee will be in the position to develop a responsible, comprehensive, long-range policy for the administration of tide and submerged lands which will take into consideration the total state interest.

RECOMMENDATIONS

Because California's tide and submerged lands have great importance to the future development of the state, it is important that policies and procedures concerning their development and administration be grounded upon a solid basis of factual information. In view of the fact that substantial additional information is required, it is the feeling of the committee that a piecemeal solution of the problem should not be attempted at this time.

Therefore, it is recommended that

1. The committee maintain a continuing interest and responsibility in this overall problem in conformance with the general directives contained in House Resolution No. 512, and upon completion of the overall study of tide and submerged lands being conducted by the State Office of Planning under the State Development Plan, that the committee carefully review the findings and recommendations as the basis for the development of a comprehensive policy for the administration of tide and submerged lands.

2. To properly implement this responsibility, it is further recommended that the State Office of Planning be directed to make quarterly reports to this committee, beginning April 1, 1965, outlining the progress and tentative conclusions of its tide and submerged lands study.

3. Finally, pending the development of a uniform, comprehensive policy for the administration of tide and submerged lands, it is recommended that the Legislature make no further grants of tide and submerged lands.

SUMMARY OF THE PROBLEM

When California was admitted to the union it became the fee simple owner of all the tide and submerged lands within its jurisdiction. Despite the fact that the state holds these lands subject to a public trust for the purpose of navigation, commerce, and fishing, thousands of acres of tide and submerged lands, most of them in San Francisco Bay, passed out of the state's control by means of sale to private persons and corporations. These sales reflected the early attitude that tide and submerged lands represented a convenient source of revenue. That attitude persisted until 1879 when the Constitution was amended to prohibit the sale to private persons, partnerships, or corporations of tide and submerged lands lying within two miles of an incorporated

town. But sales beyond that limit continued until 1909 when they were prohibited by statute.

Since 1911 the state's main device for disposing of its tide and submerged lands has been the grant in trust. The first such grant was actually made in 1851 to the City of Martinez; however, only 12 grants in trust were made prior to the turn of the century, and it was not until about 1911 that visions of increased trade through the proposed Panama Canal produced the first large scale use of the grant in trust device. Most of these early grants were given for the purpose of constructing harbors for commerce and navigation.

Since 1851 the Legislature has passed more than 200 statutes dealing with grants in trust. Some 130 specific areas of tide and submerged land has been disposed of to 61 political entities along the coast—46 cities, 7 counties, 7 harbor districts and 1 sanitary district. Twenty percent of all the grants have been made since 1959; 50 percent of the grants made since 1959 and 50 percent of the total grants made since 1851 dealt with lands lying in the San Francisco Bay region. The total area of the grants in trust comprise more than 10 percent of California's coastline.

Provisions, Conditions, and Reservations in Grants in Trust

At the request of the committee the State Lands Division of the Department of Finance has prepared a tabulation of the various provisions, conditions, and reservations contained in all of the grants made by the Legislature. For purposes of the tabulation the 130 specific areas of granted lands were combined into 83 parcels. Thus where a political entity received more than one grant in trust of contiguous tide and submerged lands for the same purpose, with the same required conditions, and the same rights reserved to the state, the combined area was reported as a unit in the tabulation. If the same entity received grants of separately defined areas of land, or if the grants were for differing purposes, contained varying conditions or reserved different rights to the state, each area of land was reported as a separate unit.

Trust Purposes. Evidently the Legislature has assumed over the years that local and state interests in the tide and submerged lands have been identical. Thus the purposes for which the grants have been made have tended to reflect the particular interests of the grantee. Furthermore, those interests have, in the main, reflected the desire of various grantees for additional transportation facilities.

Many of the grants were stated to be for more than one purpose.

Harbor for commerce and navigation	72
Aviation facilities	25
Highways, streets (incidental to harbor)	12
Public recreation facilities	46
Small boat harbors, marinas	16
Commercial and industrial uses	9
Residential uses	2
Flood control	1
Establishment of sanitary district	1

Conditions Required of Grantees. While many conditions recur in a large number of the granting statutes the tabulation does not reveal a consistent insistence upon some of the more important conditions.

No alienation	78
May grant franchises and/or leases	74
No discrimination in tolls, rates, or charges	68
Shall issue bonds of a specified amount within a specified number of years	4
Shall commence improvement within a specified number of years	3
Shall expend a specified amount within a specified number of years	3
Shall be improved without expense to the state	59
May use funds received for development from the state	24
Grantee to pay costs of survey conducted by State Lands Commission	33
Lands to be improved within 10 years	35

The tabulation reveals that the statutes relating to five parcels, the grantees were the Cities of Martinez, Oakland, Long Beach (grant made in 1961), Monterey, and Buenaventura, did not prohibit the grantees from conveying the lands to private individuals or corporations. There has been no recent investigation of the 78 parcels which carried a stipulation against alienation. However, the State Lands Division reports that "prior investigations revealed . . . there have been in effect conveyances . . ." despite the prohibitory language of the granting statutes.

While the statutes relating to most of the parcels have specifically allowed the grantee to grant franchises or leases, there has been no consistent policy as to the length of the franchise or lease period. For example the City of Buenaventura is allowed to grant a franchise or lease for only 10 years (longer terms permitted only if approved by two-thirds of the electors voting) while many other grantees may provide terms of up to 99 years.

The requirement that the grantee commence improvement within a specified period, issue bonds for improvement purposes, and expend a specified amount upon the improvements, has not been imposed since the 1917 session of the Legislature.

Moss Landing, in 1947, was the first grantee required to make "substantial improvements" upon its tide and submerged lands within 10 years. That requirement has been incorporated in all grants made since 1959. One grant to the City of Antioch allowed the grantee 20 years in which to make improvements; all the other grants containing the improvement clause have allowed only 10 years.

It should be noted that the "substantial improvement" clause might prove to be detrimental to the long-run interests of the state in some tide and submerged lands areas. The requirement probably resulted from a 1951 investigation of the tide and submerged lands situation conducted by the Assembly Interim Committee on State-federal Cooperation in the Discovery, Production, Transportation, Refining,

and Use of Petroleum Oil and Its Products. That investigation revealed that many grantees had made little effort to improve the lands granted to them by the Legislature. Thus the clause is a logical device to force grantees to make use of their lands. But on the other hand, the opponents of San Francisco Bay filling charge that the clause hastens the destruction of the bay. If it does in fact have that effect, then the state may be encouraging the destruction of the bay at the same time that it is seeking a means to save it.

Responsibility to Police. The statutes covering 26 grants place upon the State Lands Commission the responsibility to determine whether the grantees have made "substantial improvement" within a specified time period. The Division of Beaches and Parks and the Division of Small Craft Harbors are given similar responsibility in relation to two other grants. Apparently the statutes covering the remaining seven parcels (35 parcels carry the improvement provision) fail to state that a specific state agency has responsibility to determine whether the grantees have complied with the improvement provision.

In those instances where it has the responsibility to determine compliance with the improvement clause the State Lands Commission has followed the practice of requesting the grantees to submit information that would enable the commission to fulfill its responsibility. In no case has a grantee furnished the requested information. Only one granting statute, the grant to the City of Oakland, requires the grantee to submit a report to the State Lands Commission stating the degree to which the lands have been improved.

There is no state agency which is given the general responsibility to supervise the development and administration of tide and submerged lands held in trust by the grantees. Public Resources Code Section 6301 provides that the State Lands Commission is vested with "all jurisdiction and authority remaining in the state as to tidelands and submerged lands as to which grants have been or may be made..." The Attorney General has interpreted that code section to give the Lands Commission the *authority* to investigate and, in conjunction with the Attorney General, to enforce the trust conditions. However, it does not place upon the Lands Commission the specific *duty* to undertake sustained investigation, policing, audit, or review of grantee administration of their trust lands.

Amendments made to Chapter 5, Part 2 of Division 6 of the Public Resources Code in 1959, gave the State Lands Commission supervisory duties over the leasing of granted lands for oil, gas, and mineral purposes. Section 7062 of the code requires that all grantees having oil and gas operations on their lands must submit to the commission a detailed report concerning all revenues and expenditures so that it may check for compliance with trust provisions. Long Beach is specifically excluded from the operation of the section; however, the commission is empowered by Chapter 29, Statutes 1956, First Extraordinary Session, and Chapter 138, Statutes 1964, First Extraordinary Session, to supervise the Long Beach trust revenue expenditures.

Rights Reserved to the State. The rights which the state has reserved to itself when making grants of tide and submerged lands are summarized as follows:

Right of the people to fish in and gain convenient access to waters	74
Right of the state to use transportation facilities without charge	70
Rights to hydrocarbon deposits	1
Rights to all minerals	52
Use for highway purposes	43
Reversion to the state	41
Control of oyster beds	1

The statutes relating to six parcels failed to reserve any rights to the state; all of those grants were made prior to 1936. About 60 percent of all grants have reserved the mineral rights in the land to the state. However, one grant made to the City of Buenaventura in 1935 retained only the right to hydrocarbons and left all other minerals to the grantee.

Only 50 percent of the grants stipulated that the lands would revert to the state upon violation of the trust provisions.

Right of the Grantee to Collect and Retain Revenues. The statutes relating to 42 of the parcels included in the tabulation specifically authorized the grantees to "collect and retain rents and other revenues from leases, franchises and privileges . . ." However, there are some areas of confusion in relation to revenues from tide and submerged land grants.

The Legislature has never adequately defined the word "revenue" as it applies to moneys derived from activities upon granted tide and submerged lands. For example, "revenue" could conceivably include property taxes on improvements placed upon those lands.

The courts have held that a grantee can expend revenue derived from tide and submerged lands only for the purposes permitted in the trust conveyance; thus, for example, a city holding a grant of tide and submerged lands cannot expend revenue derived therefrom for general municipal purposes. But the courts have not dealt with the question which might be presented if grantee expends revenue from granted lands upon ungranted lands for purposes specified in the granting statute. This situation could arise where the trust conveyance permitted the use of granted lands for recreational purposes and the grantee used tide and submerged lands revenue to develop a beach on ungranted land. Since the development of a beach is an expenditure of money for a recreational purpose the courts might uphold this as a valid expenditure of revenue from the granted lands.

Tide and Submerged Lands Studies in Progress During the Interim

During the 1963-65 interim period at least four other organizations were actively engaged in studying problems relating to tide and submerged lands. Those organizations were the Senate Factfinding Committee on Natural Resources, the Joint Legislative Committee on Tidelands, the Bay Conservation Study Commission, and the State Office of Planning. In addition, various state agencies are interested in problems connected with the development of these lands. This situation

presents problems concerning possible duplication of effort, dispersal of information, and conflicting recommendations.

As part of its work on the State Development Plan the State Office of Planning is conducting an extensive study of all aspects of the tide and submerged lands. It is working on both a formal and informal basis with many state agencies; for example, both the Resources Agency and the State Lands Division will supply some of the information going into the study. The Office of Planning has broken the study down into three broad categories: inventory, analysis, and policy recommendations to the Legislature.

Suggestions for Future Study

The committee could at this time make substantive recommendations regarding the policy governing the granting of tide and submerged lands in trust. However, it is felt that any recommendations made now would not be based upon adequate information. The committee's primary concern is that these lands be developed and administered in a manner which will ensure the maximum benefit to all of the people of the state. But a policy which will adequately foster that objective cannot be formulated until the tide and submerged lands have been exhaustively studied from the standpoint of their economic importance, physical characteristics, present administration, potential use, and the potential demands which might be made upon them.

Many of those who cooperated with the committee in its efforts to gather information relating to tide and submerged lands offered suggestions for further study or specific suggestions for changes in present policy. The remainder of this report will deal with those and other suggestions.

Basic Data Studies

Inventory. The Resources Agency suggests that a complete inventory of the tide and submerged lands be made. This would provide information on the lands originally held by the state, the lands sold by the Legislature, lands leased by the State Lands Commission, lands granted in trust by the Legislature, and the lands remaining for disposition.

Some information of this nature will be forthcoming from the study now being conducted by the State Office of Planning as part of the State Development Plan. Since many of the grants in trust have never been surveyed the type of inventory suggested by the Resources Agency could prove to be a lengthy undertaking.

As part of the inventory the Resources Agency also suggests that extensive oceanographic studies be made. These might include mapping, mineral sampling, temperature sampling, and sampling of biologic content. Again, some information of this nature will come from the work being done on the State Development Plan. The State Office of Planning has contracted with the Institute of Marine Resources, University of California at La Jolla, to do an ocean resources study.

Investigation of Grantee Compliance With Trust Provisions. Information on this subject will also be forthcoming from the State De-

velopment Plan; the Division of State Lands of the Department of Finance is the contractor for this phase of the study. In addition, the Joint Legislative Committee on Tidelands has engaged in an investigation of the administration of tide and submerged lands by grantees and that committee will undoubtedly provide information on this subject. There are indications that some grantees are resisting such an investigation and therefore, legislation may be necessary to facilitate the gathering of information.

Investigation of the Interests and Plans of Various State Agencies. One of the things lacking at the present time is a precise statement of the interests of various state agencies in the tide and submerged lands area. We also do not have a statement of plans or projects proposed or contemplated for the tide and submerged lands. Both the Division of State Lands and the Resources Agency are engaged in working on the Development Plan. Thus, their interests will presumably be stated. However, it is not clear that other agencies, such as the Department of Public Works and the Department of Public Health, will be drawn directly into the tide and submerged lands portion of the Development Plan. The interests and plans of those agencies may be expressed through other aspects of the Development Plan and correlated to the tide and submerged lands study by the Office of Planning.

It would appear to be essential that an investigation be undertaken and perhaps it should include a determination of the interests and plans of any federal agencies concerned with California's offshore area.

Miscellaneous Studies. A large amount of information covering a number of differing subjects relating to tide and submerged lands will be necessary for the formulation of policy and procedures, or will be required for decision making purposes at a later date. The State Development Plan will supply much information of this nature. However, it may be profitable to obtain continuing reports from the State Office of Planning on the type of information being gathered and its correlation into the tide and submerged lands portion of the Development Plan.

The following headings merely suggest some possible categories of information which may be obtained from the Office of Planning or some other source:

Water Pollution. Estimates of present and potential pollution levels. Impact of present and proposed reclamation plans on pollution.

Air Pollution. Possibility of increased air pollution resulting from fill prohibition.

Recreation. Present and potential requirements. Estimates of tide and submerged lands use possibilities.

Wildlife. Present and potential need for wildlife areas. Impact of various land uses upon wildlife. Economic implications of wildlife.

Land Demand. Present and potential uses in tide and submerged lands area. Present and potential uses in surrounding areas. Cost of reclamation. Earthquake hazards in reclaimed areas. Existing

local and regional plans for tide and submerged lands development. Transportation terminal requirements.

Ocean Resources. Hydrocarbon and mineral potential. Fisheries potential. Impact of reclamation on fisheries.

Aesthetics. Criteria development. Structure design. Open space requirements.

Legal Aspects of Grant Revocation. Revocation when trust provisions violated. Revocation when trust provisions complied with. Practical implications of attempted revocation.

Agency Capabilities. Costs of new responsibilities. Staff capabilities. Possibility of creating new agency.

Possible Administrative Changes

The following suggestions for possible administrative changes are offered merely as alternatives which may be chosen once it is felt that sufficient information has been obtained to formulate an overall policy for tide and submerged lands development.

The one change in the present policy that the committee endorses at this time is a cessation in the granting of these lands until sufficient information concerning them has been obtained to make possible a thorough analysis of all the factors involved. The representatives of the two state agencies perhaps most concerned with these lands—the Resources Agency and the State Lands Commission—both recommended a moratorium on the granting of tide and submerged lands pending the completion of further study.

Designation of Responsibility. A number of suggestions were made dealing with clarification or designation of agency responsibility in relation to grants in trust of tide and submerged lands.

1. In the majority of trust conveyances no state agency has been directed to ensure that the grantees comply with the trust provisions. The State Lands Commission suggests that its responsibility in this regard be clearly specified.

2. The State Lands Commission also recommends that existing grants be amended to require, and future grants provide, that the granted lands will be developed in accordance with “approved planning concepts.” The commission suggests that it be given the responsibility to approve any programs for development of granted lands.

3. Of those grants where the State Lands Commission has been given the responsibility to determine grantees compliance with a “substantial improvement” clause only one conveyance requires the grantee to supply the commission with information concerning the state of its tide and submerged land development. If the Legislature continues to make use of the “substantial improvement” clause then the grantees should be required to make information relative to improvement of the lands available to the commission.

4. The Resources Agency suggests that all requests of a grant or lease of tide and submerged land be accompanied by an application

submitted to a review board. The board would perform the function of coordinating the interests of all state agencies having an interest in those lands, and would make recommendations to a higher level body for final action on the request. The board might be structured in such a manner that it would represent the Resources Agency, the Division of Highways of the Department of Public works, the State Office of Planning, the Division of State Lands of the Department of Finance, and the Department of Public Health.

Development of Policy Criteria. It would be desirable to establish the criteria by which decisions will be made and responsibilities carried out.

1. Prior to the disposition of a parcel of tide and submerged land there should be a systematic analysis made of the effects which would stem from the proposed use to be made of the land by the grantee. The Resources Agency suggests that this might be accomplished by means of a check list of factors which require consideration prior to a determination of the terms and conditions to be included in the granting statute. Such a check list might include such things as the state of local planning, regional planning, prospective revenue to be derived from the lands, water pollution factors, fish and wildlife factors, and earthquake hazards, in addition to other considerations.

2. The State Lands Commission recommends that criteria be established to determine when the grantee has complied with the terms and provisions of the grant.

3. The State Lands Commission suggests that there be a determination of the priorities between mineral and surface development where there is no immediate conflict between the two. For instance, in areas where development can be expected in the not too distant future, the state might encourage the exploitation of the underwater resources before their exploitation conflicts with surface development.

4. The Lands Commission also suggests that a formula for sharing revenue derived from granted lands be developed and applied to those lands where the state did not reserve the mineral rights.

Changes in Grant Terms, Conditions, and Reservations. Once the tide and submerged lands have been thoroughly studied and policies developed to govern their administration and development then those policies can be reflected in the terms of the individual grants.

1. If a state agency is given the specific authority to supervise grantee administration of tide and submerged lands then it would be desirable to require the grantees to make periodic reports to that agency. The report might include statements relating to the amount and source of revenue derived from the lands, a statement of revenue expenditures, and exposition of any local and regional plans that would affect the lands, and a notification of any legal actions concerning the lands.

2. To encourage the development of the lands on an area wide basis the grantees could be required to participate in regional planning.

3. It may also be desirable to amend existing grants, and to word future grants, to provide for uniform provisions relating to reversion to the state upon violation of the grant terms, reservation to the state of all mineral rights, and the length of leases or franchises the grantees may grant.

WITNESSES APPEARING BEFORE THE COMMITTEE OR SUBMITTING STATEMENTS

Frank J. Hortig, Executive Officer, State Lands Commission: Chief, State Lands Division, California State Department of Finance

Mr. Hortig recommended "the placement of a moratorium on the issuance of new grants until such time as the various studies being conducted by the executive and legislative branches of state government are complete and appropriate legislative control specifications have been adopted."

John Sheehan, Deputy Director, California State Department of Finance

"The problems which are encountered in the formulation of the state policy for the development and conservation of the tide and submerged lands are as difficult to solve as they are important. At this time, neither our knowledge nor examination of the issues is sufficiently complete for us to be in a firm enough position to provide the committee with comprehensive and long-range recommendations for both the immediate and long-term disposition and use of tide and submerged lands. The Development Plan study of the tide and submerged lands, on which we will base the body of our evaluation and recommendations for policy, is advancing but will not be completed until October 1, 1965. At that time the information will be available upon which, we think, rational decisions may be based and correlated with other strategies for the economic growth and development of California."

Hugo Fisher, Administrator of Resources Agency, State of California

"For those tide and submerged lands lying offshore from the California coastline, the future is apt to witness great activity in many and diverse directions. For instance, the tides may be harnessed as a source of energy. The seas will even be subject to more exploitation for their biological crops. Minerals will be harvested from the ocean floor. Oil and gas fields will be developed in increasing number. Sea water will be distilled to a useful quality for land use. Waste will be disposed of in the watery depths overlying the lands. Undersea habitation and transportation, now being researched, show future promise, and mounting recreation pressures will result in both the water surface and submarine areas being in greater demand. Thus, in a collective sense, the tide and submerged lands resource is a complex aggregation of lands, subject to innumerable uses and abuses, present and potential.

"The six sequential steps that I shall discuss are: (1) the declaration of a moratorium on future grants of tide and submerged lands pending development of an adequate policy; (2) preparation of an inventory of all such lands; (3) the determination of the interests and responsibilities of the numerous state, federal, and other entities in such lands; (4) the analyzation of the historical terms and conditions imposed by the state on grantees and lessees in the past; (5) the preparation of a new set of comprehensive and uniform policies and procedures for such lands; and (6) the reorganization of our laws and organizational structures to the extent necessary to accommodate such new policies and procedures as adopted by the Legislature.

"We do not have enough total knowledge as yet regarding the proper husbandry of these lands. Consequently, a waiting period of two years or so during which time this information and knowledge can be gained and a comprehensive, coordinated policy and procedure could be developed, would be worth the obvious temporary inconvenience. In other words, I believe it necessary that a moratorium be declared in order to protect the natural resources of the state which previously have not been given adequate consideration until policies, sought after in House Resolution 512, have been formulated and adopted."

The following persons also appeared before the committee or submitted statements for its consideration. A complete transcript of all testimony received at the Anaheim hearings and the full text of all statements received from those interested in the subject matter are on file in the committee offices.

Warren J. Abbott, Deputy Attorney General, State of California

Arthur O. Spaulding, Assistant City Administrative Officer, representing C.

Erwin Piper, Administrative Officer, City of Los Angeles

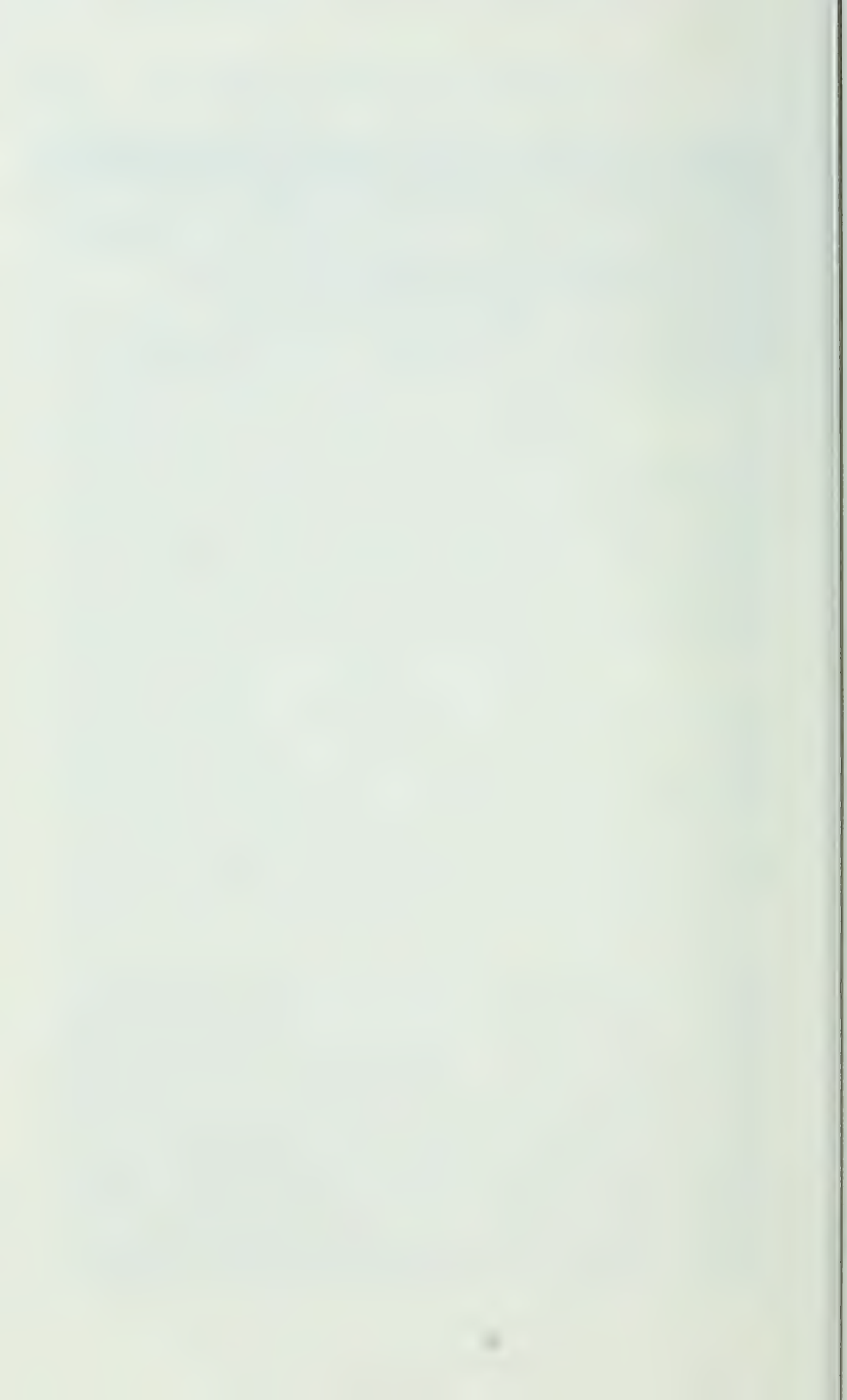
Don Nay, Assistant Port Director, Port of San Diego

John T. Schulte, Director of Public Works, City of Manhattan Beach

Douglas Maloney, County Counsel, Marin County

Mrs. James P. Crowley, Citizens Committee for Preservation of Beaches and Parks

Lohn R. Ficklin, City Manager, City of Vallejo



OLD SACRAMENTO STATE PARK

INTRODUCTION

The western portion of the City of Sacramento is an area rich with historical significance for the State of California and the nation. During the years 1849 to 1870 it was the hub of the California gold rush. As the jumping-off place for the goldfields of Northern California, the area became the transportation, communication, commercial, and cultural center for one of the greatest migrations in history. The events that transpired in and around Sacramento set the stage for the tremendous growth and development that California has obtained today.

Many of those events occurred in the old section of the city. It was there, at the foot of K Street in 1861, that ground was broken for construction of the Central Pacific Railroad; eight years later the Central Pacific tracks became part of the nation's first transcontinental railroad. On April 4, 1860, the first run of the famed Pony Express left Sacramento carrying mail destined for St. Joseph, Missouri, and points east; the Hastings Building, the western terminus for the Pony Express, still stands on the corner of Second and J Streets. The Embarcadero along Front Street was the terminal point for thousands of tons of supplies brought up the Sacramento River and transhipped to the goldfields of the interior. The offices, hotels, and saloons of the area were the setting for many far-reaching decisions affecting the development of the West.

Present-day California has a direct link with the events that took place in the old section of Sacramento. Business firms having their roots there include: the Sacramento *Union*, the Sacramento *Bee*, W. P. Fuller Paint Company, the Southern Pacific Company, Wells Fargo Bank, Baker and Hamilton, Western Union, the Bank of California, the Crocker-Citizens National Bank, the Pacific Mutual Life Insurance Company, and the DiGiorgio Fruit Company. In addition, the personal fortunes of such men as Crocker, Huntington, Hopkins, and Stanford had their beginnings in Old Sacramento and later made significant contributions to the financial, cultural, and educational life of the state.

The personalities who made Old Sacramento their base of operations have long since passed into the pages of history books. But in many instances the buildings they used are still standing. Two structures—the Hastings Building and the Big Four Building—have been declared to be of national historical significance. Many other buildings of equal historical or architectural importance still remain in the area or could be reconstructed there.

Due to the presence of these old buildings the state, in cooperation with the City of Sacramento and private enterprise, has a unique opportunity to recreate the setting and atmosphere existing in Old

Sacramento during the 1849-1870 period. When completed, such a project would offer a continuing source of education and pleasure for millions of Californians and visitors from other states.

Since 1957 the Department of Parks and Recreation has been working in cooperation with the Redevelopment Agency of the City of Sacramento, the City of Sacramento Historical Landmarks Commission, and other state and private organizations to develop a plan for the creation of a state park in the area. The Redevelopment Agency plans to develop an Old Sacramento Historic Area and Riverfront Park in the area bounded generally by the Sacramento waterfront pierhead line on the west; the I Street Bridge viaduct and approach ramps on the north; the westerly right-of-way line of the interstate Freeway Route 5 on the east; and the center line of S Street on the south. The historic area will be constructed above Capitol Avenue and the Riverfront Park will lie in the area south of Capitol Avenue. The proposed state park will be located within the historic area.

The total cost of the historic area project is estimated to be approximately \$30 million. A portion of the cost will be supplied by Federal Urban Renewal Funds and the state's contribution to the project would consist of about \$5 million spent on developing the state park.

Plans of the Department of Parks and Recreation call for the reconstruction of an 1849 scene on the western half of the block between Front Street, Second Street, I Street, and J Street. In this area would be reconstructed such buildings as the New England Feed Store, the Cothrin Building, the Washburn Building, the Round Tent, the Eagle Theatre, the McDowell Company Building, the City Hotel, the Hotel de France, the People's Market, the Hensley Building, the Gunn Blacksmith Shop and several other incidental buildings. Some of these structures would be operated as house museums; i.e., presented exactly as they would have appeared in 1849. Others will be operated as concessions; for example, the Round Tent and the Eagle Theatre might be concessioned to theatrical groups for the presentation of their productions.

The space between the 1849 scene and the river may be used to present a typical wharf scene of the era. The Big Four Building will be reconstructed on the quarter block immediately north of the 1849 scene and it will house a railroad museum. The Hastings Building will remain at its present site on the northeast corner of Second and J Streets. The main floor of the structure will be interpreted as the western terminus of the Pony Express; the second floor will be reconstructed to show it has the first State Supreme Court and the original site of the State Library.

The portions of the historic area surrounding the state park will be developed by the Redevelopment Agency to recreate as nearly as possible the scene and atmosphere of the 1849-1870 era. However, this will not merely be a museum area; it is planned that present day business and commercial activities will be carried on there, and private capital has already shown much interest in the project.

On October 5, 1964, the committee held a public hearing in the State Capitol on A.B. 2097 relating to the establishment of an Old

Sacramento State Park, at which testimony was received from Mr. Charles DeTurk, Director, State Department of Parks and Recreation; Frank P. Durkee, member, Redevelopment Agency of the City of Sacramento, chairman, Redevelopment Agency Old Sacramento Committee; Donald L. Kline, deputy director, Redevelopment Agency of the City of Sacramento; Clyde Trudell, project manager, Redevelopment Agency of the City of Sacramento; Aubrey Neasham, consultant to City of Sacramento Historic Landmarks Commission.

FINDINGS AND CONCLUSIONS

Analysis of the testimony taken at the Sacramento hearing and other information available leads the committee to make the following findings and conclusions respecting the establishment of an Old Sacramento State Park.

1. The western portion of the City of Sacramento lying generally north of Capitol Avenue, east of the Sacramento River, south of I Street, and west of Third Street is an area of great historical importance to the State of California and the nation. The area was the locale of many events and activities during the period 1849-1870 which were important to the development of California and the West. The western regional office of the National Park Service has recommended that the area be recognized as a Registered National Historic District and it is expected that the Secretary of the Interior will soon act to approve this recommendation.

2. That portion of the City of Sacramento is the location of many buildings having historical and architectural significance. Two structures—the Hastings Building and the Big Four Building—have already been declared to be of national historical significance.

3. Due to its historical importance and the presence of a large number of buildings of historical and architectural significance certain portions of the area are uniquely suited for development as a state park.

4. The City of Sacramento through its Redevelopment Agency has completed a master physical development plan for a Sacramento Historic Area and Riverfront Park. This plan has been arrived at in cooperation with various state agencies and private interests. It calls for the development of a historic area in the western portion of the City of Sacramento by the City of Sacramento, the State of California, and private capital. The total cost of the project is estimated at \$30 million, about \$5 million of which would be furnished by the state for the development of an Old Sacramento State Park.

5. The Department of Parks and Recreation is nearing completion of a master plan for the development of an Old Sacramento State Park with the Old Sacramento Historic Area. Preliminary studies for the state park were conducted pursuant to Chapter 2315, Statutes of 1957 and Chapter 117, Statutes of 1963.

RECOMMENDATIONS

The committee makes the following recommendations.

1. That those portions of the Old Sacramento area which the Division of Beaches and Parks of the Department of Parks and Recreation have found or will find to be suitable for inclusion in the state park system, be declared a State Park.

2. That the Division of Beaches and Parks of the Department of Parks and Recreation continue, in cooperation with the Redevelopment Agency of the City of Sacramento, its Historic Landmarks Commission, and private interests, to develop a master plan for the construction of a state historical park in Old Sacramento.

PROPOSED LEGISLATION

An act to add Article 4 (commencing with Section 5055) to Chapter 1 of Division 5 of the Public Resources Code, relating to historic parts of the City of Sacramento.

The people of the State of California do enact as follows:

SECTION 1. Article 4 (commencing with Section 5055) is added to Chapter 1 of Division 5 of the Public Resources Code, to read:

Article 4. Old Sacramento State Historic Park

5055. As used in this article:

(a) "Old Sacramento" means that area including buildings and structures, in the City of Sacramento, bounded on the west by the westerly boundary of the City of Sacramento, on the north by the centerline of the I Street Bridge and approach viaduct, on the east by the centerline of Third Street, and on the south by the centerline of Capitol Avenue; and that area including buildings and structures bounded on the west by the westerly boundary of the City of Sacramento, on the north by the centerline of Capitol Avenue, on the east by the easterly right-of-way line of Front Street, and on the south by the centerline of S Street.

(b) "Old Sacramento State Historic Park" means that portion of Old Sacramento, including land, buildings and structures, acquired or administered by the State of California for state park purposes pursuant to this article.

(c) "Early days" means that period of time between 1849 and 1870.

5055.5. The Legislature hereby finds and declares:

(a) That the portion of the City of Sacramento herein defined as Old Sacramento for purposes of this article is rich in past personalities, places and incidents vitally important in the development of this state and now of major historic interest and value to the people of this state and to the entire nation, including, among others, the western terminus of the Pony Express in Sacramento, the starting point of the great Central Pacific Railroad, the site of the Sutter Embarcadero and the heart of the busy Sacramento River Transpor-

tation System linking the gold country of Northern California to San Francisco and the outside world, and the site of architecturally significant or historically valuable buildings, such as the Big Four Building and the Hastings Building; that the Old Sacramento area has been declared to be a national historic site.

(b) That the Division of Beaches and Parks, as authorized by Chapter 2315 of the Statutes of 1957, has completed a preliminary survey of buildings and structures in a portion of the area herein defined as Old Sacramento; that all of Old Sacramento is now included in one or more project areas in which the Redevelopment Agency of the City of Sacramento is or will be carrying out a program of slum clearance and redevelopment pursuant to the provisions of the Community Redevelopment Law (Part I (commencing with Section 33000) of Division 24 of the Health and Safety Code); and that it is of the utmost urgency and importance that the State of California, the City of Sacramento and its Historic Landmarks Commission, and the Redevelopment Agency of the City of Sacramento consult and cooperate together in undertaking detailed and comprehensive planning for the preservation, development and administration of the historically significant aspects and features of Old Sacramento in a manner consistent with the rich heritage which they hold for the people of the State of California.

5056. It is hereby declared to be the policy of the State of California to participate in the establishment, preservation and administration as an historic area representative of the early days of this state and the early history of the City of Sacramento, as the state capital, a portion of Old Sacramento, exclusive of land required for State Highway Route 5, which is determined to have statewide historic or architectural-historic significance and value.

5056.5. To assure the accomplishment of this policy it is directed that:

(a) To the extent that funds are available for such purposes, the department shall cooperate with other public agencies, including the Redevelopment Agency of the City of Sacramento, the City of Sacramento and its Historic Landmarks Commission, and private interests in the making of a survey based upon historical research to determine the types and materials of construction, location, and uses of the structures which existed in Old Sacramento during the early days, and based upon the data so obtained shall cooperate with other public agencies, including the Redevelopment Agency of the City of Sacramento, the City of Sacramento and its Historic Landmarks Commission, and private interests in the preparation of a master plan, including subsequent modifications or revisions thereto, to which all work of preservation, restoration, reconstruction, development, and operation shall substantially conform. The master plan shall include historical, archeological, architectural, engineering and economic findings on the desirability and feasibility of retaining, relocating, reconstructing or restoring, in whole or in part, structures in Old Sacra-

mento. The master plan shall provide for or recommend the public or private agencies or persons to be in charge of and participate in such work and shall designate the source of available funds which may be lawfully expended for such work.

(b) The department may let or sublet in accordance with policies established by the State Park Commission, any buildings and other property, real or personal, owned or acquired by the state within Old Sacramento on such terms and conditions as determined by the department for occupancy, including such lawful use which is found to be the same or similar use which held in the early days or which as determined by the department is not inconsistent with the objectives of this article.

(c) A building or buildings owned by the state may be designated and used for the establishment of a museum or shelter and display exhibits of articles and equipment used in shipping, mining, railroad or other activities of the vicinity, articles formerly possessed or used by early-day inhabitants of the area, and items of historic interest or suitable for inclusion as approved by the department, whether loaned, donated or otherwise acquired.

(d) Any structures in Old Sacramento State Historic Park the preservation, restoration or reconstruction of which is assured by suitable contribution, when approved by the department, may be named in honor of or as a memorial to the donor or as designated by the donor; provided, however, that structures which are commonly identified or known by a particular name or designation which relates to their recognized historical significance or value shall, when preserved, restored or reconstructed, retain such name or designation by which they are commonly known.

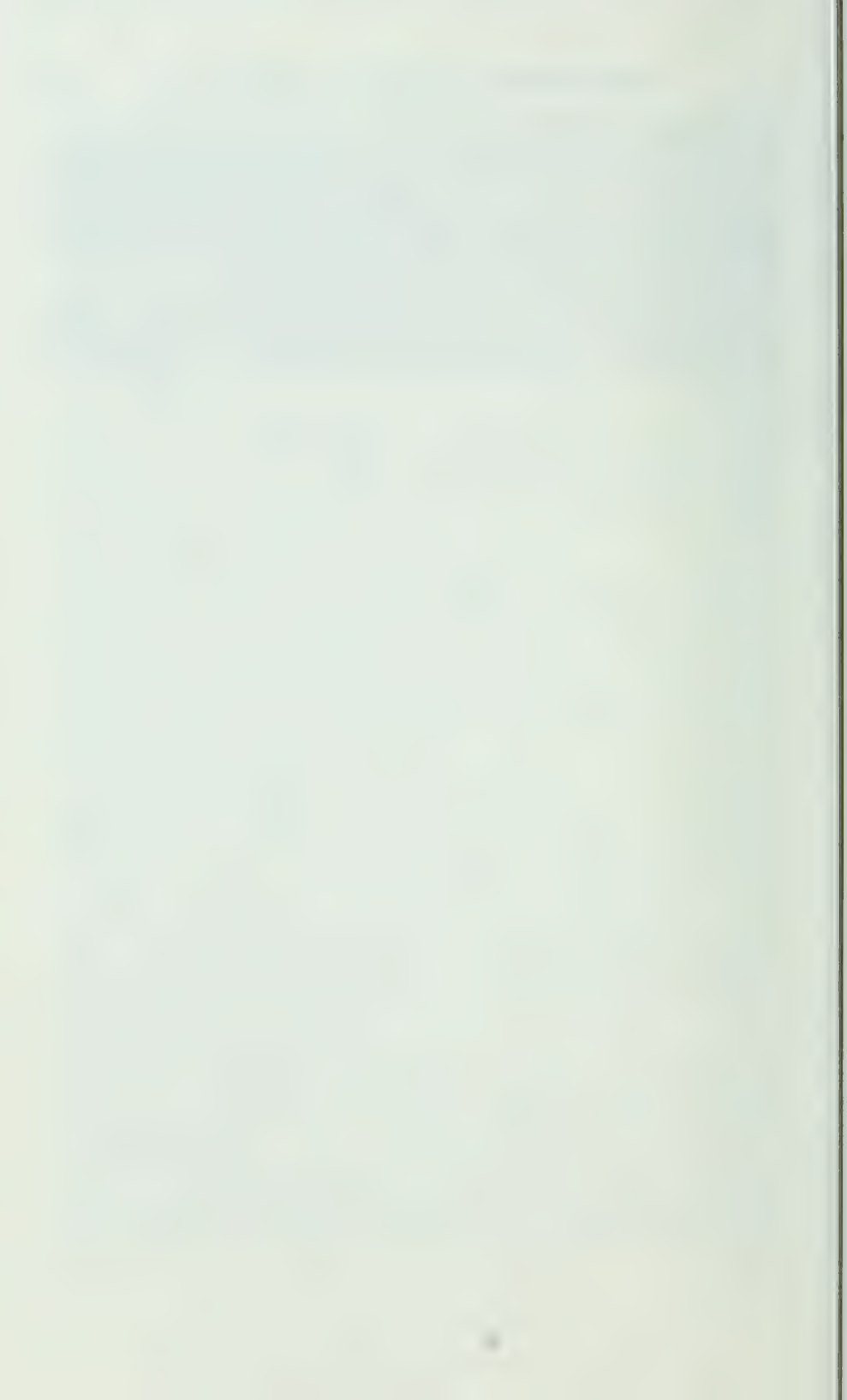
5057. Notwithstanding Section 5006.5 and Article 5 (commencing with Section 5060) of this chapter, the department may, in accordance with policies established by the State Park Commission, acquire for state park purposes, by lease, purchase, gift, bequest, eminent domain, or otherwise, out of any moneys available for such purpose, land and structures and other real property in Old Sacramento, to be thereafter known and designated as Old Sacramento State Historic Park, which in the judgment of the department are considered of sufficient statewide historic significance to be included in such project for state park purposes, as a part of the state park system, and which is not otherwise being devoted to use consistent with the development of Old Sacramento as an historic area.

5057.5. The department may, upon such terms and conditions as it deems appropriate, purchase, lease, obtain option on, acquire by gift, grant, bequest, devise or otherwise, historic artifacts and other personal property for use, exhibit or display in Old Sacramento State Historic Park.

5058. Nothing contained in this article shall in any way be construed to prevent or interfere with the execution by the Redevelopment Agency of the City of Sacramento of a slum clearance and

redevelopment program covering all or a portion of Old Sacramento, or with the acquisition therein of land and structures by the State of California for highway purposes, or the construction, maintenance and operation thereon of a state highway, it being the intent of this article that the planning and development of Old Sacramento State Historic Park be coordinated and done in cooperation with all public agencies having an interest or jurisdiction in the area.

5058.5. That portion of Old Sacramento acquired for state park purposes and known as Old Sacramento State Historic Park is a unit of the state park system and shall be administered in accordance with the laws applying thereto subject to the provisions of this article.



LAND ACQUISITION POLICIES AND PROCEDURES

SUMMARY OF THE PROBLEM

State agencies which acquire land are becoming increasingly interdependent. It is not unusual for two agencies to be interested in the same or contiguous land at the same time. Several agencies' functions are so similar that the same land may be involved in several government purchases. One agency negotiating a purchase of land may establish a precedent of price for a second agency interested in land in the same area.

Very often the original development of a government program in a particular site causes land values to rise sharply and additional purchases of land by other agencies are much more costly than the original purchase.

For these reasons, it would appear that statewide planning and coordination would be better served by the establishment of a single division charged with the responsibility of acquiring land on behalf of all state agencies. This division would in no way interfere with the individual state agency's determination as to what land should be acquired nor would it obviate the need for obtaining approval of their purchases as may be otherwise required by law.

Other advantages will accrue to the state as a result of a separate agency to physically negotiate for and acquire property for various governmental purchases. In many agencies, the program of land acquisition tends to fall in peaks and valleys, i.e., heavier workloads at some times of years and lighter workloads at others. For this reason the committee feels that consolidation would result in reduction of the number of employees required for all of the state's land acquisition functions.

In addition, there is general recognition among state agencies that the Division of Highways has excellent programs and procedures for acquiring land. As a matter of fact, during the 10-year period from 1954-55 through 1963-64, the division has acquired 1,359 parcels of land valued at \$42,927,790 on behalf of other state agencies. Well over half of that number of parcels and approximately half of that dollar amount has been involved in the last three fiscal years. Thus there appears to be a wider use of the Division of Highways for acquisition of land on behalf of other state agencies. The committee believes that this is a recognition of the Division of Highways' having become specialists in the field of land acquisition and are better equipped to acquire land than other state agencies. It would logically follow that the creation of a land acquisition division would give the state a specialized land acquisition program far superior than the decentralized units which exist today.

At the present time, the Division of Highways maintains its own legal staff for negotiation or condemnation of land. With one other

notable exception, the University of California, the Attorney General represents state agencies in their condemnation suits. Again, it would appear that staffing the proposed division of land acquisition with its own legal counsel would result in specialization on condemnation suits that would serve the state to good advantage. Since most requests for acquisition of land are subject to the approval of the Department of Finance, there seems to be a disproportionate legal review in some land acquisition cases. Since the Department of Finance also uses the Attorney General to verify legal opinions of its staff attorneys, a Department of Water Resources transaction concerning land condemnation for example, receives legal review by its own staff attorneys, the Department of Finance and the staff of the Attorney General.

On this basis, consolidation of a legal staff specialized in land acquisition programs seems desirable as a part of the proposed division of land acquisition.

RECOMMENDATIONS

The committee recommends that a division of land acquisition be created in the Department of Public Works, and that the physical negotiation and/or condemnation of land for use by *all* state agencies be conducted by this division. The division would be created by the consolidation of all existing land acquisition units in state government.

The committee further recommends that the division maintain its own legal staff for review of such legal documents as may be necessary in the acquisition of land by negotiation and to institute such legal actions as may be necessary in the condemnation of property.

PROPOSED LEGISLATION

An act to amend Section 14005 of, and to add Chapter 5 (commencing with Section 14600) to Part 5, Division 3, Title 2, of the Government Code, and to repeal Sections 86 and 1091.1 of the Military and Veterans Code, relating to acquisition of real property by the state.

The people of the State of California do enact as follows:

SECTION 1. Section 14005 of the Government Code is amended to read:

14005. For the purpose of administration, the director shall organize the department with the approval of the Governor in the manner that he deems necessary properly to segregate and conduct the work of the department. The work of the department shall be divided into at least four divisions known as the Division of Highways, the Division of Aeronautics, the ~~Division of Contracts and Rights of Way~~ *Division of Land Acquisition*, and the Division of Bay Toll Crossings.

SEC. 2. Chapter 5 (commencing with Section 14600) is added to Part 5, Division 3, Title 2 of the Government Code, to read:

CHAPTER 5. LAND ACQUISITION

Article 1. Definitions

14600. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

14601. "Chief" means the Chief of the Division of Land Acquisition.

14602. "Director" means the Director of Public Works.

14603. "Division" means the Division of Land Acquisition.

14604. "Real property" includes the fee or any lesser estate or interest in real property.

Article 2. Division of Land Acquisition

14620. There is in the Department of Public Works the Division of Land Acquisition which is created to provide centralization of real property acquisition functions of state government.

14621. The division is under the control of an executive officer known as the Chief of Land Acquisition.

14622. The chief, with the approval of the director, shall perform all duties, exercise all powers and jurisdiction, assume and discharge all responsibilities, and carry out and effect all purposes vested by law in the division.

14623. Notwithstanding the provisions of Section 11043 of the Government Code, the director may employ an attorney at law and such assistant attorneys as are necessary to provide legal counsel for the division. These attorneys may advise the chief and the officers and employees of the division concerning legal affairs of the division and may represent the division and the state in litigation concerning affairs of the division.

Article 3. Functions

14640. Notwithstanding any other provision of law, the division has exclusive power to acquire any real property for the state by condemnation, purchase, lease, hire, or exchange.

14641. The division also succeeds to and is vested with all of the duties, functions, powers, purposes, responsibilities, and jurisdiction vested in the Division of Contracts and Rights of Way of the Department of Public Works.

14642. Whenever the acquisition of any real property for any state agency, except the division, is authorized or contemplated by any law, the state agency for which the real property is to be acquired shall request the division to acquire such real property. The request shall be in writing and shall contain all of the following:

(a) A description of the real property which is to be acquired.

(b) A statement of the authority under which the real property is to be acquired.

(c) A statement of any conditions which are required to be satisfied by the division before the real property may be acquired for the state agency, or before proceedings may be commenced by the division to condemn the real property.

(d) Such other information as the chief may require.

14643. If the division determines that the acquisition of any real property which it is requested to acquire for any state agency, or which is necessary for the purposes of the division, is authorized or required by law and that the funds are available to pay the costs of the acquisition of the real property, the division shall acquire the real property.

14644. Where, prior to October 1, 1965, a particular procedure is required to be followed by any state agency in acquiring any real property, such procedure shall be followed by the division, as nearly as may be practicable in acquiring such real property for such state agency.

SEC. 3. Section 86 of the Military and Veterans Code is repealed.

86. ~~The department shall investigate and determine the advisability of accepting or acquiring on behalf of the State the Corona Naval Hospital, including the buildings and grounds thereof, from the United States government, for use either as a state veterans' home or hospital, or both, or for use as a state veterans' facility used in conjunction with the federal Veterans Administration.~~

Following such investigation and determination as the department shall make, the department may accept or acquire on behalf of the State from the United States government any part or all of the Corona Naval Hospital, including the buildings and grounds thereof, for use either as a state veterans' home or hospital, or both, or for use as a state veterans' facility used in conjunction with the federal Veterans Administration if the property becomes available to the State for such use and if the department deems the acquisition and the terms and conditions thereof to be in the best interests of the State and provided that the department accepts or acquires only that portion of the property which may reasonably be used by the department for a veteran's facility, and provided that no state funds shall be expended in connection with the acquisition of Corona Naval Hospital without the prior approval of the Legislature.

SEC. 4. Section 1091.1 of said code is repealed.

1091.1. ~~The manager of the Division of Veterans Homes may purchase grave plots for the interment of indigent members of the home out of any funds under his control.~~

SEC. 5. The Division of Contracts and Rights of Way of the Department of Public Works is hereby abolished.

SEC. 6. All public property, real or personal, of any state agency which is used principally or primarily in the carrying out of any function, or acquired in connection with the exercise of any function, which function is transferred by this act to the Division of Land Acquisition of the Department of Public Works, is transferred to such division.

SEC. 7. All officers and employees of state agencies on the operative date of this section, who are serving in the state civil service, other than temporary employees, and who are engaged in the performance of a function transferred to the Division of Land Acquisition of the Department of Public Works or who are engaged in the administration of a law, the administration of which is transferred to such division, by this act shall be transferred to the Division of Land Ac-

quisition and their status, positions, and rights shall not be affected by their transfer and they shall continue to be retained as employees of the Division of Land Acquisition pursuant to the State Civil Service Act, except as to positions the duties of which are vested in a position exempt from civil service in such division.

SEC. 8. This act shall become operative October 1, 1965.

**WITNESSES APPEARING BEFORE THE COMMITTEE
OR SUBMITTING STATEMENTS**

Emerson Rhyner, Counsel, Department of Public Works

Rudolf Hess, Chief Right-of-way Agent, Division of Highways, Department of Public Works

John Legarra, Deputy State Highway Engineer, Division of Highways, Department of Public Works

H. C. Vincent, Jr., Chief Land Agent, Property Acquisition Service, Department of General Services

Thomas Clayton, Land Agent, Property Acquisition Service, Department of General Services

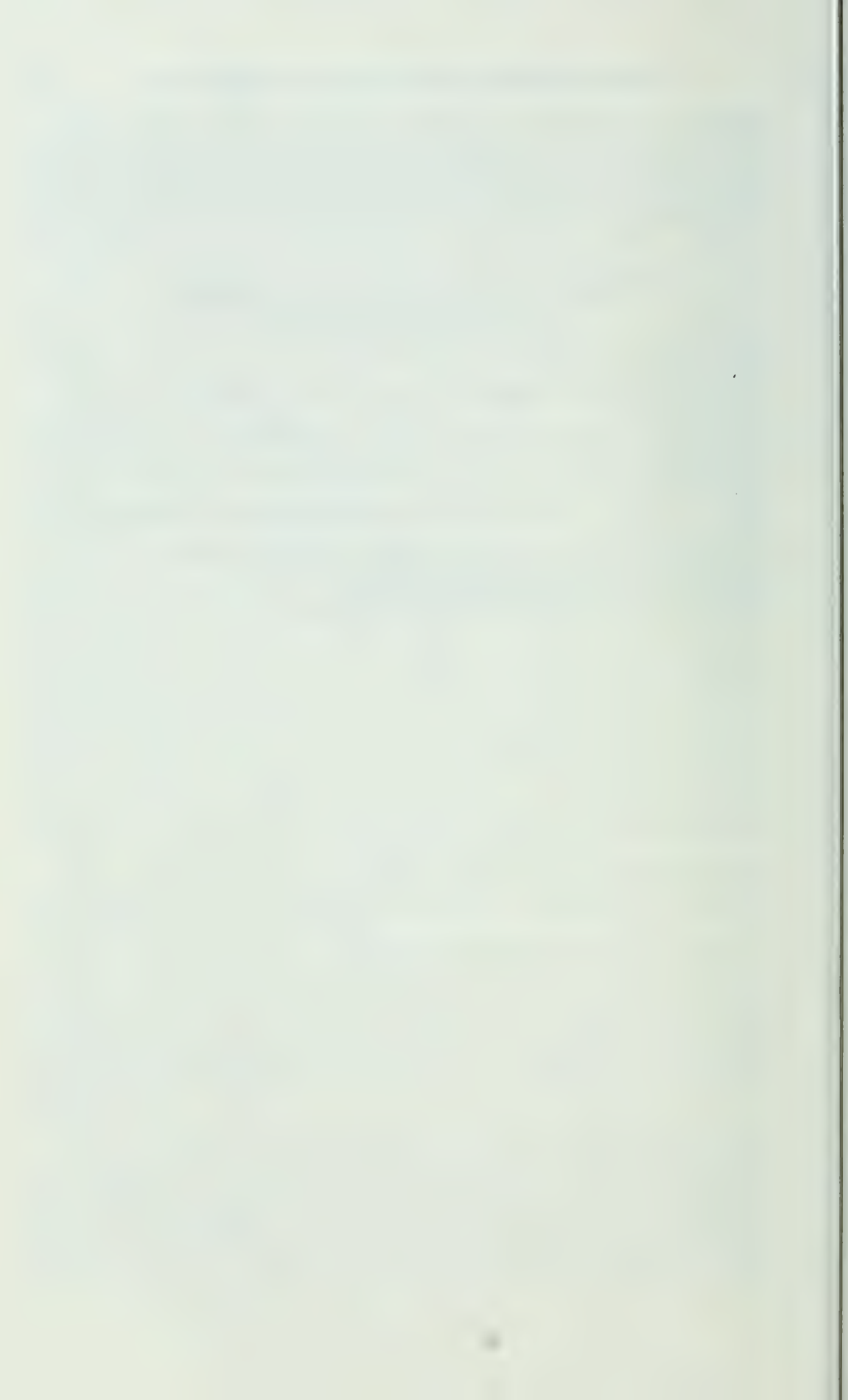
William E. Warne, Director, Department of Water Resources; representing the Resources Agency

Colonel Albert E. McCollom, General Manager, the Reclamation Board

Les Cohen, Director, External Affairs, California State Colleges

Ray Hunter, California Farm Bureau Federation

James H. Corley, Vice President, University of California



RECREATIONAL BOATING

SUMMARY OF THE PROBLEM

Part I

As a result of a study conducted by the legislative analyst in accordance with Assembly Resolution No. 47 of the 1961 session, approximately \$3,600,000 was determined to be the proper amount of unclaimed gas taxes which should be transferred from the motor vehicle fuel fund to the Small Craft Harbor Revolving Fund.

Assembly Bill 239 of the 1963 legislative session transferred \$2,000,000 per year for this purpose. This committee strongly urges that the additional moneys in the motor vehicle fuel fund attributable to taxes imposed on distributions of motor vehicle fuel used or usable in propelling vessels be transferred to the Small Craft Harbor Revolving Fund.

The committee notes that pursuant to Senate Concurrent Resolution 68 of the 1963 General Session, a supplementary study is being conducted. However, the study has not been completed as of the time of the drafting of this report.

Under existing law, individuals can claim refunds under Section 8108 of the Revenue and Taxation Code for fuel used or usable in propelling vessels. Money unrefunded is being transferred to the Small Craft Harbors Fund and loaned for construction of boating facilities and grants for construction of boat launching ramps. Once these facilities are constructed, they are available to use equally by persons who claim their gas tax refunds and by persons who did not choose to do so. This creates a basic inequity where unclaimed gas tax funds build facilities used by persons who claim their refunds. For this reason, the committee recommends that refunds be discontinued except to charitable organizations, such as the Sea Scouts, whose claim for refunds should be honored.

Part II

This committee is extremely concerned with the lack of adequate enforcement of California's boating laws. It is also concerned with the apparent recognition of the fact that all boats presently being used are not registered in accordance with California law. For this reason it recommends that the law require that all boats be registered and that exemption certificates be issued without charge for those boats in dry storage and subsequently not in use. This recommendation will accomplish two goals:

- (a) The California Highway Patrol will be able to determine if boats being trailered on state highways are properly registered. The present law, which provides that only boats on the waters be registered, allows trailered boats to travel from place to place

without proper registration documents when it would appear that the boats are being transported for the purpose of use.

- (b) Requiring all boats to be registered and issuing exemption certificates for those not in use would, for the first time, give the State of California an accurate census of the number of boats owned by California residents. The issuance without cost of a certificate exempting boats from registration when they are in dry storage and not in use will cause no financial hardship on the boat owner. At such a time as he intends to put his boat into use he can return the exemption certificate and apply for registration, thus incurring no penalty for failure to register his boat during the period it was in dry storage.

Because it appears to be widely recognized that many boats remain unregistered, although registration is required under California law, the committee further recommends that the penalty fee be increased from 50 percent of the registration fee to an amount equal to the registration fee. In recognition of the cost to county government for enforcement of the California boating laws, the committee feels that the increase in penalties for failure to register should be allocated to county government. Where counties are issuing citations for failure to register, the increased fee should be allocated to that county. Where penalty fees are routinely assessed by the Division of Small Craft Harbors because of voluntary late registrations, the increased penalties should be allocated to the county in which the boat is registered.

During the last two general sessions, legislation granting peace officer authority to harbor personnel so that they might enforce California's boating laws has been vetoed by the Governor. In his veto message on Assembly Bill 1362 of the 1963 General Session, Governor Edmund G. Brown stated:

"It appears to me that the whole subject, of what additional classes of law enforcement personnel should have peace officer status, is a matter that might appropriately be studied by a legislative interim committee. Pending the completion of such study, I believe that there should be a clear showing of urgent need before such powers are granted to additional persons. Such clear showing has not been made in this case."

There is no question in the minds of this committee that the present California boating laws are not being uniformly enforced. Many counties have no enforcement whatsoever. This committee strongly feels that limited peace officer authority (for enforcement of California's boating laws only) should be granted to special harbor personnel, employed by cities, counties or special districts, where the primary function of this personnel is enforcement of local marine ordinances. Such limited peace officer power should only be granted within the confines of the area in which such special harbor personnel are employed.

This committee further recognizes that part of the problem of uniform enforcement lies in the fact that sparsely populated counties with negligible ownership of boats on the personal property assessment

rolls contain bodies of water imminently suitable for boating. Examples of this situation are the Salton Sea in Riverside and Imperial Counties, Lake Tahoe in Placer and El Dorado Counties, and Lake Berryessa at Napa. These waterways are widely used by nonresidents of the bordering counties and create an undue financial burden on the counties to supply adequate law enforcement. This committee recommends that during the next interim period, a thorough study be conducted on a method of reimbursing these counties to insure that proper enforcement of California's boating laws are conducted by the local law enforcement agencies.

This does not, however, prevent those counties whose personal property tax rolls contain a large number of boats from the responsibility of enforcing California's boating laws on waterways within their county boundaries. This committee is gravely concerned with the failure of those counties to enforce the boating laws, and in many cases, total failure to make any effort toward enforcement of these laws. This committee rejects the theory that the U.S. Coast Guard has law enforcement authority on federal navigable waters, therefore obviating the need for local law enforcement. The U.S. Coast Guard has no authority to enforce California law on federal navigable waters.

RECOMMENDATIONS

Part I

It is recommended that the proper amount of unrefunded motor vehicle fuel tax be transferred to the Small Craft Harbor Revolving Fund and used for the purposes prescribed for this fund. In addition, the committee recommends that refunds of motor vehicle fuel tax by boatowners be discontinued and that funds previously refunded be deposited in the Small Craft Harbor Revolving Fund.

Part II

The committee recommends that the present California boating laws be properly enforced by local law enforcement agencies. To assist in this enforcement, the committee recommends:

- (a) That all boats be registered and exemption certificates be issued without charge to boats in dry storage and not in use.
- (b) That a penalty equal to the registration fee be charged for boats not registered within the time prescribed by law and that the penalty fee provision be rigidly enforced by the Small Craft Harbors Commission. The committee further recommends that 50 percent of the penalty fees be allocated in the following manner: (1) Where citations have been issued for failure to register, 50 percent of the penalty fee shall be annually allocated in the county in which the citation was issued. (2) Where penalty fees are assessed without a citation being issued, 50 percent of the penalty fee shall be allocated to the county in which the boat is registered.
- (c) That limited peace officer authority be granted to special harbor personnel whose primary function is enforcement of marine laws within the confines of the area in which they are employed.

PROPOSED LEGISLATION

Registration fees.

Amends Secs. 680, 681, adds Sec. 680.3, H. & N.C.

Exempts from registration and renewal fees undocumented vessels kept out of water in dry storage, and provides for issuance of special exemption certificates.

Makes unlawful the use of waters of state by such vessels until regular registration fees have first been paid.

Makes technical clarifying changes.

An act to amend Sections 680 and 681 of, and to add Section 680.3 to, the Harbors and Navigation Code, relating to undocumented vessels.

The people of the State of California do enact as follows:

SECTION 1. Section 680 of the Harbors and Navigation Code is amended to read:

680. ~~Effective April 1, 1960, every~~ Every undocumented vessel using the waters of within this state shall be numbered whether or not such vessel is using the waters of this state. ~~No person shall operate or a county, city, or political subdivision give permission for the operation of any undocumented vessel on such waters unless the~~ Every undocumented vessel is shall be numbered in accordance with this chapter; ~~or~~; except that such a vessel may be numbered in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, and unless provided that (1) the certificate of number issued to such undocumented vessel is in full force and effect, and (2) the identifying number set forth in the certificate of number is displayed on each side of the bow of such undocumented vessel.

SEC. 2. Section 680.3 is added to said code, to read:

680.3. No fees shall be required in connection with an application for number or for the renewal of a certificate of number for any vessel required to be numbered by this state, for so long as such vessel is maintained out of the waters of this state in drydock or other dry storage. The Division of Small Craft Harbors shall, in connection with the issuance of a certificate of ownership and a certificate of number or the renewal thereof for any such vessel, issue to the certificate of exemption from fees.

The commission may adopt rules and regulations necessary for the effective administration of the provisions of this section.

It shall be unlawful to place in any of the waters of this State any vessel for which a certificate of exemption from fees has been issued, unless the fees prescribed by Section 681 for vessels using the waters of this state have been paid.

SEC. 3. Section 681 of said code is amended to read:

681. (a) The owner of each vessel requiring numbering by this state shall file an initial application for number with the Division of Small Craft Harbors at its Sacramento Office or an agent authorized

by the Division of Small Craft Harbors on forms approved by the commission. The application shall contain the name and address of the owner, and of the legal owner if any, and the builder's hull number or any hull number of the vessel as may be required by the division. The application shall be signed by the owner of the vessel. *and. With respect to vessels which are to use the waters of this state, the application shall be accompanied by a fee of five dollars (\$5); except that initial application for numbers made during 1961 and every third year thereafter shall be accompanied by a fee of four dollars (\$4); and initial application for numbers made during 1962 and every third year thereafter shall be accompanied by a fee of three dollars (\$3).* Upon receipt of the application in approved form, the Division of Small Craft Harbors shall issue a certificate of ownership to the legal owner and a certificate of number to the owner, or both to the owner if there is no legal owner, stating the number issued to the vessel and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the vessel the identification number in such manner as may be prescribed by rules and regulations of the commission in order that it may be clearly visible. The number shall be maintained in a legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the vessel for which issued, whenever such vessel is in operation. The Division of Small Craft Harbors may issue one or more stickers, tabs or other suitable devices to identify vessels as being currently registered. The size, shape, and color of such sticker, tab, or other device and the positioning of such on the vessel shall be as determined by the commission.

(b) The owner of any vessel already covered by a number in full force and effect which has been issued to it pursuant to then operative federal law or a federally approved numbering system of another state shall make application within thirty (30) days after the ninety (90) day reciprocity period provided for in Section 682. Such application shall be in a manner and pursuant to the procedure required for the issuance of a number under subdivision (a) of this section.

(c) Should the ownership of an undocumented vessel change, the existing certificate of ownership and a new application form accompanied by a fee of three dollars (\$3) shall be filed with the Division of Small Craft Harbors and a new certificate of ownership and a new certificate of number shall be issued in the same manner as provided for in the initial issuance of number and the number shall be reassigned to the new owner.

(d) In the event that an agency of the United States government shall have in force an overall system of identification numbering for undocumented vessels within the United States, the numbering system employed pursuant to this article shall be in conformity therewith.

(e) The Division of Small Craft Harbors may issue any certificate of ownership and certificate of number or temporary certificate of number directly or the Division of Small Craft Harbors may authorize any person to act as agent for the issuance of a certificate of number or temporary certificate of number. In the event that a person

accepts such authorization, he may be assigned a block of numbers which upon issuance, in conformity with this article and with any rules and regulations of the commission, shall be valid as if issued directly by the Division of Small Craft Harbors. All registration of vessels pursuant to the provisions of this code shall be conducted by the Division of Small Craft Harbors at its Sacramento office or by any agent authorized by the Division of Small Craft Harbors to conduct such registration. No field offices shall be established by the Division of Small Craft Harbors for the registering of vessels.

(f) All records of the commission, the department, and the Division of Small Craft Harbors made or kept pursuant to this section shall be public records.

(g) Every certificate of number issued pursuant to this article shall continue in full force and effect until December 31, 1962 unless sooner terminated, discontinued or extended in accordance with the provisions of this article. Certificates of number shall be renewed by the owner between January 1, 1963, and February 4, 1963, or between January 1 and February 4 every three years thereafter, by presentation of the certificate of number last issued for the vessel or by presentation of a potential registration card issued by the Division of Small Craft Harbors. ~~The~~ *With respect to vessels which are to use the waters of the state the fee for renewal shall be three dollars (\$3)* and shall accompany the request for such renewal.

(h) All certificates of number valid on the effective date of this section, and all certificates of number issued from that date to December 31, 1962, shall expire on December 31, 1962, and on December 31st of every third year thereafter regardless of when such certificates are initially issued.

(i) If the initial application for number is not received by the Division of Small Craft Harbors on or before the date set by the commission a penalty of one-half the fee shall be assessed. If a certificate of number is not renewed on or before the date on which it expires a penalty of one-half the fee shall be assessed, except where the vessel has not been used on the waters of the state subsequent to the expiration date.

(j) All money received, except moneys collected under Section 683, pursuant to this article shall be deposited in the Small Craft Harbors Revolving Fund and is appropriated for the support of the Division of Small Craft Harbors in the administration of this article. Any money that is not so used shall be expended in accordance with Section 5882 of the Public Resources Code.

(k) The owner shall furnish the Division of Small Craft Harbors notice of the wrecking or junking, or the destruction or abandonment of such undocumented vessel within fifteen (15) days thereof. Such wrecking, junking, destruction or abandonment shall terminate the certificate of ownership and certificate of number of such undocumented vessel which if in existence shall be surrendered to the Division of Small Craft Harbors. The Division of Small Craft Harbors, upon receiving notice of the abandonment of an undocumented vessel, or upon an official determination that an undocumented vessel has been aban-

doned, may order the destruction of such vessel at the expiration of 30 days if an investigation by the division has disclosed that no owner, legal owner, or lienholder claims an interest in such vessel, or if such persons have waived their interest. Nothing in this section shall be construed to deny the legal rights, otherwise provided for by law, of any person claiming an interest in an abandoned vessel if such person notifies the division within the time specified in this section.

(l) Any holder of a certificate of number shall notify the Division of Small Craft Harbors within 30 days, if his address no longer conforms to the address appearing on the certificate and shall, as a part of such notification, furnish the Division of Small Craft Harbors with his new address. The Division of Small Craft Harbors may provide for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.

(m) No number other than the number issued to an undocumented vessel or granted reciprocity pursuant to this article shall be painted, attached, or otherwise displayed on either side of the bow of such undocumented vessel.

(n) A fee of one dollar (\$1) shall be charged for a copy of certificate of number, certificate of ownership, or any application filed pursuant to this article.

(o) Fees received pursuant to this article are appropriated for payment of refunds of money received or collected in the payment of fees, permits, or services whenever the fee, permit or service cannot lawfully be issued or rendered to the applicant, and in cases where the payment in whole or in part represents overpayment or payment in duplicate.

(p) The Division of Small Craft Harbors shall transmit information from each initial application and each transfer application or renewal application to the county assessor in the county of residence of the owner of the vessel and to the county assessor in the county in which the vessel is principally kept if other than the county of residence of the owner. If an application shows that the owner of the vessel has changed his residence from one county to another county or that there has been a change in the county in which the vessel is principally kept, the Division of Small Craft Harbors shall transmit information of the change to the assessor of the county in which the owner of the vessel formerly resided or the assessor of the county in which the vessel formerly was principally kept. After the Division of Small Craft Harbors receives a notice pursuant to subdivision (k) of this section the division shall transmit information of the destruction or abandonment to the assessor of the county in which the owner of the vessel resides and to the assessor of the county in which the vessel is or was principally kept, if other than the county of residence of the owner.

(q) A nonprofit corporation organized solely for charitable purposes pursuant to Part 10 (commencing at Section 9000) or Part 3 (commencing at Section 10200), Division 2, Title 1 of the Corporations Code, which purposes relate to promoting the ability of boys and girls to

do things for themselves, to train them in scoutcraft and camping, and to teach them patriotism, courage, self-reliance and kindred virtues, shall not be required to pay the fees provided for in this section.

(r) On or after October 1, 1963, upon application for original registration or transfer of registration of an undocumented vessel, the division may assign an appropriate builder's hull number to such vessel whenever there is no builder's hull number thereon, or when a builder's hull number thereon has been destroyed or obliterated; and such builder's hull number shall be permanently marked in an integral part of the hull which is accessible for inspection.

(s) No person shall intentionally deface, destroy, or alter the builder's hull number of a vessel required to be numbered under this chapter, without written authorization from the division; nor shall any person place or stamp any serial or other number or mark upon an undocumented vessel which might interfere with identification of the builder's hull number. This does not prohibit the restoration by an owner of an original number or mark when the restoration is authorized by the division, nor prevent any manufacturer from placing in the ordinary course of business numbers or marks upon new vessels or new parts thereof.

The rules and regulations adopted by the commission shall be adopted in accordance with the provisions of Chapter 4 (commencing at Section 11370), Part 1, Division 3, Title 2 of the Government Code.

LEGISLATIVE COUNSEL'S DIGEST

Undocumented Vessels: Penalty Fees.

Amends Sec. 681, adds Sec. 685, H. & N.C.

Increases penalties for late registration or failure to register undocumented vessels, from one-half to full amount of the regular fee.

Provides for distribution to counties of one-half of the penalty fees.

An act to amend Section 681 of, and to add Section 685 to, the Harbors and Navigations Code, relating to undocumented vessels.

The people of the State of California do enact as follows:

SECTION 1. Section 681 of the Harbors and Navigations Code is amended to read:

681. (a) The owner of each vessel requiring numbering by this state shall file an initial application for number with the Division of Small Craft Harbors at its Sacramento office or an agent authorized by the Division of Small Craft Harbors on forms approved by the commission. The application shall contain the name and address of the owner, and of the legal owner if any, and the builder's hull number or any hull number of the vessel as may be required by the division. The application shall be signed by the owner of the vessel and shall be accompanied by a fee of five dollars (\$5); except that initial application for numbers made during 1961 and every third year thereafter shall be accompanied by a fee of four dollars (\$4);

and initial application for numbers made during 1962 and every third year thereafter shall be accompanied by a fee of three dollars (\$3). Upon receipt of the application in approved form, the Division of Small Craft Harbors shall issue a certificate of ownership to the legal owner and a certificate of number to the owner, or both to the owner if there is no legal owner, stating the number issued to the vessel and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the vessel the identification number in such manner as may be prescribed by rules and regulations of the commission in order that it may be clearly visible. The number shall be maintained in a legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the vessel for which issued, whenever such vessel is in operation. The Division of Small Craft Harbors may issue one or more stickers, tabs or other suitable devices to identify vessels as being currently registered. The size, shape, and color of such sticker, tab, or other device and the positioning of such on the vessel shall be as determined by the commission.

(b) The owner of any vessel already covered by a number in full force and effect which has been issued to it pursuant to then operative federal law or a federally approved numbering system of another state shall make application within thirty (30) days after the ninety (90) day reciprocity period provided for in Section 682. Such application shall be in a manner and pursuant to the procedure required for the issuance of a number under subdivision (a) of this section.

(c) Should the ownership of an undocumented vessel change, the existing certificate of ownership and a new application form accompanied by a fee of three dollars (\$3) shall be filed with the Division of Small Craft Harbors and a new certificate of ownership and a new certificate of number shall be issued in the same manner as provided for in the initial issuance of number and the number shall be reassigned to the new owner.

(d) In the event that an agency of the United States government shall have in force an overall system of identification numbering for undocumented vessels within the United States, the numbering system employed pursuant to this article shall be in conformity therewith.

(e) The Division of Small Craft Harbors may issue any certificate of ownership and certificate of number or temporary certificate of number directly or the Division of Small Craft Harbors may authorize any person to act as agent for the issuance of a certificate of number or temporary certificate of number. In the event that a person accepts such authorization, he may be assigned a block of numbers which upon issuance, in conformity with this article and with any rules and regulations of the commission, shall be valid as if issued directly by the Division of Small Craft Harbors. All registration of vessels pursuant to the provisions of this code shall be conducted by the Division of Small Craft Harbors at its Sacramento office or by any agent authorized by the Division of Small Craft Harbors to conduct such registration. No field offices shall be established by the Division of Small Craft Harbors for the registering of vessels.

(f) All records of the commission, the department, and the Division of Small Craft Harbors made or kept pursuant to this section shall be public records.

(g) Every certificate of number issued pursuant to this article shall continue in full force and effect until December 31, 1962 unless sooner terminated, discontinued or extended in accordance with the provisions of this article. Certificates of number shall be renewed by the owner between January 1, 1963, and February 4, 1963, or between January 1 and February 4 every three years thereafter, by presentation of the certificate of number last issued for the vessel or by presentation of a potential registration card issued by the Division of Small Craft Harbors. The fee for renewal shall be three dollars (\$3) and shall accompany the request for such renewal.

(h) All certificates of number valid on the effective date of this section, and all certificates of number issued from that date to December 31, 1962, shall expire on December 31, 1962, and on December 31st of every third year thereafter regardless of when such certificates are initially issued.

(i) If the initial application for number is not received by the Division of Small Craft Harbors on or before the date set by the commission a penalty of ~~one-half the~~ *equal to the initial* fee shall be assessed. If a certificate of number is not renewed on or before the date on which it expires a penalty of ~~one-half the~~ *equal to the renewal* fee shall be assessed, except where the vessel has not been used on the waters of the state subsequent to the expiration date.

(j) All money received: ~~except moneys collected under Section 683,~~ pursuant to this article, ~~except moneys collected under Section 683,~~ shall be deposited in the Small Craft Harbors Revolving Fund ~~and~~. *The money so deposited, except that which is to be disbursed to counties pursuant to Section 685,* is appropriated for the support of the Division of Small Craft Harbors in the administration of this article. *Any of the appropriated* money that is not so used shall be expended in accordance with Section 5882 of the Public Resources Code.

(k) The owner shall furnish the Division of Small Craft Harbors notice of the wrecking or junking, or the destruction or abandonment of such undocumented vessel within fifteen (15) days thereof. Such wrecking, junking, destruction or abandonment shall terminate the certificate of ownership and certificate of number of such undocumented vessel which if in existence shall be surrendered to the Division of Small Craft Harbors. The Division of Small Craft Harbors, upon receiving notice of the abandonment of an undocumented vessel, or upon an official determination that an undocumented vessel has been abandoned, may order the destruction of such vessel at the expiration of 30 days if an investigation by the division has disclosed that no owner, legal owner, or lienholder claims an interest in such vessel, or if such persons have waived their interest. Nothing in this section shall be construed to deny the legal rights, otherwise provided for by law, of any person claiming an interest in an abandoned vessel if such person notifies the division within the time specified in this section.

(l) Any holder of a certificate of number shall notify the Division of Small Craft Harbors within 30 days, if his address no longer conforms to the address appearing on the certificate and shall, as a part of such notification, furnish the Division of Small Craft Harbors with his new address. The Division of Small Craft Harbors may provide for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.

(m) No number other than the number issued to an undocumented vessel or granted reciprocity pursuant to this article shall be painted, attached, or otherwise displayed on either side of the bow of such undocumented vessel.

(n) A fee of one dollar (\$1) shall be charged for a copy of certificate of number, certificate of ownership, or any application filed pursuant to this article.

(o) Fees received pursuant to this article are appropriated for payment of refunds of money received or collected in the payment of fees, permits, or services whenever the fee, permit or service cannot lawfully be issued or rendered to the applicant, and in cases where the payment in whole or in part represents overpayment or payment in duplicate.

(p) The Division of Small Craft Harbors shall transmit information from each initial application and each transfer application or renewal application to the county assessor in the county of residence of the owner of the vessel and to the county assessor in the county in which the vessel is principally kept if other than the county of residence of the owner. If an application shows that the owner of the vessel has changed his residence from one county to another county or that there has been a change in the county in which the vessel is principally kept, the Division of Small Craft Harbors shall transmit information of the change to the assessor of the county in which the owner of the vessel formerly resided or to the assessor of the county in which the vessel formerly was principally kept. After the Division of Small Craft Harbors receives a notice pursuant to subdivision (k) of this section the division shall transmit information of the destruction or abandonment to the assessor of the county in which the owner of the vessel resides and to the assessor of the county in which the vessel is or was principally kept, if other than the county of residence of the owner.

(q) A nonprofit corporation organized solely for charitable purposes pursuant to Part 1 (commencing at Section 9000) or Part 3 (commencing at Section 10200), Division 2, Title 1 of the Corporations Code, which purposes relate to promoting the ability of boys and girls to do things for themselves, to train them in scoutcraft and camping, and to teach them patriotism, courage, self-reliance and kindred virtues, shall not be required to pay the fees provided for in this section.

(r) On or after October 1, 1963, upon application for original registration or transfer of registration of an undocumented vessel, the division may assign an appropriate builder's hull number to such vessel whenever there is no builder's hull number thereon, or when a

builder's hull number thereon has been destroyed or obliterated; and such builder's hull number shall be permanently marked in an integral part of the hull which is accessible for inspection.

(s) No person shall intentionally deface, destroy, or alter the builder's hull number of a vessel required to be numbered under this chapter, without written authorization from the division; nor shall any person place or stamp any serial or other number or mark upon an undocumented vessel which might interfere with identification of the builder's hull number. This does not prohibit the restoration by an owner of an original number or mark when the restoration is authorized by the division, nor prevent any manufacturer from placing in the ordinary course of business numbers or marks upon new vessels or new parts thereof.

The rules and regulations adopted by the commission shall be adopted in accordance with the provisions of Chapter 4 (commencing at Section 11370), Part 1, Division 3, Title 2 of the Government Code.

SEC. 2. Section 685 is added to said code, to read:

685. There shall be established in the Small Craft Harbors Revolving Fund a penalty account for each county of the state. One-half ($\frac{1}{2}$) of each penalty collected pursuant to subdivision (i) of Section 681 shall be credited to the penalty account of a county in the manner following:

(a) If the penalty collected was the result of an arrest made by any peace officer, one-half ($\frac{1}{2}$) thereof shall be credited to the penalty account of the county in which the arrest was made.

(b) If the penalty collected was the result of action taken by the Division of Small Craft Harbors, one-half ($\frac{1}{2}$) thereof shall be credited to the penalty account of the county in which the vessel is principally kept.

On or before the end of each fiscal year, the State Controller shall, by drawing warrants on the Small Craft Harbors Revolving Fund, disburse to each county the total of moneys which may, at the date of disbursement, be credited to the penalty account of such county. The moneys so disbursed shall in each instance be deposited to the credit of the general fund of the county.

LEGISLATIVE COUNSEL'S DIGEST

Peace officers.

Amends Sec. 817, Pen.C.

Gives various harbor personnel of city, county, harbor district or other public agency limited peace officer authority within boundaries of the public agency employing them.

An act to amend Section 817 of the Penal Code, relating to peace officers.

The people of the State of California do enact as follows:

SECTION 1. Section 817 of the Penal Code is amended to read:

817. A peace officer is the sheriff, undersheriff, deputy sheriff, coroner, deputy coroner, regularly employed and paid as such of a county, marshal or deputy marshal of a municipal court, constable of a judicial

district, marshal, policeman of a city or town, or any juvenile officer of a city or town engaged in performing juvenile law enforcement functions which are generally performed by the local police department, the Deputy Director of the State Department of Justice, the Chief, Assistant Chief, special agents of the Bureau of Criminal Identification and Investigation, the Chief, Assistant Chief and narcotics agents of the Bureau of Narcotic Enforcement, and any parole officer of the State Department of Corrections, and any placement or parole officer of the Youth Authority.

Inspectors and investigators regularly employed and paid as such in the office of a district attorney, members of the California Highway Patrol, policemen of the Board of State Harbor Commissioners for San Francisco Harbor, a supervisor or guard employed by the Department of Corrections, each member of an arson-investigating unit of an organized fire department, the Chief and inspectors of the Bureau of Food and Drug Inspection, inspectors and investigators of the California State Board of Pharmacy not exceeding 10 in number, investigators of the Board of Medical Examiners of the State of California, special investigators of the Board of Osteopathic Examiners of the State of California, investigators of the Board of Chiropractic Examiners of the State of California, and investigators of the Department of Motor Vehicles are respectively peace officers for the purpose only of carrying out the duties of their respective employments. When he is carrying out his duties, a supervisor or guard employed by the Department of Corrections engaged in transportation of prisoners or apprehension of prisoners who have escaped is a peace officer whether acting within or without this state.

Any qualified person, when deputized or appointed by the proper authority as a deputy sheriff or city policeman for the purpose only of transporting prisoners, is a peace officer while engaged in the transportation of prisoners.

When a sheriff designates any qualified public officer or employee as a deputy sheriff for the purpose of supervising the labor of county prisoners, such person, while acting in the performance of such services, is a peace officer.

Each deputized law enforcement member of the Wildlife Protection Branch of the Department of Fish and Game shall be deemed a peace officer for the purposes set forth in Section 856 of the Fish and Game Code.

Harbor policemen, harbor patrolmen, or other persons employed by a city, county, harbor district, or other public agency whose primary duty it is to enforce the laws in Division 2 (commencing with Section 240) and Chapter 5 (commencing with Section 650) of Division 3 of the Harbors and Navigation Code and the regulations adopted pursuant to such sections, or local ordinances relating to the operation, equipment and protection of watercraft on the waters of the state are peace officers for the purpose of enforcing such laws, regulations, and ordinances, but only within the boundaries of the city, county, harbor district or other public agency employing them.

When in any law a public officer or employee is designated as, given the powers of, or determined to be, a peace officer, such officer or

employee shall be deemed to be a peace officer but only for the purpose of that law.

The restriction of peace officer functions of any public officer or employee shall not affect his status for purposes of retirement.

When, pursuant to Nevada law, an officer or employee of the Nevada State Prison has in his custody in California a prisoner of the State of Nevada whom he is transporting from the Nevada State Prison or any honor or forest camp in Nevada to another point in Nevada for the purposes of firefighting or conservation work, such officer or employee of the Nevada State Prison shall have the power to maintain custody of the prisoner in California and to retake the prisoner if he should escape in California to the same extent as if such officer or employee were a peace officer appointed under California law and the prisoner had been committed to his custody in proceedings under California law.

WITNESSES APPEARING BEFORE THE COMMITTEE OR SUBMITTING STATEMENTS

Hon. Robert E. Badham, Assemblyman, County of Orange

Lachlan Richards, Chief, Division of Small Craft Harbors

George Askelund, Boating Regulation Officer, Division of Small Craft Harbors

James E. Ballinger, representing Kenneth Sampson, Harbor Manager, Orange County Harbor District

Al Oberg, Harbor Master, Orange County Harbor District

Greta Simon, Secretary, Los Angeles Chapter, Society of Yacht and Ship Brokers

John W. Witt, Deputy City Attorney, City of San Diego

H. J. Evans, Director, Department of Parks and Recreation, County of Kern

Vernon Cox, Chairman, Recreation Commission, County of El Dorado

Elmer Koenig, Recreation Commission, County of El Dorado

Commander John P. O'Barski, U.S. Coast Guard

John S. Wright, President, Southern California Division, California Marine Parks and Harbors Association

Robert J. Voorhies, California Boating Council, Inc.

Mrs. Jan Mower, Managing Director, California Boating Council, Inc.

R. D. Sweeney, General Counsel, Southern California Marine Association

Vincent Jorgensen, Vice President, Southern California Marine Association

Albert J. Habberger, Administrative Officer, County of Imperial

Merle F. Harp, Superintendent, Parks Department, County of Tulare

RIDING AND HIKING TRAILS

SUMMARY OF THE PROBLEM

The committee is very concerned over the failure of the California Riding and Hiking Trail program which was authorized by the 1945 General Session of the Legislature. It recognizes, however, that the lack of eminent domain authority for easements for this program has prevented the program from making any substantial headway.

The committee feels that the 3,000-mile riding and hiking trail loop recommended by the Division of Beaches and Parks may no longer be required for the needs of California's current riding and hiking trail advocates. It is noted that over 31,000 miles of riding and hiking trails exist in California, primarily on federal national forest lands. Most of these trails have been established since 1945 and eliminate much of the need of any further riding and hiking trails in rural areas. Horsemen and hikers who are taking extended trips have adequate trails available for this purpose.

However, increased population in urban areas requires the completion of riding and hiking trails and/or loops near metropolitan centers, and requires that such a program be implemented immediately. This implementation requires eminent domain authority for acquisition of rights-of-way for riding and hiking trails. The committee feels that such a program should be approved by the Legislature and eminent domain authority should be restricted to such an approved program. At its meeting on September 13, 1963, the committee requested the Division of Beaches and Parks to supply it with legal descriptions and names and addresses of owners of rights-of-way on those parcels that were preventing the completion of contiguous trails near the urban centers of population. Through its representative, the Division of Beaches and Parks informally agreed to do so, and on September 18, 1963, the chairman of this committee informed the Director of the Department of Parks and Recreation by letter of the committee's request. The committee intended to assist in the negotiation for these rights-of-way to get the first hand information as to the problems the department was facing and to enlist the aid of the local legislators in some negotiated agreement for rights-of-way. This information has not yet been received by the committee.

The committee urges that the department proceed with the immediate preparation of a program of riding and hiking trails or loops near the urban centers of population and present it to the Legislature for consideration during the 1965 legislative session, together with a request for such eminent domain authority as may be necessary to acquire rights-of-way for this program after its approval.

RECOMMENDATIONS

The committee recommends that the Department of Parks and Recreation prepare and submit to the Legislature for approval a rid-

ing and hiking trail program which envisions a series of riding and hiking trails and/or loops near urban centers of population. The committee further recommends that at such time as the Legislature approves this program, the approval include the right of eminent domain for acquisition of rights-of-way for the approved program.

The committee also recommends that such a program be submitted to the 1965 Legislature for its approval and requests that when the program is prepared it be forwarded to the Assembly Committee on Natural Resources, Planning and Public Works for introduction. At the same time, the committee recommends that a list of specific parcels preventing completion of trails near urban centers of population be forwarded.

WITNESSES APPEARING BEFORE THE COMMITTEE OR SUBMITTING STATEMENTS

Los Angeles, California

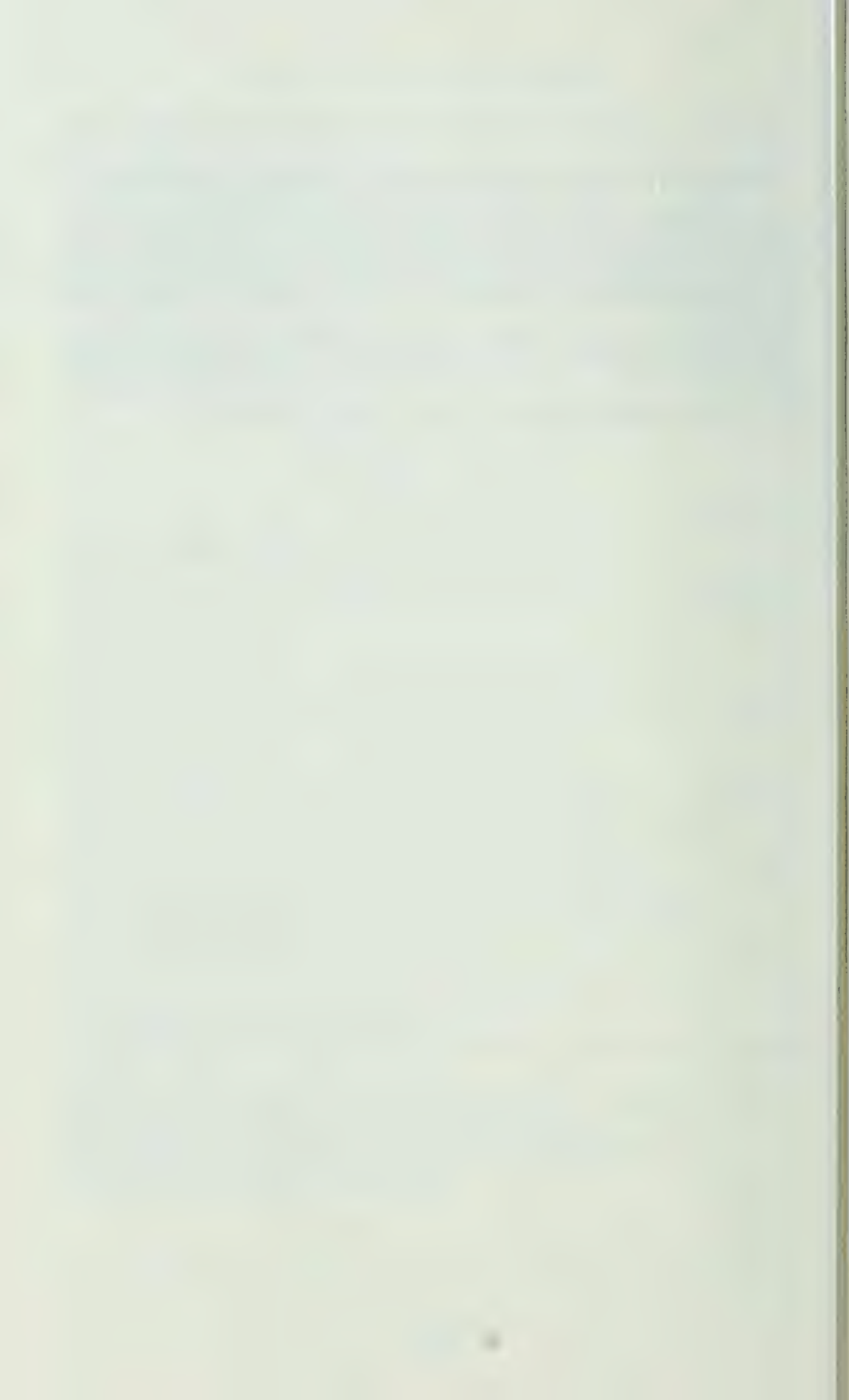
September 13, 1964

Robert B. Hatch, Supervisor of Advance Planning, Division of Beaches and Parks, State Department of Parks and Recreation
 Bert Perrin, State Trail Planner, Department of Parks and Recreation
 Captain Herman R. Garbe, Commander of Reserve Forces and Disaster Law Enforcement Bureau, Sheriff's Office, Los Angeles County
 Ron Paige, Representing Norman Johnson, Director, Los Angeles County Parks and Recreation Department
 George M. Dean, Chairman, San Mateo County Hiking and Riding Trails Committee; Member Executive Board, San Mateo Boy Scout Council
 Sydney L. Mason, Chairman, Board of Directors, Equestrian Trails, Inc.
 Jack Costa, Chairman, Riding and Hiking Trail Program, California State Horsemen's Association, Representing C. B. Williams, President
 Howard E. Marks, President, Cattlemen's Association
 Wendell T. Robie, President, Western States Trails Organization
 Mrs. Herman Friedlaender, Regional Supervisor, United States Pony Clubs, Inc.
 George H. Cardinet, Jr., Secretary, California State Riding and Hiking Trail Patrol Committee; Past President, California State Horsemen's Association
 Arthur B. Johnson, Member, Riding and Hiking Trails Advisory Committee.
 Henry M. Weber, M.D., Conservation Chairman, California Garden Clubs, Inc.
 Carl Twisselman, President, California Cattlemen's Association
 John Callaghan, Secretary-Manager, California Forest Protective Association
 Seward Rice, Representing J. B. Quinn, Master, California State Grange
 William B. Staiger, Assistant Executive Secretary, Agricultural Council of California
 William Tullock, Cattleman, San Diego County
 Marge Sullivan, Trail Chairman, Region 5, California State Horsemen's Association
 T. Louis Chess, Member, Board of Supervisors, San Mateo County
 Lewis F. Clark, Vice President, Sierra Club
 Mrs. Dorothy Carlson, Executive Secretary, California State Horsemen's Association
 Robert E. Hanley, Legislative Representative, California Farm Bureau Federation
 James H. Brewer, President, The Saddle and Sirloln Club, Los Angeles
 Mrs. Edson L. Foulke, President, California Cowbells, Inc.
 C. Russell Johnson, President, Union Lumber Company, San Francisco
 Mrs. Evelyn Gayman, Conservation Chairman, Desomount Club
 Evelyn M. Questo, Rancho Del Questo, Sonora

RECREATIONAL USE OF STATE WATER PROJECTS

The committee makes no recommendations on the subject of recreational use of California Water Plan facilities. The committee does reiterate the need of the programs presently underway for creating recreational facilities as construction of the California Water Plan proceeds.

However, since the problems here are primarily fiscal in nature, this committee defers to those studies made by the Assembly Interim Committee on Water and urges consideration by the 1965 Legislature of the recommendations of that interim committee.



ASSEMBLY CALIFORNIA LEGISLATURE

E. RICHARD BARNES

Member of Assembly, Seventy-eighth District

SAN DIEGO COUNTY

I disagree with the recommendations of the Interim Committee on Natural Resources with reference to control of outdoor advertising.

Outdoor advertising is, in my judgment, a legitimate business providing employment for hundreds of California working people, and should be encouraged, not legislated out of existence. Proper control is one thing but obliteration is another.

At a time, when there is substantial unemployment in important areas of California, I can find no justification for a legislative course which would contract job opportunities, not expand them.

Outdoor advertising is an important tool of many other business enterprises in our state, and its destruction would have far-reaching repercussions outside the industry itself.

Outdoor advertising, like other advertising media, is an important means of communicating with the public. I believe the protection of freedom of expression should extend to this segment of the communications industry.

The committee report clearly points out that "the principle of expanded state regulation of outdoor advertising" was "clearly established by passage of the Collier-Z'berg Act." This act applied strict state controls to advertising along interstate highways. It is now proposed to expand such coverage "to the remainder of the state highway system."

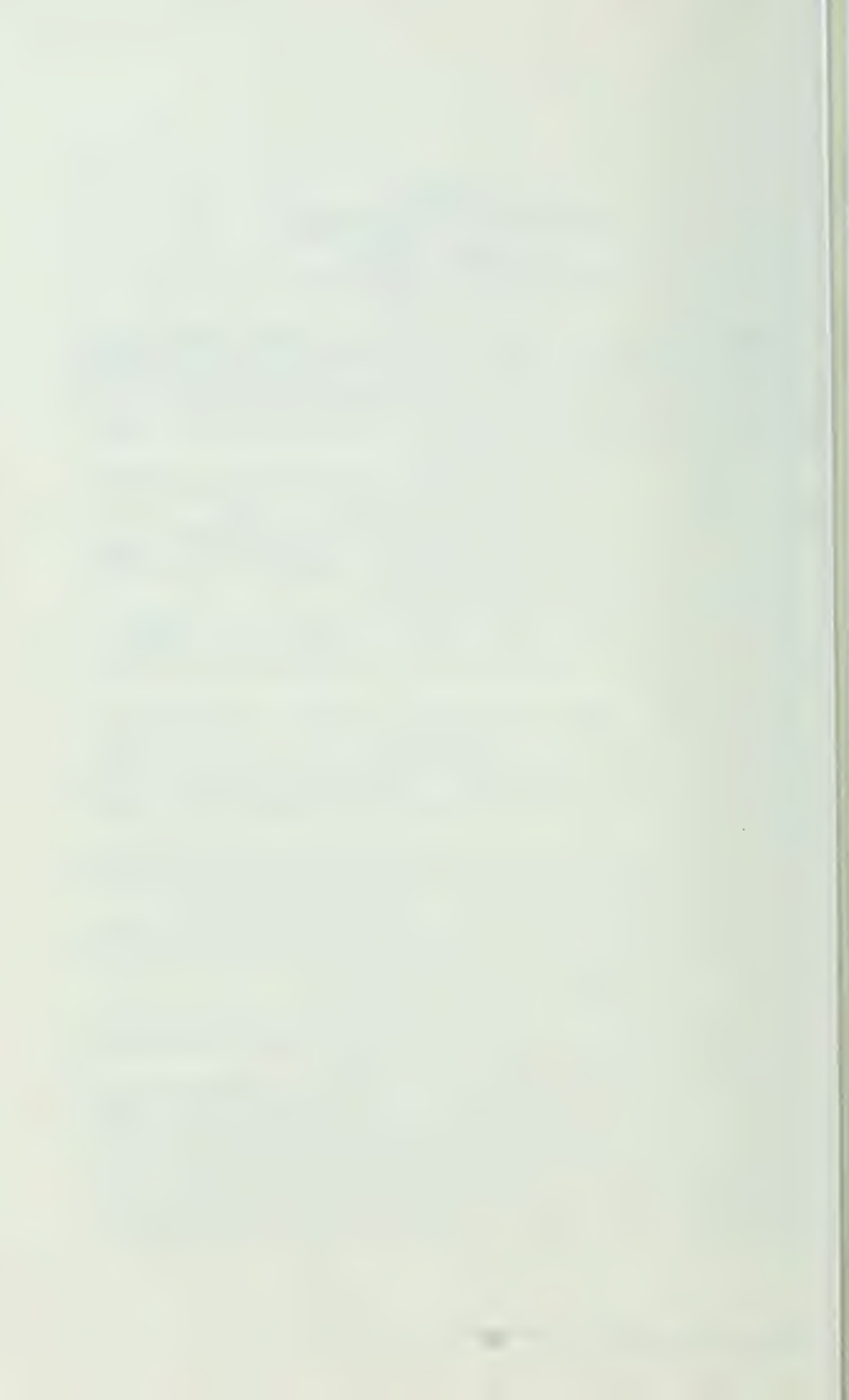
This again illustrates that once the door of bureaucratic regulation has been opened, its stifling control continually seeks to expand. The ultimate result is the destruction of a free enterprise industry.

I believe that the extension of state control over outdoor advertising will have an adverse effect on the local tax base, and I am unalterably opposed to adopting regulatory laws of this kind in order to secure a subsidy or bribe from the federal government.

For these reasons, I do not concur in the section of the committee report entitled "Control of Outdoor Advertising," and do not support the proposed legislation included in the report.

I am in general agreement with the principles and objectives outlined in the section of the committee report entitled "Land Acquisition Policies and Procedures." In implementing this policy, however, I think it is important that the Legislature take special precautions to assure that this implementation will reduce, not increase, state expenditures for land acquisition, and that it will not result in an increase in the number of state employees involved in such acquisition.

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ASSEMBLY INTERIM COMMITTEE REPORTS
1963-1965

VOLUME 26

NUMBER 10

STATE FINANCIAL ASSISTANCE TO LOCAL WATER DEVELOPMENT
UNDER THE DAVIS-GRUNSKY ACT

A Report of the
ASSEMBLY INTERIM COMMITTEE ON WATER
TO THE CALIFORNIA LEGISLATURE
House Resolution 467, 1963 Regular Session
House Resolution 54, 1963 First Extraordinary Session

MEMBERS OF DAVIS-GRUNSKY SUBCOMMITTEE

CARLEY V. PORTER, *Chairman*

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Frank P. Belotti
John L. E. Collier
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Pauline L. Davis
Harvey Johnson
Frank Lanterman
John C. Williamson

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David J. Epstein, *Legislative Intern*

Ruth Clark, *Secretary*

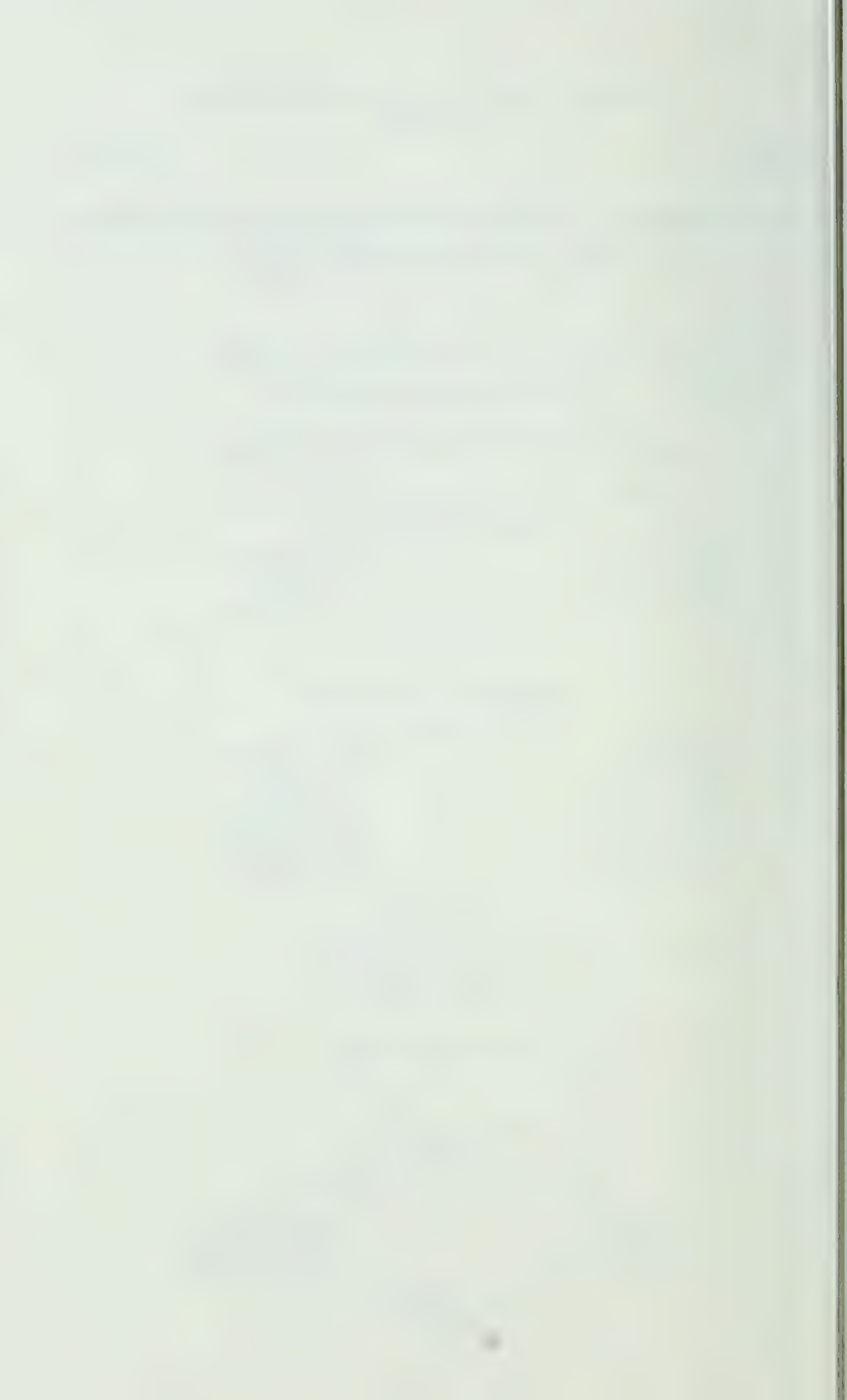
November 1964

Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA

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Majority Floor Leader

CARLOS BEE
Speaker pro Tempore
CHARLES J. CONRAD
Minority Floor Leader

JAMES D. DRISCOLL
Chief Clerk



LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WATER
CALIFORNIA LEGISLATURE
November 24, 1964

HON. JESSE M. UNRUH, *Speaker of the Assembly*
MEMBERS OF THE ASSEMBLY
State Capitol, Sacramento 14, California

Gentlemen :

Pursuant to HR 467 of the 1963 General Session and HR 54 of the 1963 First Extraordinary Session, your Assembly Interim Committee on Water herewith submits a report on State Assistance to Local Water Development under the Davis-Grunsky Act.

In this report the committee presents an analysis of the act, together with comments on changes in the program which have been proposed.

In tracing the legislative development of Davis-Grunsky Act program from its origin in 1957, the committee reaffirms its support of the program but does not recommend additional legislation to implement its provisions. The substantial amendments made at the 1961 and 1963 sessions appear to have been satisfactory and a workable program of state assistance to local projects has been achieved.

This report, which is the result of staff research and a public hearing, was prepared by the Davis-Grunsky Act Subcommittee. The subcommittee's report was adopted by the full committee at a meeting on October 9, 1964.

Respectfully submitted,

CARLEY V. PORTER, *Chairman*
Assembly Interim Committee on Water

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SUBCOMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WATER
CALIFORNIA LEGISLATURE
October 9, 1964

ASSEMBLY INTERIM COMMITTEE ON WATER
Assembly Post Office Box 38
State Capitol, Sacramento, California 95814

Gentlemen:

Your Subcommittee on the Davis-Grunsky Act, pursuant to House Resolution 467 (1963 General Session) and House Resolution 54 (1963 First Extraordinary Session) herewith submits its report on its activities for the 1963-1965 interim.

Respectfully submitted,

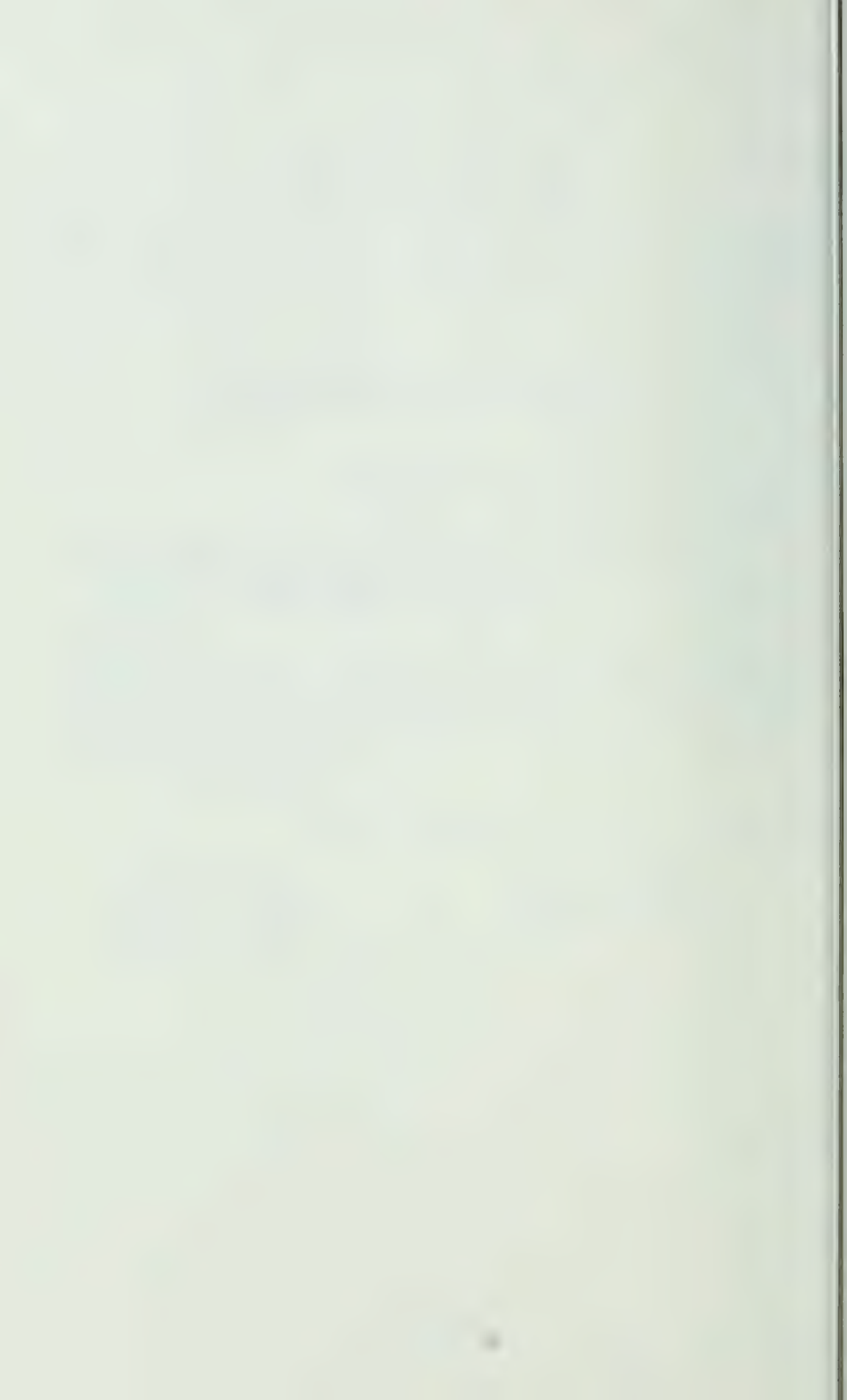
CARLEY V. PORTER, *Subcommittee Chairman*

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HARVEY JOHNSON
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I.

INTRODUCTION

The committee's consideration of the Davis-Grunsky Act is authorized by two resolutions assigned to this committee for study. House Resolution 467 of the 1963 General Session, by Assemblyman Z'berg, requested a study of "the entire program of state financial assistance for local projects pursuant to the Davis-Grunsky Act . . ." House Resolution 54 of the 1963 First Extraordinary Session, by Assemblyman Lunardi, requires a study of "the feasibility of modifying the Davis-Grunsky Act to include grants for basic access roads . . ." In addition, Assembly Bill 1841, by Assemblyman Lunardi, was assigned to this committee for interim study.

For its study, pursuant to these resolutions, the committee conducted an extensive staff investigation and study and the subcommittee also held one public hearing in Auburn on October 24, 1963, on the specific subject of House Resolution 54.

II.

THE DAVIS-GRUNSKY ACT AND STATE FINANCIAL ASSISTANCE

In response to House Resolution 467 the committee presents a brief historical development of the act together with a more detailed analysis of certain aspects of the program. In the discussion the committee makes its recommendations as to each aspect of the program.

History of Program

The Davis-Grunsky Act was enacted by the Legislature in 1957 as the Grunsky Act, in a much more modest form than the present act (Statutes of 1957, Chapter 2052, Senate Bill 2174). The original purpose of the program was set forth in Water Code Section 12880 as follows:

In furtherance of the development, control and conservation of the water resources of the State it is the policy of the State to provide financial assistance to public agencies for the construction of projects for water development in which there is a state-wide interest by making grants or loans, or both, and by participating in the construction and operation of such projects, in accordance with this section.

The original program provided for loans to be made "upon such terms as may be prescribed by the Legislature" and the District Securities Commission was required to certify that the amount of the loan was "beyond the reasonable financial ability of the public agency and for which funds cannot be obtained from other sources."

The types of projects eligible were limited to those of public agencies for "flood control, for the diversion, storage, distribution or other use of water primarily for domestic, municipal, agricultural, or industrial purposes, and for the production of power."

Grants were available for construction costs allocated to the preservation and enhancement of fish and wildlife and recreational benefits of statewide interest, that were *incidental* to the primary functions of the projects. Thus, projects primarily for these purposes were not eligible. Projects were required to conform substantially to the California Water Plan and be engineeringly feasible and economically justified.

Both loans and grants were available only upon specific authorization of the Legislature.

A section of the act authorizing state participation was also included:

If in order to accomplish the objectives of The California Water Plan it is necessary to construct a project that is beyond the requirements of the public agency constructing the project, the State may participate in financing those costs of the project in excess of the costs necessary to meet the requirements of the public agency, on terms agreed upon with the agency, to the end that the project to be constructed and operated shall accomplish the maximum

water development objectives at a minimum total expenditure. (Section 12880(f))

No legislation authorizing grants or loans was passed at the 1957 session and no completed applications were processed by the department prior to the 1959 legislative modifications.

On February 2, 1959, Senate Bill 425 (Chapter 1752) was introduced calling for a greatly expanded program, including loans and grants made administratively by the Department of Water Resources. On February 27, 1959, Assembly Bill 1717 was introduced providing for a \$1,260,000 loan from the Investment Fund (later the California Water Fund) to the South Sutter Water District for its Camp Far West Project. This bill was finally enacted into law and became the first such legislative authorization under the program.

Senate Bill 425 greatly expanded the program by (1) financing the program first through a revolving fund, the "Local Projects Assistance Fund" consisting of \$15,000,000 from the California Water Fund; and (2) by providing that grants up to \$300,000 and loans up to \$4,000,000 could be made administratively by the Department of Water Resources, subject to the approval of the California Water Commission without approval of the Legislature. Larger loans or grants required specific authorization by the Legislature.

The legislation placed the former responsibilities of the Districts Securities Commission with the Department of Water Resources.* The department was required to report to the Legislature on each application, making findings as to "the nature and extent of the statewide interest in the project, the public necessity for the project, the urgency of the need, and the engineering feasibility, economic justification, and financial feasibility of the project."

Interest on loans was set at "a rate equal to the net interest cost to the state on the last sale of general obligation bonds of the state that occurred prior to the time the application for a loan was filed with the department . . ."

Senate Bill 425 provided that if Senate Bill 1106, the California Water Resources Development Bond Act (Burns-Porter Act) were enacted into law and the bond issue were approved by the voters in November 1960, the \$15,000,000 revolving fund would be abolished and funding of the program would be from \$130,000,000 in proceeds from the \$1.75 billion water bond issue. The bond issue was approved and the Davis-Grunsky program is now being financed as provided in the Burns-Porter Act. The program, however, is no longer a revolving fund program.

In 1960, a Department of Water Resources spokesman explained to the Senate Fact Finding Committee on Water Resources the basis for determining the \$130,000,000 figure:

While developing "The California Water Plan" and conducting the California Water Planning Program, the Department has made numerous planning studies of potential local projects.

Nearly 30 projects throughout California, requiring on the order of \$200,000,000 to construct, have been identified as water resource

* See 40 Ops. Atty. Gen. 198, for discussion of Districts Securities Commission and the Davis-Grunsky Act.

development that could, in the foreseeable future, significantly enhance the economy of local areas and consequently the State. This is understandably not a complete total for with further and more extensive planning and with the growing need for new water supplies, additional projects will be conceived.

On the other hand, not all of the projects will prove to be feasible within the foreseeable future. In any event, not all of the cost would need to be financed under the Davis-Grunsky Act. Substantial funds could come from other sources such as sale of bonds and federal loans and flood control grants.

When the department suggested the inclusion of the \$130,000,-000 as a figure for local water development projects, it did so in response to a feeling that local areas should, as nearly as possible, be put upon a parity, in the satisfaction of their water needs, with the areas which would be supplied with water from the major export facilities which were to be constructed with the remainder of the \$1,750,000,000. (Hearing of Senate Fact Finding Committee on Water Resources, June 23, 1960, *Transcript*, at 13-14.

Applications under the program came in rather slowly during the first years of the program. At the 1961 General Session a number of modifications were proposed, some of which were adopted. Two major problems faced the Legislature during the 1961 session as a result of preliminary experience in administering the Davis-Grunsky Act by the Department of Water Resources.

Risk Assumed by State

The first problem was the degree of financial risk that should be assumed by the state in making a loan. At that time Section 12880(b) of the act required that "... if the loan is proposed that there is reasonable assurance that the public agency can repay it". While on the other hand, Section 12880(d) stated, "... in no event shall any such loan be in an amount which is greater than the portion of the cost of the project which the department finds to be beyond the reasonable ability of the public agency to finance from other sources".

The Department of Water Resources and the California Water Commission adopted a joint policy statement in March 1960 to clarify the practical application of these sections, as follows:

The state should take a reasonable risk in financing developmental water projects in relatively undeveloped areas, provided such projects can be shown to be economically justified on the basis of acceptable methods of analysis.

In 1961 the Legislature attempted to remedy the situation by modifying Section 12280(b) as follows:

The proposed project may be approved for assistance only if it is determined . . . that the loan is proposed, that there is reasonable assurance, *commensurate with the need for the proposed project, that the public agency can repay it.* (New language italicized)

This language did not completely resolve the problem and in 1963 the Legislature again modified this language by adding the following additional guidance to the Department of Water Resources:

The potential future growth and development of the area shall be taken into consideration in the calculation of the benefits for the determination of the economic justification of a proposed project . . . Such factors as the public health, safety and welfare shall be taken into consideration in determining the need for a proposed project. (Section 12880(b))

Additional attention is given to this problem in the "Joint Statement of Policies for Administration of the Davis-Grunsky Act" adopted by the Department of Water Resources and the California Water Commission.

The policies further define reasonable inability to finance from other sources as requiring the following conditions:

- (1) The project is not eligible for federal assistance or, if eligible, it appears that funds are not available or when need is so urgent this would preclude financing from federal sources.
- (2) Bonds can't be marketed at an interest rate commensurate with the feasibility of the project.
- (3) The agency has no other funds or source of funds available.

Inability to finance may well be a short-term condition in which local assessed valuations without construction of the project are insufficient to permit local bond financing.

This does not mean, however, that once the project is constructed the added value will not be sufficient to permit repayment of the loan. If the added local valuation does not permit eventual repayment of the loan (including the liberal development period benefits) it would seem the project is either unsound or unworthy of construction.

This aspect of the program nevertheless will undoubtedly continue to remain a troublesome one, as the two concepts of inability to finance from other sources and the requirement that the project be economically feasible to protect the state's investment are, by definition, contradictory.

The committee believes, however, that the present language of the act and administrative flexibility is satisfactory and no further statutory changes need be made.

Distribution System Projects

The second problem which concerned the department and this committee during the 1961 session was the matter of loans for either irrigation or municipal distribution system projects.

In March 1960 the Department of Water Resources and the California Water Commission, in their joint policy statement, required that a project to be eligible must "develop new basic water supplies", in other words, included storage and diversion works (except in case of extreme hardship), in order to prevent use of the program for a large number of distribution system projects.

During the 1959-61 interim this committee studied this problem and in its report to the Assembly dated January 2, 1961, on the Davis-Grunsky Act (see *Assembly Journal, January 5, 1961, at 139*) included the recommendations that:

Clarification of policy with respect to distribution facilities is needed and that amendment of the law is a better method to make this clarification than administration policy.

The Director of Water Resources advised the Assembly Committee on Water, April 4, 1961, of his concern with regard to distribution system loans:

While it is true that loans and grants for distribution systems technically are authorized under it (Davis-Grunsky Act), we believe that the Legislature contemplated, in the main, that the Davis-Grunsky Act be used as a vehicle for making loans of the type previously described (loans for projects which develop new basic water supplies). Were this not to be done a substantial portion, if not all, of the \$130,000,000 could be utilized for construction of distribution facilities without developing any new water, which would be contrary to the obvious underlying purpose of the Burns-Porter Act which makes those funds available. (Statement before Assembly Water Committee, April 4, 1964, at 4)

Several bills were introduced to accomplish the clarification. The language adopted in 1961 (and presently in the act) is substantially the same as the previous administrative policy:

12880.2. . . . No funds shall be loaned for either irrigation distribution system projects or municipal distribution projects, except in cases which, in the judgment of the department and the commission, involves extreme hardship which jeopardizes the public health, safety or welfare. Distribution facilities which are a necessary and integral part of an overall water development project may be covered by a state loan.

This provision is read together with a provision that:

In the administration of this chapter the department and the commission shall give preference to projects involving development of new basic water supplies. (Section 12880.2)

This committee believes that the present language with regard to distribution system loans is also satisfactory and is sufficiently flexible to permit the department to make loans for distribution systems which are essential to local areas while at the same time guaranteeing that as many Davis-Grunsky loans as possible are utilized for development of water supplies so that the program does not become a loaning device for municipal distribution systems, which could run into the millions of dollars.

As was indicated by a Department of Water Resources spokesman:

Without this stipulation [in the 1961 Statutes] it is of course quite possible that a large portion of the \$130,000,000 would be used for construction projects to distribute water from the Cali-

fornia Aqueduct, without accomplishing any additional development of new local water supplies. (William Berry "State Financial Assistance to Local Water Projects Under the Davis-Grunsky Act—A Progress Report," April 6, 1962, p. 7)

Development Period

In addition, at the 1961 Session provisions for Davis-Grunsky loans were modified to provide that payments on principal may be deferred, during the optional 10-year development period. It was pointed out that the flexibility offered by such deferment of principal payments was similar to that of the Reclamation Act of 1939 under which the Secretary of Interior was authorized to allow a development period. It should be noted that 1963 modifications of the act provided that *interest* also may be deferred during the first ten years of the 50-year repayment period:

When in the department's judgment such development period is justified under the circumstances. If the payment of interest is deferred . . . interest shall be charged on the interest amounts for which the payment is deferred at the same rate as the rate of interest charged on the principal amount of the particular loan. The accrued interest may, at the option of the public agency, be paid in annual installments during the remainder of the loan repayment period at the same rate of interest as is charged on the principal amount of the loan. (Section 12880(d))

The committee believes that this provision which, in its present form, represents a gradual easing of the repayment obligation by expanding the development period concept, is satisfactory and should not be modified further. It must be cautioned that a deferment of both principal and interest necessarily causes increased burdens on the latter part of the repayment period and any additional benefits to the early period is unwarranted at this time.

Authority of Districts to Participate

The 1961 session also saw extensive amendments to the act with regard to the authority of local districts to participate in the Davis-Grunsky program. These amendments expressly granted the various public agencies sufficient power to contract with the department for assistance under the act. It also required that proposed contracts for loans and grants be submitted to a vote of the people of the public agency before the contracts were entered into between the state and the local agency. This requirement of an election was further modified in 1963 to exempt from the election provisions in the case of a grant:

. . . a public agency where the applicable law contains provision for the election of the members of the governing body of the agency or where a county Board of Supervisors acts as the governing body of the agency. (Section 12880(i))

Experience with the act showed that in the case of grants (which involve no obligation of repayment or other major financial obligations upon the district) an election in the district is unnecessary where the

district board is itself elected by the people and responsible to them. The rationale of continuing the requirement for loans, however, is valid inasmuch as these loans represent the incurring of an indebtedness similar to that of a bonded indebtedness. *No further modifications to this phase of the program seem appropriate.*

The most extensive changes in the Davis-Grunsky Act came at the 1963 session of the Legislature. The appendix to this report includes the complete text of the Davis-Grunsky Act showing deletions and additions made at the 1963 Regular Session of the Legislature. The major modifications are described below.

Projects Primarily for Recreation and Fish and Wildlife Enhancement

The basic concept of the program was expanded to broaden the definition of eligible project to include a project whose primary purpose was "recreation or fish and wildlife enhancement".

Thus, for the first time loans and grants are now available to public agencies for financing water projects which are *primarily* for fish and wildlife and recreation.

In order to implement this policy change, it was necessary to limit the grants to projects which involve the development of "new water supplies" and to place limitations on the grant amount, in order to prevent the entire project from being financed by a grant. These limitations are as follows:

- (1) A grant for the part of a cost of a project properly allocated to the enhancement of fish and wildlife may not exceed 50 percent of the project construction cost.
- (2) A grant for the part of the cost of any dam and reservoir of a proposed project properly allocated to recreational functions of state wide interest may not exceed 50 percent of the construction cost of the dam and reservoir.
- (3) The total amount granted for the above purposes may not exceed 75 percent of the project construction cost.

Thus, it is possible for a public agency building a project for which recreation or fish and wildlife enhancement are the primary purpose to receive a maximum grant of 75 percent of the construction cost of each project. It, of course, would be possible for the agency to obtain a loan for the remainder of the construction cost if it qualified for such a loan.

The Director of Water Resources has indicated that:

This basic amendment alone should stimulate the economic development of areas of this state where recreation is, or could become, an important industry by assisting in financing much needed additional water facilities for recreation and enjoyment by the people of this state.

This committee agrees with the Director of Water Resources and, at the time of this amendment, concurred in the advisability of modifying the basic purposes of the act to include fish and wildlife and recreation projects. The committee has been concerned, however, lest a disproportionate amount of the funds in the Davis-Grunsky program be granted

for such projects at the expense of projects with the primary purpose of water supply development.

A warning in this regard was made to the committee by a representative of the Mountain Counties Water Resources Association:

We support the initial concept of the Davis-Grunsky Act which primarily recognized this fund as a source of loan financing for the development of needed water supplies in counties of limited financial ability.

While the introduction to the act of recreational aspects has circumvented some of the financial problems connected with marginal projects, the organization prefers still to view this as a means to the primary objective of actually making available domestic, agricultural and industrial water which will permit the valuable rural counties to reach a reasonable degree of economic maturity.

A reaction of the introduction of these aspects is the ultimate effect that Davis-Grunsky monies may, in the majority, be granted for state wide benefits associated with projects in lieu of a state fund for this purpose. This trend is being set and while it cannot be denied, it is perhaps engendering new water supplies, the fact remains majority depletion of the monies is in a field disassociated with the initial concept. (*Transcript of hearing, October 24, 1963, at 70-71*)

A review of projects to date since the 1963 amendments has indicated that although sponsors of a number of projects have made application which would not have been eligible under the previous provisions of the act, a fair balance between recreation and fish and wildlife projects and projects primarily for municipal and industrial and irrigation water supplies has been achieved. *It would appear that the 1963 amendments in this regard are working satisfactorily and no further changes are necessary.*

Initial Water Supply and Sanitary Facilities Grants

A second major change in the program was to expand the scope of grant provisions to provide grants to finance the cost of constructing initial water supply and sanitary facilities which are needed for the public recreational use of each proposed dam and reservoir of a project. These grants are limited to 25 percent of the total amount granted for recreation and fish and wildlife enhancement costs of the project. It became obvious to this committee and to the Legislature that in providing grants and loans to local agencies for projects the state was giving substantial impetus to the development of such projects, which are located primarily in northern California. It was also obvious, however, that basic recreation facilities were absolutely essential to the proper utilization of a project when completed. A provision of grants for initial water supply and sanitary facilities appears to have filled an important need with regard to the Davis-Grunsky program.

As originally introduced, legislation making this modification also included language permitting similar grants for initial basic access roads. This provision was deleted by the Assembly Water Committee and is discussed in greater detail later in this report.

The Department of Water Resources has interpreted the language authorizing these additional grants as authorization for such grants even if this is in excess of that amount specifically authorized by the Legislature. For example, if the legislature authorizes a one million dollar maximum grant for a specific project, according to the department, an additional \$250,000 could be granted for the purposes of water supply and sanitary facilities without further approval of the Legislature. (See letter from William E. Warne to Ralph M. Brody, dated July 29, 1963, found in *Activities and Transactions of the Department of Water Resources under the Davis-Grunsky Act, 1963 Report to the Legislature, January, 1964.*)

The Director of Water Resources has commented that this new grant provision:

Represents a substantial step forward in helping local public agencies to carry out their grant contract obligations with the state . . . The grant contracts require the public agencies to cause on-shore recreation facilities to be installed and operated in conjunction with the recreational functions of the dams and reservoirs. Eligible public agencies will now be in a position to finance the initial water supply and sanitary facilities portions of those on-shore recreational facilities . . .

Table 1, on page 22, indicates that the total amount which presently is estimated to be granted for initial water supply and sanitary facilities is \$2,176,120. This amount is based upon the 15 projects which have already been approved by the department and the commission and three projects which are now under review by the department.

In February 1964, the Director of Water Resources submitted to the California Water Commission the "Joint Statement of Policies for Administration of the Davis-Grunsky Act" in regard to initial water supply and sanitary facilities. The Director of Water Resources indicated that:

Initial water supply and sanitary facilities should include those necessary to protect the health and safety of persons using the reservoir for recreation. These facilities should generally be restricted to permanent works and should include any or all of the following: (1) development of a water source; (2) water treatment facilities; (3) pumps; (4) storage facilities; (5) pipelines, including the appurtenances; (6) fire hydrants; (7) comfort stations, including the building, toilets, washbasins, and showers; (8) drinking fountains; (9) sewers and appurtenances; (10) sewage treatment and disposal facilities.

When economic studies indicate a savings in construction costs, pumps, pipes, storage and treatment facilities to be constructed for the first phase of the recreation development may be sized to serve all the recreation facilities shown in the feasibility report.

On March 6, 1964, the California Water Commission adopted the following policy statements with regard to recreation facilities and the definition of initial water supply and sanitary facilities to be used in considering these grants:

Recreation Facilities

Recreation facilities should be staged in a logical and economical manner. Initial water supply and sanitary facility grants are to provide for only the first phase of recreation development. The first phase of recreation development must be the most economical plan, considering all costs.

Definition of Initial Water Supply and Sanitary Facilities

"Initial Water Supply and Sanitary Facilities," as used in Water Code Section 12880(c) (3), are those which reasonably might be installed as the first phase of the overall development of water supply and sanitary facilities to protect the health and safety, and to provide for the convenience of persons using the reservoir for recreation. Such facilities must be constructed and operated in conformance with applicable local and state public health standards.

Initial water supply facilities may include works necessary to collect, treat, and distribute water from the source to the recreation area. Initial sanitary facilities may include the works necessary to collect, treat, and dispose of wastes from the recreation area.

Initial water supply and sanitary facilities should meet the needs of the recreationists to be served by the first phase of onshore recreation facilities. The water supply and sanitary facilities may be constructed to meet the needs of later phases of development when the department finds such enlargement to be reasonable, considering physical conditions and economic factors; provided that the agency agrees to pay the incremental cost involved.

Experience thus far with this provision indicates that grants for this purpose will substantially meet the needs of local agencies for these purposes. It must be pointed out that the amounts of the grants possible are based upon the project cost rather than specific recreation needs. More experience is required with this phase to determine in the long run what relationship these amounts bear to actual needs.

It has been suggested that administrative policy be adopted to limit these grants to those projects approved after the effective date of the section, September 22, 1963. That is, apply this provision *prospectively*.

We concur in the advisability of this limitation.

Increase in Maximum Grant

In addition, the maximum grant permitted without legislative approval was increased from \$300,000 to \$400,000 at the 1963 session. This amount was a compromise figure worked out by the Davis-Grunsky subcommittee of this standing committee. At the time this increase was considered the department indicated that it would have been helpful in a few cases in the past to have had an increased maximum when costs allocated to recreation fell between the \$300,000 and \$400,000 range. *The committee believes that this maximum amount is the most appropriate level at which to maintain the limit and recommends no further changes.*

Revised Interest Rate

An additional amendment proposed by this committee revised the interest rate on construction loans and feasibility study loans. The former language, which required repayment over an entire period of a loan at the rate "equal to the net interest cost to the state on the last sale of general obligation bonds," would provide a hardship on loans that were made at a time when state bonds (for an entirely different purpose) were selling at a higher rate. By the same token, it would provide an unusually low rate for those projects whose approval was granted by coincidence when the state bond market was more favorable. This committee recommended, and the Legislature approved, an interest rate based upon the average of the net interest cost to the state on the sales of general obligation bonds over a five-year period. The actual language of the amendment provided that during the period January 1, 1962 inclusive, through the year immediately preceding the year in which the loan application was filed, if the application is filed before 1968, or during the five-year period immediately preceding the year in which the loan application was filed, if the application was filed during or after 1968. Thus, over the long haul the interest rate should be not only representative of the overall bond market, but will reflect an equitable rate for all projects and local agencies will not be subjected to either high or low interest rates based on chance, adding stability and conformity to the program. Commenting on this formula the Department of Water Resources indicated that:

The new formula should prove of assistance to the public agencies because the interest rate will only be subject to change once a year, in contrast to several possible changes a year under the old formula, because the changes under the new formula will ordinarily be less pronounced, making the interest rate to be charged in each case more predictable. (Letter from William Warne to Ralph M. Brody, dated July 29, 1963, found in *Activities and Transactions of the Department of Water Resources Under the Davis-Grunsky act; 1963 Report to the Legislature, January 1964.*

Maximum Feasibility Study Loans

In addition the Davis-Grunsky Act was modified in 1963 to increase the maximum feasibility study loan from 2 percent of the estimated cost of the project, or \$25,000, whichever is less, to 2 percent of the estimated cost of the proposed project or \$50,000, whichever is less. The feasibility study loan program was enacted at the 1961 Session. The department has appropriately pointed out that this amendment "serves the worthy purpose of avoiding the necessity of waiting the time consuming process of special legislative approval to obtain a loan of relatively small magnitude."

Experience with the act to the present indicates that this amendment has provided an adequate maximum level for these loans and further modification of it is not warranted.

State Participation

A final modification made at the 1963 Session was a substantial amendment to the state participation portion of the act which had

not been modified since the original enactment of the Davis-Grunsky Act. Section 12880(f) was revised to expressly authorize the department, subject to the prior approval of the California Water Commission, to participate with local public agencies in the planning, designing, constructing, operating and maintaining of projects that are primarily for domestic, municipal, agricultural, industrial, recreational or fish and wildlife enhancement purposes without the need for special legislative authorization to participate in each given project up to \$1,000,000.

Each project in which the department participates would have to be larger than a project which the particular agency proposes to construct by itself. The amendments specifically provide that before the department may participate in the larger project with a public agency such participation must first be requested by the public agency. The amendment of this section provides that the department may perform all or part of the planning, designing, construction, authorization or maintenance of the projects on terms agreed upon by the agency. The department may also finance its participation with funds allocated to the Davis-Grunsky Program under the Burns-Porter Act.

The amendment also provides that the department may make loans and grants to public agencies for projects in addition to participating in a project, therefore, the department can not only utilize state participation for the additional features of the project but may also provide loan funds for the basic project to meet the needs of the local agency.

These modifications were recommended by the Department of Water Resources, which expressed the view that, as previously worded, the provisions for state participation were unclear and unworkable. At the present only one application for state participation has been received by the department, that is an application by the Tuolumne County Water District No. 2. No action has been taken on this application.

A department spokesman has discussed the meaning behind the "state participation" feature of the act:

As we see it now, the state participation clause might be implemented in a situation where development of a local water project, to a size larger than required to serve local needs, would result in savings and benefits to all parties concerned. For example, should a local agency in the North Coastal area of California propose to construct a small project at a location which is most suitable for a larger project, possibly the state could participate in building the project to the larger capacity. The waters conserved by the project that are in excess of those required to serve local needs might then be integrated into the state's own water system. I should point out again, however, that as we see it, such an arrangement could only be made if it were to the mutual benefit of both the local agency and the state. (William Berry, "State Financial Assistance to Local Water Projects—A Progress Report, April 6, 1962, at 6)

An even broader example of state participation is exemplified in Assembly Bill 1841 by Assemblyman (now Senator) Lunardi, which

was sponsored by the Department of Water Resources and which was referred to this committee for study.

Assembly Bill 1841 would have added a new article to the Davis-Grunsky Act for the purpose of establishing a procedure that would lead to the construction by the Department of Water Resources of water projects to meet local needs. Under such procedure, the department would plan such projects and submit project reports to the Legislature. Thereafter, the department would construct the projects on specific authorization of the Legislature.

This committee *cannot* recommend approval of this proposal for the following reasons, among others:

1. Such a program would be a serious financial drain on the available Davis-Grunsky funds. For this reason alone it is inappropriate to utilize the act for this purpose.
2. No demonstrable need for this program has been shown.
3. The liberalized Davis-Grunsky program represents a substantial state financial commitment to local projects.
4. Through its operation the department might impose projects and financial burdens on areas unwilling or unable to receive them.
5. Assembly Bill 1841 would open up an entirely new concept of state construction of local projects. This state construction of purely local projects represents a major entry into a new field of state activity. Davis-Grunsky projects must be of statewide interest. The state is properly assisting in this manner. Assembly Bill 1841 is an unwarranted departure from this concept.

On July 20, 1964, the Director of Water Resources proposed to the California Water Commission the following additional language to the "Joint Statement of Policies for the Administration of the Davis-Grunsky Act":

*State Participation Under Section 12880(f) for
Recreation and Fish and Wildlife Enhancement Purposes*

It is the view of the Department of Water Resources and the California Water Commission that the Legislature intended that the use of Davis-Grunsky funds to promote the construction of water projects for recreation and/or fish and wildlife enhancement purposes should be confined to the making of grants and loans to the local public agencies under the liberal provisions of subdivisions (c) and (d) of Water Code Section 12880. Therefore, the department will not participate in a project under subdivision (f) of Section 12880 for such purposes.

Action has not yet been taken by the commission upon this proposal which was explained as follows by the Director of Water Resources:

Subsection (f) authorizes, but does not require the department to form a partnership with a local agency in constructing a project that is primarily for domestic, municipal, agricultural, industrial, recreational, or fish and wildlife enhancement purposes. Since grants may be obtained for recreation and the enhancement of fish

and wildlife, it does not appear that the department should participate as a partner in projects constructed primarily for these purposes. In fact, to do so would render meaningless the restrictions placed on the grants.

The . . . policy statement would limit state assistance to local projects for recreation and/or fish and wildlife enhancement purposes to the same restrictions as those placed on grants under Section 12880(c).

This committee concurs with the Director of Water Resources in his interpretation of this amendment of the state participation provisions. Although it has not been adopted by the Water Commission, such a modification appears reasonable and appropriate. It appears that administrative action is sufficient here but if necessary, legislation embodying this concept could be introduced.

Summary

The basic concept of the grant program has been, from the inception of the Davis-Grunsky program to finance portions of local projects which would primarily benefit the state at large and which would be desirable but should not be borne strictly by the local agency. This, of course, is exemplified by recreation and fish and wildlife.

The loan program, on the other hand, was to provide an alternative source of financing for local projects. It is imperative that the program be continued within the framework of this original concept and that grants continue to represent that part of the project which has statewide interest and which is most properly a function to be assumed and financed by the taxpayers of the state as a whole.

The trend of the Davis-Grunsky program, however, from a standpoint of applications received and approved, has been to emphasize grants and the largest portion of the money disbursed and approved to date is for grants rather than loans. It must be emphasized that it is through the loan program that the state makes its most important contribution with regard to assistance to local projects and Davis-Grunsky is basically a program of assistance to local projects. It is through loans that water supply projects are developed and local projects needed for strictly local purposes can be made more easily available to the local people in areas with limited present economic resources.

This committee is concerned lest the original concept of state assistance for local projects be overshadowed by the availability of nonreimbursable grants. It should not be overlooked that the loan program now is one of the most attractive forms of financing to local agencies available in the state.

In addition to extensive changes in the act, the Legislature authorized in 1963 maximum grants exceeding \$400,000 for 10 projects. These

TABLE 1
ESTIMATED COSTS AND AMOUNTS TO BE GRANTED UNDER DAVIS-GRUNSKY ACT
September 10, 1964

Agency	Access roads		Project		Purposes
	Cost	Grant	Construction cost	Construction grant	
1. Helix I.D. -----	\$10,000	\$3,000	\$2,803,000	\$537,000 ¹	Domestic, irrigation and recreation
2. Browns Valley I.D. -----	60,000	26,000	5,491,000	700,000 ¹	Irrigation, power and recreation
3. South Sutter W.D. -----	186,200	73,000	8,931,400	960,000 ¹	Irrigation and recreation
4. San Luis Obispo Co. FC&WCD * -	550,000	336,000	9,338,000	3,285,000 ²	Domestic, municipal, agricultural, industrial and recreation
5. Humboldt Bay M.W.D. -----	2,000	100	6,972,000	300,000	Municipal, industrial and recreation
6. City of Santa Cruz -----	119,000	15,500	2,862,000	149,000	Municipal, industrial and recreation
7. Georgetown Divide P.U.D. -----	--	--	4,483,100	300,000	Irrigation, municipal and recreation
8. Alameda County FC&WCD (Cull Creek) -----	15,000	3,700	692,000	184,000	Percolation, flood control and recreation
9. Alameda County FC&WCD (San Lorenzo Creek) -----	23,000	5,700	753,000	151,000	Percolation, flood control and recreation
10. Monterey County FC&WCD -----	605,000	28,900	14,655,000	3,820,000 ³	Percolation, flood control and recreation
11. Sacramento M.U.D. (Loon Lake)	182,000	24,800	24,542,000	300,000	Power and recreation
12. Sacramento M.U.D. (Gerle Creek)	16,000	6,200	1,889,000	275,000	Power and recreation
13. Sacramento M.U.D. (Union Valley)	438,000	25,800	61,398,000	300,000	Power and recreation
14. Sacramento M.U.D. (Ice House) -	163,000	29,700	16,399,000	300,000	Power and recreation
15. Jackson Valley I.D. -----	--	--	2,700,000	343,000	Irrigation, municipal, industrial and recreation
				42,000	

16. City of San Diego *	51,000	17,400	2,658,000	615,200	32,120	Municipal, industrial and recreation
17. Nevada I.D.*	1,364,000	201,000	66,073,000	3,500,000 ¹	875,000	Power, irrigation, domestic and recreation
18. Yuba County W.A.*	804,400	37,600 ⁴	165,035,000	6,344,000 ⁵	271,000	Flood control, irrigation, power, recreation and fish enhancement
Totals	\$4,588,600	\$846,800	\$397,754,500	\$23,363,200	\$2,176,120	

* Applications under review by department.

¹ Authorized grants by 1963 Legislature.

² \$1,000,000 grant authorized by 1963 Legislature.

³ Authorized grant by 1962 Legislature.

⁴ Allocation—\$12,500 recreation and \$25,100 fish enhancement.

⁵ Includes \$3,481,000 for fish enhancement—\$5,000,000 total grant authorized by 1963 Legislature.

10 projects represent total possible grants of \$28,025,000 excluding on-shore facilities grants. Table 2 on page 25 describes these 1963 authorizations. Also, at its 1961 session, the Legislature authorized a grant for the Paskenta Project in the amount of \$3,090,100 (Assembly Bill 2265, Chapter 1292).

The substantial liberalizations of the act at the 1963 session,* together with the large number of projects authorized for increased maximum grants by the Legislature at that time indicate that activities under the Davis-Grunsky program are being stepped up substantially. At the present, however, we have not had sufficient experience with the 1963 amendments to completely assess their effect since the Department of Water Resources and the California Water Commission are still working on modifications to their joint policy statement to reflect 1963 changes.

It appears clear at this time, however, that the Davis-Grunsky Act has been made more useful, more flexible, and a more valuable program to the State of California as a result of these amendments. *As was indicated above with regard to individual provisions of the act, additional modifications of these provisions is not recommended.* (A discussion of the access road problem is given below.)

With regard to the expected expenditures for Davis-Grunsky during the next few years, the Director of Water Resources told the California Water Commission on June 7, 1963:

In the department's current programing for the sale of water bonds and use of the California Water Fund, I am anticipating expenditures in the order of \$10,000,000 per year for the Davis-Grunsky program, during about the same period that the other features of the state water facilities are under construction. . . . As we move forward with the Davis-Grunsky program, particularly after the 1965 Session . . . I believe that a priority system to select projects will become essential. I plan to work closely with the California Water Commission on establishment of priorities when this becomes necessary.

This committee does not agree that a priority system will be necessary in the immediate future. The number of legislative authorizations anticipated at the 1965 session does not appear now to be as great as at the 1963 session.

The Governor's Budget for 1964-65 indicated an estimated \$11,104,901 was disbursed during the 1963-64 fiscal year and an estimated \$9,529,025 will be disbursed during the 1964-65 fiscal year.

It appears, thus, that annual disbursements for the program are running at approximately the rate estimated by the Director of Water Resources.

Elsewhere in this report concern has been expressed over the trends of operation of the Davis-Grunsky Act whereby a greater emphasis has been placed on grants than loans. Financing of both loans and grants, of course, may be from either California Water Fund moneys available or Burns-Porter Act bond proceeds. For several years this committee has been concerned over the problems raised by utilization of Burns-Porter Act bond funds for nonreimbursable grants.

* AB 45 (Chapter 82), AB 219 (Chapter 1075), AB 308 (Chapter 769), SB 137 (Chapter 2023), SB 193 (Chapter 908), and SB 253 (Chapter 53).

BILLS SPECIFICALLY AUTHORIZING GRANTS UNDER DAVIS-GRUNSKY ACT

Enacted as Result of 1963 Regular Legislative Session

<i>Bill no. and related ch. no. of 1963 Cal. Stats.</i>	<i>Agency and project</i>	<i>Maximum authorized grant amount</i>
AB 1076 <i>Helix Irrigation District in San Diego (Ch. 1962) County</i>	Terminal storage reservoir to regulate imported water for domestic and irrigation uses—includes incidental recreation functions. (Chet Harritt project.) Estimated cost—\$2.9 million.	\$900,000
AB 1576 <i>Placer County Water Agency (Ch. 1969)</i>	Extensive power project on the Middle Fork American River—includes irrigation and recreation functions. (Middle Fork American River project.) Estimated cost—\$116 million.	\$3,000,000
AB 1577 <i>Nevada Irrigation District in Nevada and (Ch. 1970) Placer Counties</i>	Extensive power and irrigation project on Yuba-Bear River System—includes incidental recreation functions. (Yuba-Bear development.) Estimated cost—\$16 million.	\$3,500,000
AB 1842 <i>South Sutter Water District in Sutter and (Ch. 1973) Placer Counties</i>	Irrigation water supply project under Federal Public Law 984—includes incidental recreation functions. (Camp Far West project.) Estimated cost—\$7.7 million.	\$960,000
AB 2536 <i>Siskiyou County Flood Control and Water (Ch. 1987) Conservation District in Siskiyou County</i>	Recreation and fish enhancement project. (Box Canyon project.) Estimated cost—\$4.8 million, including cost of onshore recreation facilities.	\$2,800,000
<i>Bill no. and related ch. no. of 1963 Cal. Stats.</i>	<i>Agency and project</i>	<i>Maximum authorized grant amount</i>
AB 2675 <i>Yuba County Water Agency (Ch. 1993)</i>	Extensive power, flood control and irrigation project on Yuba River—includes incidental recreation and fish enhancement functions. (Yuba Basin development.) Estimated cost—\$154 million.	\$5,000,000
SB 327 <i>Browns Valley Irrigation District in Yuba (Ch. 132) County</i>	Irrigation water supply project under Federal Public Law 984—includes incidental recreation. (Virginia Ranch project.) Estimated cost—\$5.25 million.	\$700,000
SB 634 <i>San Luis Obispo County Flood Control and (Ch. 531) Water Conservation District in San Luis Obispo County</i>	Municipal and irrigation water supply project—includes incidental recreation and fish enhancement functions. (Lopez project.) Estimated cost—\$4.25 million.	\$1,000,000
SB 1228 <i>Oroville-Wyndotte Irrigation District in (Ch. 1925) Butte, Plumas and Yuba Counties</i>	Extensive power project on South Fork Feather River—includes irrigation and incidental recreation functions. (South Fork project.) Estimated cost—\$65 million.	\$3,500,000
SB 1413 <i>Tuolumne County Water District No. 2 (Ch. 1932)</i>	Water development for recreation and fish enhancement purposes—includes water supply for domestic purposes. (Tuolumne River project.) Estimated cost—\$6.6 million.	\$6,665,000
Total		\$28,025,000

The committee was gratified that in proposing the 1964-65 Budget, the Department of Finance administratively set aside the expected \$11,000,000 in revenues to the California Water Fund from tidelands for use first for Davis-Grunsky Act expenditures. (Most of which are grants.) This is a major policy step and should prevent future problems from arising as a result of the large number of nonreimbursable grants as long as annual disbursements remain approximately at or below the level of \$11,000,000 a year. A complete summary of the program including loans and grants authorized by both the commission and the department together with those expected to be approved shortly is found in Table 1.

The cost of administration of the Davis-Grunsky program was a subject of some concern to this committee during the early years of the program when few grants and loans were actually approved. The table below indicates the cost of the administration of the Davis-Grunsky program since its inception in the 1958-59 fiscal year. It has been pointed out by the Director of Water Resources that in some cases the department spends a great deal of time in assisting an agency in preparing a feasibility report by furnishing available data, and by advising an agency on such matters as data that should be included. According to the Director of Water Resources it is expected that as additional applications now being reviewed are included in the tabulation, administrative costs will average out at about 4 percent. In view of the detail involved in the analysis of each proposed project it would appear that the department's cost of administration is reasonable and appropriate for a program of this type.

<i>Fiscal year</i>	<i>Work¹ (man-years)</i>	<i>Administrative expenditures</i>	<i>Fund</i>	<i>Preliminary requests</i>	<i>Formal applications</i>	<i>Funds approved</i>
1958-59	0	\$8,560	General	0	0	\$1,260,000
1959-60	4	54,487	General	19	0	0
1960-61	8	101,299	Water	16	3	600,000
1961-62	11	163,134 ²	Water	6	2	4,000
1962-63	19	285,719 ⁴	Water	25	12	7,806,800
1963-64 ³	17	122,536 ⁵	Water	15	7	537,000
TOTALS		\$735,785		81	24	\$10,207,800

¹ Estimated.

² \$1,463 reimbursed by South Sutter Water District.

³ First six months.

⁴ Includes \$6,417 to Fish and Game.

⁵ Includes \$5,474 to Fish and Game.

III

ACCESS ROADS GRANTS

Under existing Davis-Grunsky Act provisions a certain amount of access road construction may be included within a recreation and fish and wildlife grant. Eligible roads are those considered part of the "construction cost" of the dam itself, as explained by the Director of Water Resources:

The cost of those roads which are necessary for construction, operation, or maintenance of the project, or of the dam and reservoir of the proposed project, are considered to be a part of the cost of the joint works and, therefore, a part of the cost to be allocated among the project functions. Some part of the cost of such roads then may be allocated to fish and wildlife enhancement or to recreation as appropriate. The cost of constructing roads for recreation would not be a part of the joint cost to be allocated among functions. However, the cost of lands for such roads, in some instances, could be included as part of the construction cost of the given dam and reservoir under the second section of Water Code Section 12880 (c2), and become a part of the grant by virtue of the roads being located on lands above the high waterline of reservoirs which are necessary or desirable for public recreation in connection with the reservoir.

The department does not limit the length of the roads necessary to construct, operate and maintain a project or a dam and reservoir. Plans for each project are reviewed separately and the cost of safe, low-cost roads necessary to construct, operate and maintain the dam and reservoir are accepted as part of the cost of the project.

The department does not distinguish between roads that are necessary only for the construction of a dam and reservoir, or proposed project, and those that are used after construction for operation and maintenance. No distinction is made between the main road to the dam site and in other roads necessary to construct, operate, and maintain the reservoir. (Transcript, October 24, 1963, at 7, 8)

Such an interpretation of the law is consistent with the interpretation by the Legislative Counsel. (See Op. 1131, Oct. 23, 1963). The Legislative Counsel also has held that a road constructed or improved solely for recreation use not required for project construction could not be included in a grant under existing law:

Accepting this assumed fact (that the improvement of the existing access road is not needed in order to bring men and equipment to the construction site but is being undertaken solely for recreational purposes) our conclusion would have to be that the cost of improving the road could not be covered by a grant under Section 12880.

The extent to which the total access road requirements of various projects could be met by *existing law* is indicated in the table below:

COST OF ACCESS ROADS FOR DAVIS-GRUNSKY PROJECTS			
Agency	Construction cost for access roads (multipurpose)	Grant (Amount of cost allocated to recreation)	Under existing law percent- age of cost met by Davis- Grunsky grant
1. Helix Irrigation District-----	\$10,000	\$3,000	30%
2. Browns Valley Irrigation District	60,000	26,000	43%
3. South Sutter Water District----	186,200	73,000	39%
4. San Luis Obispo County FC&WCD -----	550,000	336,000	60%
5. Humboldt Bay Municipal Water District -----	2,000	100	5%
6. City of Santa Cruz -----	119,000	15,500	13%
7. Georgetown Divide Public Utility District -----	0	0	0%
8. Alameda County FC&WCD (Cull Creek Project) -----	15,000	3,700	25%
9. Alameda County FC&WCD (San Lorenzo Creek Project) -----	23,000	5,700	15%
10. Monterey County FC&WCD -----	605,000	28,900	5%
11. Sacramento Municipal Utility District (Loon Lake) -----	182,000	24,800	14%
12. Sacramento Municipal Utility District (Gerle Creek) -----	16,000	6,200	39%
13. Sacramento Municipal Utility District (Union Valley) -----	438,000	25,800	7%
14. Sacramento Municipal Utility District (Ice House) -----	163,000	29,700	18%
15. Jackson Valley Irrigation District	0	0	0%
16. City of San Diego -----	51,000	17,400	34%
17. Nevada Irrigation District -----	1,364,000	201,000	15%
18. Yuba County Water Agency -----	804,400	37,600	5%
TOTALS -----	\$4,588,600	\$834,000	24%

It can be seen that approximately 24 percent of the total access road construction involved in present project plans can be included in existing Davis-Grunsky grants. The table above, of course, refers only to those access roads to be used primarily for the construction, operation and maintenance of projects.

With regard to roads to be used specifically and primarily for recreation, the Department of Water Resources has prepared the following table indicating the amount of money required for construction roads (as indicated in the table above) together with an estimate of the total amount to be expended for each project for recreation roads (none of which is covered by existing Davis-Grunsky Act program).

Agency and project	Roads	
	Construction	Recreation
1. Helix Irrigation District—Chet Harritt Project	\$10,000	\$34,000
2. Browns Valley Irrigation District—Virginia Ranch Project -----	60,000	22,000
3. South Sutter Water District—Camp Far West Project -----	186,200	72,800

<i>Agency and project</i>	<i>Roads</i>	
	<i>Construction</i>	<i>Recreation</i>
4. San Luis Obispo County FC&WCD—Lopez Project -----	\$550,000	\$520,650
5. Yuba County Water Agency—Yuba River Development Project -----	804,000	45,000
6. Nevada Irrigation District—Yuba-Bear Development Project -----	1,364,000	451,800
TOTALS -----	\$2,974,600	\$1,146,250

In discussing access roads it must be emphasized that roads primarily for recreation often are used for other purposes such as logging trucks, etc. Also the length of a road required is based upon the physical location and terrain of the project and is not directly related to recreation use or needs in many cases.

At this committee's hearing on House Resolution 54 a number of witnesses representing existing or potential Davis-Grunsky projects supported further broadening the act to include access roads for recreation purposes. The Director of Water Resources, however, cautioned that

There is a very difficult problem of the relationship between the cost of the project and the cost of the access road to it. In other words, a project might be proposed primarily or perhaps exclusively, for recreation purposes and it might be desirable . . . that it might involve an extraordinarily difficult access. We need some kind of a limitation, some measure of the benefit here, I think, before we can include access roads as a part of the Davis-Grunsky Act for fear of getting the program pretty badly out of balance. This is the matter that concerns us . . . The Davis-Grunsky program is perhaps best described as a program designed to assist local public agencies in developing local water supplies. Now among the purposes are municipal water supplies, irrigation water supplies and other beneficial uses. Until this last year, recreation and the fish and wildlife enhancement had to be simply incidental to the central theme of the project, now they may also become primary objectives of the program. I think the balance that I had in mind is that which you have indicated, for example, if we build a small reservoir somewhere that costs twice as much to get into it as it does to build the reservoir that would put an unbalanced amount of this Davis-Grunsky \$130,000,000 that we have available into recreation projects and the individual project might be unbalanced. I think it would be illogical to choose such a project over one which gave a greater benefit from the water development—a greater proportion of benefit. I am fearful of the possibility, you know, of having to build a \$5,000,000 road to a \$500,000 reservoir. And this \$130,000,000 ought to be related to all appropriate types of water development in these areas. Now, I personally welcome the inclusion of recreation and fish and wildlife enhancement into the basic purposes of the program because in a good many instances these are going to be controlling factors as to whether the project is going to be able to go forward or not. But there are other reasons—other purposes—for the program and we ought not to overlook them. . . . The hope for a balance is the motivation

for the recommendation that I have made, that we don't get ourselves too much committed to access road expenditures until we have a little better experience in how much is going to be involved in it. (Transcript, Oct. 23, 1964, at 14, 23, 24, 25 and 28.)

The scope of access road requirements can be indicated by using as an example the Middle Fork-American River Project of the Placer County Water Agency. This is a major water development project which will be financed primarily from power revenues developed by the project. Total cost of the project is estimated to be \$115,000,000. According to spokesmen for the district a report of the agency's recreation consultants indicated that the number of visitor days generated by the project will increase from 84,300 in 1970 to 671,300 in 2020. It was pointed out that for this project present access to the area is still a forest service highway the major use of which is for hauling timber. The agency estimates that an entirely new access road will be required for recreational use. The expected cost of the access road will be approximately \$2,000,000. The total Davis-Grunsky grant authorized for this project at the 1963 session was \$3,000,000 (with another \$750,000 available for initial sanitary and water supply facilities). Thus, it can be seen that if the entire access road was financed through the Davis-Grunsky program nearly \$6,000,000 would be utilized from the funds for this project alone.

A second project which the committee explored was the project of the Nevada Irrigation District which has received authorization for a Davis-Grunsky construction grant in the amount of \$3,500,000 which would also permit it an \$875,000 grant for water supply and sanitary facilities. The following table indicates the total recreational development costs of the four reservoirs comprising the Nevada Irrigation District complex:

RECREATIONAL DEVELOPMENT COSTS
NEVADA IRRIGATION DISTRICT RESERVOIRS

	<i>Costs</i>	<i>Percentage of total cost</i>
Access Roads * (8.11 miles) -----	\$437,790	14
Water Supply and Sanitary Facilities -----	928,800	29
Recreational Land -----	209,000	7
All Other Facilities -----	1,587,300	50
TOTAL ALL STAGES -----	\$3,162,890	100

* These are "perimetrical" access roads only. Roads leading from major highways into the back country are not included.

From this table it can be seen that a major portion of the water supply and sanitary facilities requirements can be met by the Davis-Grunsky facilities grant of \$875,000. The Department of Water Resources has estimated that the total access road cost, *including perimetrical access roads for recreation purposes only* will total \$1,364,000. Of this amount, \$201,000 is eligible for a grant under existing law as part of the construction cost of the dam. At this complex the type of access road varies on each of the four dams involved. All of the dams are relatively close to existing main access roads operated by the county or the forest service or the state and, comparatively speaking, the access roads in this project are of less magnitude than those on the Placer County Water Agency project described above. These two projects are

the only two about which, at the present time, there is substantial detailed information available with regard to access roads. The modifications to the Davis-Grunsky Act in 1963 provide that the state may finance all of the recreation construction cost of the dam and reservoir and most of the onshore water supply and sanitary facilities. If access road grants were added to the program, virtually all onshore recreation facilities at these projects would be financed by the state.

It must be pointed out that substantial benefits to the local areas accrue from recreational developments of this type at projects. These substantial economic advantages accrue from increases in the assessed valuation and economic base of a county due to development of the project as well as increases in sales tax, gas tax, and other revenues as a result of increased economic activity in the area involved. It does not seem appropriate in view of the economic advantages to areas receiving Davis-Grunsky grants that the entire obligation of recreation and its attendant requirements such as access roads be met by the state in view of the limitations upon money available in the Davis-Grunsky Act program. Local areas, including counties and public agencies have important obligations regarding road construction.

A great many Davis-Grunsky projects involve construction on land owned by the U.S. Forest Service and access roads to such projects involve Forest Service land. The Forest Service outlined its policies with regard to access roads for the committee:

Construction of water and power development projects within National Forests generally requires new or improved access roads and trails, and causes considerable impact on the Forest Development road and trail system. Usually roads of higher standard are required to serve the combined needs of project construction traffic and recreation and other user traffic to and from a reservoir or water development project than would be needed for forest user and protection traffic without the project.

In general, it is our position that the construction agency on such water development projects should provide the new roads or improve the existing roads sufficiently to provide service for the increased public traffic generated by the water facility upon its completion. It is important that plans, specifications and estimates for such access roads and for soil erosion control and revegetation measures on the roads and borrow pits be included in project plans. Where the recreation facilities developed on the reservoir are campgrounds, picnic sites or boat launching ramps on national forest land the Forest Service has a responsibility in connection with maintenance of the roads directly serving these sites.

Where the facilities will be developed on private lands or other than national forest lands, or the sites are summer homes or commercial establishments, the maintenance responsibility then becomes one in which we feel it is proper to look to the project developer or the County or other benefitting local authority. In many cases gas tax receipts are a factor that should be considered.

Timing of access road construction for water projects must be keyed to project construction schedules (e.g. main road must often be built before the dam), and this time requirement may complicate the financing problems. Regulations concerning use of forest road

development funds provide that we will not construct or maintain roads for public service traffic as distinguished from forest user traffic. Where both types of traffic are involved, the Forest Service can and has cooperated in financing construction and maintenance. (Transcript, Oct. 24, 1963, at 118)

In the above statement the matter of maintenance of access roads is raised and it is pointed out that when projects are constructed on national forest land the Forest Service does have a responsibility in connection with the maintenance of roads serving those sites. Thus, additional assistance to local areas is provided through maintenance of these roads. It seems obvious that the maintenance responsibilities on mountainous roads of this type can be substantial. From time to time funds are also available for construction of roads from the Forest Service road development fund. Thus, Placer County Water Agency officials pointed out that Congress authorized \$900,000 to the agency for roads, providing that matching funds could be raised by the agency, but such funds were not available from the agency. (See Transcript, Oct. 24, 1963, at 61).

Financing of recreational facilities at the state water facilities is a further complication to the problem faced by the committee with regard to the Davis-Grunsky Act. It is important to emphasize that substantial amounts of money for onshore facilities, access roads and other facilities will be financed by the General Fund of the state under existing law during the next decade or so. Policy modification in the Davis-Grunsky Act to provide financing for access roads must be considered in light of the overall requirements of state expenditures for recreation facilities.

Suggestions were also made to the committee that gasoline tax revenues be specifically earmarked for recreation road development including access roads required for Davis-Grunsky Act projects. It does not appear that such a course of action is desirable.

The Legislature has recognized the needs of the counties as to road construction funds (see report of the Senate Fact Finding Committee on Transportation and Public Utilities, *Critical Deficiencies on City Street and County Roads and other Transportation Matters, 1963*) and through enactment of the Collier-Unruh Local Transportation Development Act (Senate Bill 344, Chapter 1852) at the 1963 session of the Legislature additional funds were made available to cities and counties for local streets and roads. Thus, funds are presently available to counties and cities from gas tax receipts which can be used for roads providing access to water projects by the local entity. Very little would be gained by earmarking portions of this money already going to local areas for water project purposes as needs vary greatly from county to county. In addition, there would be an undesirable mixing of water project financing and state and city and county road and street financing.

We do not believe that Davis-Grunsky funds should be used for extensive road development. Already portions of access road construction properly allocated to recreation are eligible for grants. This committee must reaffirm its belief that the construction of water project access roads is basically an obligation of the local counties, cities and public entities. As indicated above, the Davis-Grunsky Act was not

created to finance the total water project needs of all local areas. Utilization of large sums for road construction is contrary to the spirit and objectives of the Davis-Grunsky program. State assumption of access road costs would be an abdication of the local entities' responsibility to shoulder its fair share of local project costs.

It should be emphasized that already part of this traditional local responsibility has been assumed by the state through the generous provisions for initial water supply and sanitary facilities grants. This has resulted in a definite easing of the burden on local entities to provide onshore facilities. Money which would have been required for these purposes may now be available to local areas for access road construction. The 1963 modifications have made substantially more money available to individual local projects under the Davis-Grunsky program and the Davis-Grunsky program today may finance up to 75 percent of the cost of the project under certain circumstances.

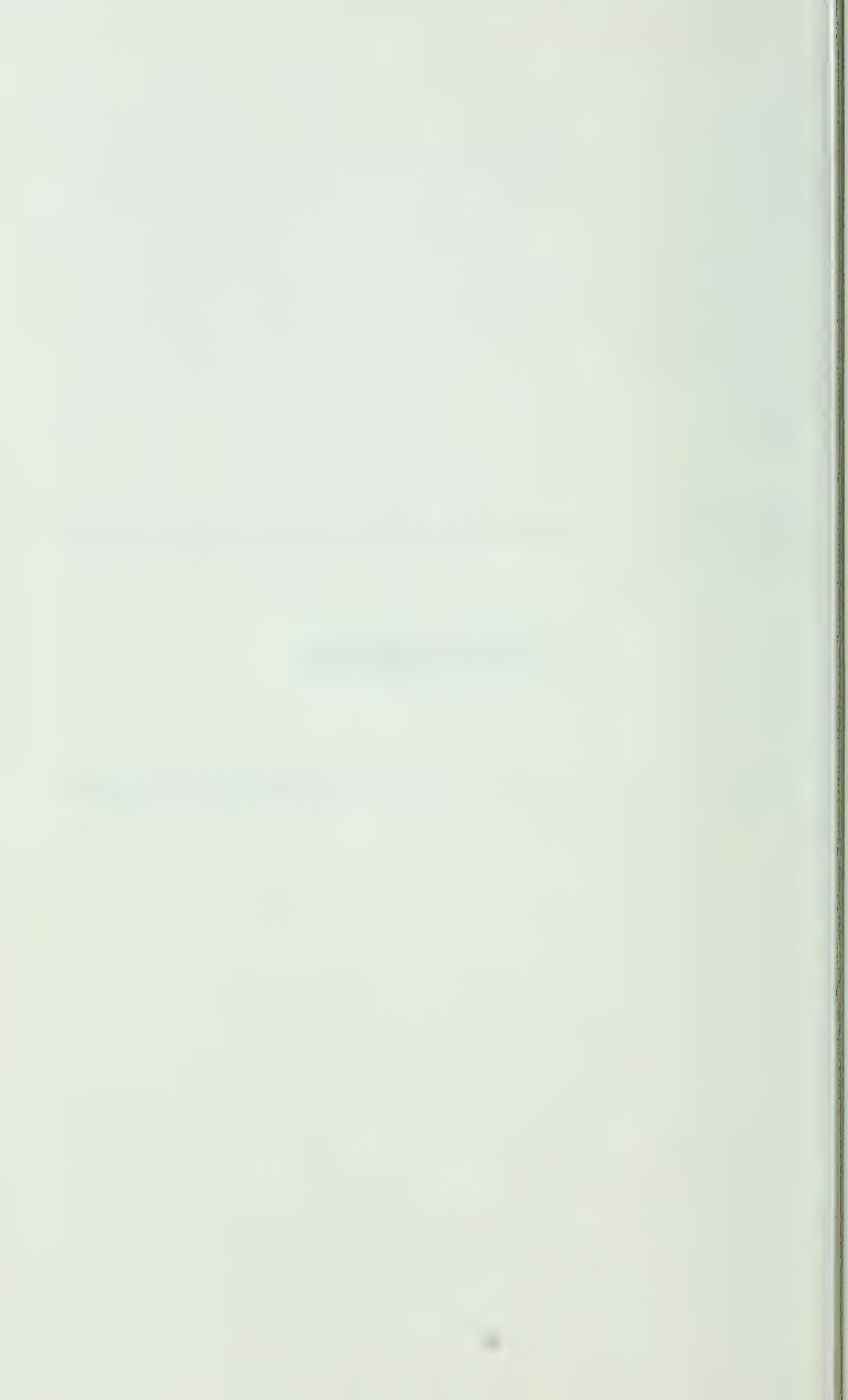
In addition only meager information was available on anticipated access road requirements at the hearing of this committee in October 1963, with the exception of the Nevada Irrigation District and the Placer County Water Agency projects discussed above. Little additional information has become available since that time with regard to the needs of various other projects under the Davis-Grunsky Act.

A number of additional suggestions were made with regard to possible alternative methods of providing state assistance for access roads. These include (1) loans rather than grants for such purposes. This is presently possible under the Davis-Grunsky Act but the net effect of loans on the overall program would be the same as if they were used for grants since the money repayed on the loan could not be reused for Davis-Grunsky purposes since a revolving fund concept cannot be legally instituted while Davis-Grunsky expenditures are being made under authority of the initial \$130,000,000 available from the Burns-Porter Act. The major advantage of a loan program would be to make the additional money available on a revolving fund basis. (2) Provision of statutory limits on the amount of funds available for access road grants. It has been suggested that the amount be no more than that amount of proposed onshore facilities grant. (Which is 25 percent of the basic recreation grant). It was further suggested that limitations on the basis of mileage of roads be applied to access road grants. It appears that due to the great diversity of road requirements from project to project that any such formula based on existing information would not be satisfactory, it would be nothing more than arbitrary amount. (3) Additional aid from the Federal Government, which is beyond the scope of this committee study.

Therefore, this committee recommends that the Davis-Grunsky Act not be modified further to provide for recreational access road grants.



APPENDIX



THE DAVIS-GRUNSKY ACT

Showing Deletions and Additions Made at the
1963 Regular Session of the
Legislature

CHAPTER 5. STATE FINANCIAL ASSISTANCE FOR LOCAL PROJECTS

(Chapter 5 added by Stats. 1957, Ch. 2052.)

State policy

12880. In furtherance of the development, control and conservation of the water resources of the State and the State Water Resources Development System it is the policy of the State to provide financial assistance to public agencies for the construction of water projects to meet local requirements in which there is a statewide interest by making grants or loans, or both, and by participating in the construction and operation of water projects, and also to provide financial assistance to public agencies for the preparation of certain feasibility reports on such water projects by making loans, in accordance with this chapter.

"Project"

(a) As used in this chapter, "project" means any construction or improvement by a public agency for the diversion, storage, or distribution of water primarily for domestic, municipal, agricultural, industrial, *recreation, fish and wildlife enhancement*, flood control, or power production purposes. "Public agency" means any city, county, district or other political subdivision of the State. "Feasibility report" means such report on the feasibility of a public agency's proposed project as the department may require the public agency to file with the department in support of an application by the public agency under this chapter for a loan for the construction of the proposed project.

Approval

(b) The proposed project may be approved for assistance only if it is determined that the project substantially conforms to The California Water Plan, is engineeringly feasible, economically justified, and, if a loan is proposed, that there is reasonable assurance, commensurate with the need for the proposed project, that the public agency can repay it. *The potential future growth and development of the area shall be taken into consideration in the calculation of the benefits for the determination of the economic justification of a proposed project. In the case of a grant for recreation or fish and wildlife enhancement, or both, the determination of economic justification of the proposed project may, in the department's discretion, be limited to a determination of the economic justification of the recreation and fish and wildlife enhancement functions of the project. Such factors as the public health, safety, and*

welfare shall be taken into consideration in determining the need for a proposed project. A loan for the preparation of a proposed feasibility report on a proposed project may be approved only if it is determined that there is reasonable assurance that the public agency can repay the loan and only if the agency receives a favorable written reply from the department on a written request for a preliminary determination of eligibility for a loan for the construction of the proposed project filed with the department by the agency under the regulations of the department promulgated pursuant to this chapter.

Grants

(c) Grants in furtherance of a project *that involves the development of a new water supply* may be made for the following purposes:

(1) For the part of the construction cost of the proposed project properly allocated to the enhancement of fish and wildlife ; ~~incidental to the primary functions of the project~~ *provided, that a grant for such part shall not exceed fifty percent (50%) of the construction cost.*

(2) For the part of the construction cost of ~~the any~~ dam and reservoir of the proposed project properly allocated to recreational functions of statewide interest ~~that are incidental to the primary functions of the project~~ ; *provided, that a grant for such part shall not exceed fifty percent (50%) of the construction cost, and provided further, that the total grant under paragraphs (1) and (2) of this subdivision for any one project shall not exceed seventy-five percent (75%) of the construction cost of the project.* Such construction costs may include expenditures for lands located above the high waterline of reservoirs which are necessary or desirable for public recreation in connection with the reservoir.

(3) *For the construction of initial water supply and sanitary facilities which are needed for public recreational use of each proposed dam and reservoir of the proposed project. A grant for the purpose specified in this paragraph (3) shall not be subject to the limitation contained in Section 12885 on grants for the purposes specified in paragraphs (1) and (2) of this subdivision and shall not be included in computing the total amount which may be granted to a public agency in connection with a project for such purposes. A grant for the purpose specified in this paragraph (3) shall not exceed one-fourth of the total amount granted to a public agency in connection with a project for the purposes specified in paragraphs (1) or (2), or both, of this subdivision.*

Loans

(d) Loans may be made only for projects primarily for domestic, municipal, agricultural, ~~or~~ industrial, *recreation, or fish and wildlife enhancement* purposes. Such loans may be made for all or any part of the construction cost of any such project but in no event shall any such loan be in an amount which is greater than the portion of the construction cost of the project which the department finds to be beyond the reasonable ability of the public agency to finance from other sources. Such loans shall be repayable over a period not to exceed 50 years. A period of development of not exceeding 10 years may be

allowed within such maximum 50-year repayment period, during which no payments on the principal of *or the interest on* such loans shall be required, when in the department's judgment such development period is justified under the circumstances. *If the payment of interest is deferred pursuant to this subdivision, interest shall be charged on the interest amounts for which payment is deferred at the same rate as the rate of interest charged on the principal amount of the particular loan. The accrued interest may, at the option of the public agency, be paid in annual installments during the remainder of the loan repayment period at the same rate of interest as is charged on the principal amount of the loan.*

Same: Feasibility reports

(e) Loans may be made for all or any part of the cost of the preparation of proposed feasibility reports on proposed projects, but in no event shall any such loan be in an amount which is greater than the portion of the cost of the preparation of the proposed feasibility report which the department finds to be beyond the reasonable ability of the public agency to finance from other sources. Such loans shall be repayable over a period not to exceed 10 years.

State participation

(f) If in order to accomplish the objectives of this chapter it is necessary to construct a project that is ~~beyond the requirements of the public agency constructing the project, larger than one which a public agency proposes to construct,~~ the State may participate in planning, designing, constructing, operating and maintaining the project, and in ~~financing~~ so participating shall finance those costs of the project ~~in excess of the costs necessary to meet the requirements of the public agency allocated to the State,~~ on terms agreed upon with the agency, to the end that the project shall accomplish the maximum water development objectives at a minimum total expenditure. *In participating in a project under this subdivision (f), the department may perform all or part of the planning, designing, construction, operation or maintenance of the project on terms agreed upon with the agency.*

The department is authorized, following receipt of an application for state participation from a public agency, to participate under this subdivision (f) on behalf of the State in any project that is larger than the one which the public agency proposes to construct and that is primarily for domestic, municipal, agricultural, industrial, recreational or fish and wildlife enhancement purposes and in so participating shall finance those costs of such project that are allocated to the State, on terms agreed upon with the public agency, subject to the prior approval of the California Water Commission, and to expend for participation in the planning, designing, and construction of any one project an amount not exceeding one million dollars (\$1,000,000) from moneys available for such participation, including but not limited to, the moneys appropriated by the California Water Resources Development Bond Act (Chapter 8 (commencing with Section 12930) of Part 6 of Division 6 of the Water Code) for provision for water development facilities for local areas as provided in this Chapter 5. Expenditures by the department in excess of one million dollars (\$1,000,000) for the

planning, designing, and construction of any one project may be made only upon specific authorization of the Legislature.

The department is authorized to make loans and grants to public agencies pursuant to the provisions of this chapter for projects in which the department participates under this subdivision (f).

Applications for loans or grants

(g) Applications for loans or grants or financial participation by the State under this chapter shall be made to the department in such form and with such supporting material as may be prescribed by the department. *Supporting material with respect to the ability of a public agency to repay the loan and to the reasonable ability to finance the proposed project from other sources may be supplied by the county assessor and the county engineer.* A report on each application shall be prepared by the department and filed with the Legislature. In such reports the department shall make findings as to the nature and extent of the statewide interest in the project, the public necessity for the project, the urgency of the need, and the engineering feasibility, economic justification, and financial feasibility of the project; provided, that in the case of reports on applications for loans for the preparation of proposed feasibility reports, in lieu of the above findings, the department shall make findings with respect to the public necessity for and urgency of need of the proposed project and the ability of the applicant to repay the requested loan for the preparation of the proposed feasibility report.

Additional powers of public agencies

(h) Notwithstanding any provision of law to the contrary, every public agency empowered by law to construct and operate a project, as defined in subdivision (a) of this section, is hereby granted, in addition to and not in derogation or limitation of the powers conferred upon the public agency by any other law, the power:

(1) To borrow money from and repay the same with interest to the State in accordance with this chapter on behalf of the entire public agency or of any portion or portions thereof for which the law applicable to the agency authorizes an indebtedness or liability to be incurred, including any improvement district, distribution district, or zone within the public agency, notwithstanding any debt limitation or other provision in the law applicable to such agency which might otherwise preclude or limit such borrowing.

(2) To enter into a contract with the department, on behalf of the entire public agency, or of any portion or portions thereof referred to in paragraph (1) of this subdivision (h), for a loan or grant under this chapter or for participation by the State in a local project under subdivision (f) of this section and to use the loan or grant contracted for as an additional or alternative means of financing the project proposed by the public agency.

(3) To comply with the provisions of any contract entered into with the department under this chapter, including any provision which obligates the public agency, or any specified portion or portions thereof, to meet all commitments, financial or otherwise, undertaken by the public agency in such contract notwithstanding any individual default

by its constituents or others in the payment to the public agency of taxes, assessments, tolls, or other charges levied by the public agency.

(4) To include recreation and enhancement of fish and wildlife, or either of them, as functions ~~incidental to the primary functions~~ of a project which the public agency is empowered by law to construct and operate, and to construct and operate the project for such ~~incidental~~ recreation and enhancement of fish and wildlife functions, or either of them, in accordance with the provisions of a grant contract entered into with the department, including provisions for public use of the project facilities for fishing and other recreational activities.

(5) To construct and operate such onshore recreational facilities, fish and wildlife enhancement facilities or other facilities as the department or the Legislature may require in connection with a grant to the public agency under this chapter, and to construct and operate such facilities in accordance with the provisions of a grant contract entered into with the department, including provisions for public use of such facilities for fishing and other recreational activities.

(6) To annually levy or cause to be levied upon all property in the public agency, or in any portion or portions thereof, subject to taxation or assessment by the public agency an ad valorem tax or assessment, based upon the assessed valuation of such property, necessary and sufficient to meet all commitments, financial or otherwise, of the public agency that are set forth in any contract which the agency enters into with the department under this chapter, in addition to any other taxes or assessments which the public agency is authorized to levy or cause to be levied on such property and notwithstanding any provision in the law applicable to such agency which might otherwise preclude or limit such taxing or assessing. Where the law applicable to such public agency does not set forth a procedure for levying and collecting taxes or assessments on an ad valorem basis, such public agency shall utilize the procedure for levying and collecting taxes for the payment of principal and interest on general obligation bonds of municipal water districts, set forth in the Municipal Water District Act of 1911 (Chapter 671, Statutes of 1911), as it may now or hereafter be amended, for the purpose of levying and collecting taxes or assessments necessary and sufficient to meet commitments in a contract entered into under this chapter.

(7) To make charges for the furnishing of services from the project for which the public agency receives financial assistance under this chapter and to pledge and use any or all revenues received from the collection of such charges for the purpose of meeting the commitments, financial or otherwise, of the public agency that are set forth in any contract which the public agency enters into with the department under this chapter.

(8) To perform all acts and do all things that are necessary or convenient to carry out the above powers.

Elections

(i) *Except in the case of a grant to a public agency where the applicable law contains provisions for the election of the members of the governing body of the agency or where a county board of supervisors*

acts as the governing body of the agency, before a public agency may enter into a contract with the department for a construction loan or a grant under this chapter, the public agency shall hold an election on the proposition of whether or not the public agency shall enter into the proposed contract and more than 50 percent of the votes cast at such election must be in favor of such proposition; provided, that if a higher percentage of favorable votes is required for the issuance of any bonds by the public agency or is required by the Constitution before the public agency may incur an indebtedness, such higher percentage shall apply in lieu of the percentage set forth in this subdivision. Such election shall be held in accordance with the following provisions:

(1) The procedure for holding an election on the incurring of bonded indebtedness by such public agency shall be utilized for an election on the proposed contract as nearly as the same may be applicable. Where the law applicable to such agency does not contain such bond election procedure, the procedure set forth in the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) Part 1, Division 2, Title 5 of the Government Code), as it may now or hereafter be amended, shall be utilized as nearly as the same may be applicable.

(2) No particular form of ballot is required.

(3) The notice of the election shall include a statement of the time and place of the election, the purpose of the election, the general purpose of the contract, and the maximum amount of money to be borrowed from the State under the contract.

(4) The ballots for the election shall contain a brief statement of the general purpose of the contract substantially as stated in the notice of the election, shall state the maximum amount of money to be borrowed from the State under the contract, and shall contain the words "Execution of contract—Yes" and "Execution of contract—No."

(5) The election shall be held in the entire public agency except where the public agency proposes to contract with the department on behalf of a specified portion, or of specified portions, of the public agency, in which case the election shall be held in such portion or portions of the public agency only.

Validation

(j) Every public agency that has obtained authority through an election held pursuant to subdivision (i) of this section is enter into a contract with the department under this chapter is hereby granted the power to bring an action in the superior court of the county in which the office of such agency is situated to determine the validity of ~~the contract~~ any contract made with the department under this chapter and the authority of the public agency to enter into the contract. The action shall be had as in the case of the judicial determination of the validity of the public agency's bonds, as nearly as the same may be applicable, and with like effect. Where the law applicable to such agency does not set forth a procedure for the judicial determination of the validity of the public agency's bonds, the action shall be had as in the case of the judicial determination of the general obligation bonds of irrigation districts under the Irrigation District Law (Division 11 (commencing with Section 20500) of this code), as it may now or here-

after be amended, as nearly as the same may be applicable, and with like effect.

(Added by Stats. 1957, Ch. 2052; amended by Stats. 1959, Ch. 1752, Stats. 1961, Ch. 1723, and by Stats. 1963, Ch. 2023)

Project preference

12880.2. In the administration of this chapter, the department and the commission shall give preference to projects involving development of new basic water supplies.

Loan limitations

In furtherance of this policy, no funds shall be loaned for either irrigation distribution system projects or municipal distribution system projects, except in cases which, in the judgment of the department and the commission, involve extreme hardship which jeopardizes the public health, safety or welfare. Distribution facilities which are a necessary and integral part of an overall water development project may be covered by a state loan.

Applications for loans in hardship cases

Applications for loans for irrigation distribution system projects or municipal distribution system projects which involve extreme hardship which jeopardizes the public health, safety or welfare shall be made in the following manner:

The governing body of the public agency shall submit an application to the department describing, generally, such extreme hardship existing with respect to the water supply, the financial and economic conditions existing in the area, and the proposed project. The statements by the governing body shall be based upon, and the application shall be accompanied by:

(a) A report by the assessor of the local agency with respect to assessed valuations and tax delinquencies.

(b) A report by the engineer of the local agency (or if it has none, by the county surveyor or road commissioner) describing the project and estimating its cost, in general terms.

(c) In cases involving a health hazard with respect to the domestic water supply, a report by the local health officer or by the Department of Public Health with respect to such health hazard.

(d) Such other information as the department may require from the agency.

(Added by Stats. 1961, Ch. 1286.)

Legal counsel

12880.5. Whenever a public agency is required to have legal counsel in connection with any of its activities pursuant to this chapter, it may use the services of the district attorney or county counsel of the county in which it is located.

(Added by Stats. 1961, Ch. 520.)

12881. (Added by Stats. 1959, Ch. 1752; repealed by Stats. 1961, Ch. 1723.)

12881.5. (Added by Stats. 1959, Ch. 1752; repealed by Stats. 1961, Ch. 1723.)

12882. (Added by Stats. 1959, Ch. 1752; repealed by Stats. 1961, Ch. 1723.)

State loans to public agencies

12883. The department is authorized to make state loans to public agencies for the construction of projects, from moneys available for such loans, in amounts not exceeding four million dollars (\$4,000,000) for any one project, subject to the provisions of this chapter and to the prior approval of the California Water Commission for each loan that the department proposes to make. Loans in excess of four million dollars (\$4,000,000) for any one project may be made by the department only upon specific authorization of the Legislature and upon such terms and conditions as the Legislature may prescribe.

(Added by Stats. 1959, Ch. 1752; amended by Stats. 1961, Ch. 1723.)

Same: Feasibility reports

12883.5. The department is authorized to make state loans to public agencies for the preparation of feasibility reports on proposed projects, from any moneys available for such loans, in an amount for any one feasibility report on a proposed project not exceeding 2 percent of the estimated cost of the proposed project or ~~twenty-five~~ fifty thousand dollars (~~\$25,000~~) (\$50,000), whichever is less, subject to the provisions of this chapter; provided, that only one such loan may be made to a public agency in relation to any one proposed project. A loan in excess of said amount for any one feasibility report may be made by the department only upon authorization by the Legislature and upon such terms and conditions as the Legislature may prescribe.

(Added by Stats. 1961, Ch. 1723; amended by Stats. 1963, Ch. 908.)

Interest rates

12884. The department shall require the payment of interest on each loan made pursuant to this chapter at a rate equal to the net interest cost to the State on the last sale of general obligation bonds of the State that occurred prior to the time the application for a loan was filed with the department; provided that when the applicable net interest cost to the State is not a multiple of one-quarter of 1 percent, the interest rate on the loan shall be at the multiple of one-quarter of 1 percent next above the applicable net interest cost.

(Added by Stats. 1959, Ch. 1752; amended by Stats. 1961, Ch. 1723; repealed by Stats. 1963, Ch. 1075.)

Interest rates

12884. The department shall require the payment of interest on each loan that is made pursuant to this chapter after September 19, 1963, at a rate equal to the average, as determined by the department, of the net interest costs to the State on the sales of general obligation bonds of the State that occurred during the period from January 1, 1962, inclusive, through the calendar year immediately preceding the calendar year in which the application is filed if the application is

filed prior to the year 1968 or that occurred during the period of five calendar years immediately preceding the year in which the application is filed if the application is filed after the year 1967; provided, that when the applicable average of the net interest costs to the State is not a multiple of one-tenth of 1 percent, the interest rate on the loan shall be at the multiple of one-tenth of 1 percent next above the applicable average of the net interest costs.

(Added by Stats. 1963, Ch. 1075.)

State grants to public agencies

12885. The department is authorized to make state grants to public agencies from moneys available for such purpose in amounts not exceeding ~~three~~ four hundred thousand dollars (~~(\$300,000)~~ (\$400,000) for any one project for the purposes specified in paragraphs (1) and (2) of subdivision (c) of Section 12880 and, in addition, in amounts as authorized by paragraph (3) of subdivision (c) of Section 12880, subject to the provisions of this chapter and to the prior approval of the California Water Commission for each grant that the department proposes to make. Grants in excess of ~~three~~ four hundred thousand dollars (~~(\$300,000)~~ (\$400,000) for any one project for the purposes authorized by paragraphs (1) and (2) of subdivision (c) of Section 12880 may be made by the department only upon specific authorization of the Legislature and upon such terms and conditions as the Legislature may prescribe.

(Added by Stats. 1959, Ch. 1752; amended by Stats. 1963, Ch. 2023.)

California Water Commission: Conflict of interest

12885.7. No member of the California Water Commission shall participate in the action of the commission in considering for approval, or approving, a loan or grant under this chapter to a public agency of which he is an officer, employee, agent, consultant, accountant, engineer, or legal counsel or in which he owns real property.

(Added by Stats. 1961, Ch. 1348.)

Terms and conditions

12886. In making loans or grants pursuant to this chapter, the department shall impose terms and conditions that are designed to protect the State's investment and that are necessary to carry out the purposes of this chapter.

(Added by Stats. 1959, Ch. 1752.)

Effectuating loans

12887. In order to effectuate loans or grants made by the department pursuant to this chapter, the State Controller shall, upon demand of the department, draw warrants made payable to such public agencies and in such amounts as are from time to time designated by the department. The State Treasurer shall pay such warrants from available moneys in the fund.

(Added by Stats. 1959, Ch. 1752.)

Records and accounts

12888. The department shall keep full and complete records and accounts concerning all of its transactions under this chapter and shall render a report on such transactions to the Legislature within 15 days after the commencement of each legislative session.

(Added by Stats. 1959, Ch. 1752.)

12889. (Added by Stats. 1959, Ch. 1752; repealed by Stats. 1961, Ch. 1723.)

Rules and regulations

12890. The department is authorized to make from time to time such rules and regulations as may be necessary to carry out, and as are consistent with, this chapter.

(Added by Stats. 1959, Ch. 1752.)

Audits by State Controller

12891. It shall be the duty of the State Controller to make such audit or audits of the books and records of public agencies receiving loans or grants pursuant to this chapter, as he may deem necessary from time to time, for the purposes of determining that the money received by such public agencies as loans or grants hereunder has been expended for the purposes and under the conditions authorized herein. Whenever the State Controller determines that any money paid to such a public agency has been expended by such public agency for purposes not authorized by this chapter, or exceeds the final cost of the project for which a loan or grant was made, or exceeds the final cost of the feasibility report for which a loan was made, the State Controller shall furnish written notice to the department and to the public agency directing the public agency to pay into the State Treasury the amount of such unauthorized expenditures, or the amount in excess of the final authorized cost of the project or the feasibility report. Upon receipt of such notice, such public agency shall, at the time specified therein, pay to the State Treasurer the amount set forth in such notice. Such amount shall, upon order of the State Controller, be deposited in the State Treasury to the credit of the California Water Resources Development Bond Fund to be available for the purposes prescribed in Section 12937 of this code.

It shall be the duty of such public agency to make the payments to the State Treasurer as provided in this section, and it shall be the duty of the State Controller to enforce such collection on behalf of the State.

(Added by Stats. 1959, Ch. 1752; amended by Stats. 1961, Ch. 1723.)

Short title

12891.1. This chapter shall be known and may be cited as the "Davis-Grunsky Act."

(Added by Stats. 1959, Ch. 1752.)

JOINT STATEMENT OF POLICIES FOR ADMINISTRATION OF THE DAVIS-GRUNSKY ACT

Adopted by the California Water Commission and
by the Department of Water Resources on March 16, 1962
and Subsequent Amendments Thereto

INABILITY TO FINANCE PROJECT CONSTRUCTION COSTS FROM OTHER SOURCES

Reasonable inability to finance project construction costs from other sources will be established when all of the following conditions exist:

1. When the proposed project is not eligible for financial assistance under a program of the federal government, or, if the project is eligible for such assistance, when: (a) there is no reasonable possibility that funds could be obtained due to administrative policy of the federal government or to lack of funds, or (b) when the need for the project is so urgent that the time factor would reasonably preclude an effort to finance from federal sources.
2. When the agency cannot market bonds at an interest rate commensurate with the feasibility of the project, such inability to be demonstrated to the satisfaction of the department and the commission.
3. When the agency has no other funds, or sources of funds, available to finance the project.

WATER RIGHTS

Construction loans and grants will not be made to agencies for projects on which water rights necessary for project operation are in litigation.

LAND REQUIREMENTS FOR GENERAL PROJECT PURPOSES

In addition to other land requirements, a protective strip of land shall be provided around the shore line of the reservoir of a proposed project above the normal pool elevation, such that proper control of the shore line can be assured. Normally, a minimum strip of 100 feet in horizontal width will be considered adequate for this purpose.

RECREATIONAL GRANTS

A project is considered to have recreational functions of "statewide interest," if:

1. It fosters the conservation and proper utilization of water resources for recreational use, and
2. It produces benefits which are dispersed generally throughout the local community or area, and
3. The recreational features are open and accessible to the general public on a nondiscriminatory basis.

DEFINITION OF A PROPOSED PROJECT (Concurred in March 1, 1963)

A project is considered "proposed" under the terms of Section 12880(b) of the Davis-Grunsky Act if all of its physical works, other than future stage facilities, have *not* been constructed, or if its physical works have been constructed but are *not* operable for their intended purposes.

The determination as to whether a project is "proposed" will be made as of the date of the filing of a request for preliminary determination of eligibility (refer to the department's letter to the commission of June 15, 1962).

GRANTS FOR INITIAL WATER SUPPLY AND SANITARY FACILITIES

(Concurred in January 3, 1964)

No consideration will be given requests for facilities grants for projects which were completed at the time of application for such facilities grants, or for which construction grants have been approved by the California Water Commission prior to the effective date of amendments providing for such facilities grants. (September 20, 1963)

FURTHER AMENDMENTS TO JOINT POLICY STATEMENTS

DAVIS-GRUNSKY ACT

(Concurred in February 7, 1964)

RECREATION FACILITIES

Recreation facilities should be staged in a logical and economical manner. Initial water supply and sanitary facility grants are to provide for only the first phase of recreation development. The first phase of recreation development must be the most economical plan, considering all costs.

DEFINITION OF INITIAL WATER SUPPLY AND SANITARY FACILITIES

"Initial Water Supply and Sanitary Facilities," as used in Water Code Section 12880(c) (3), are those which reasonably might be installed as the first phase of the overall development of water supply and sanitary facilities to protect the health and safety, and to provide for the convenience, of persons using the reservoir for recreation. Such facilities must be constructed and operated in conformance with applicable local and state public health standards.

Initial water supply facilities may include works necessary to collect, treat, and distribute water from the source to the recreation area. Initial sanitary facilities may include the works necessary to collect, treat, and dispose of wastes from the recreation area.

Initial water supply and sanitary facilities should meet the needs of the recreationists to be served by the first phase of onshore recreation facilities. The water supply and sanitary facilities may be constructed to meet the needs of later phases of development when the department finds such enlargement to be reasonable, considering physical conditions and economic factors; provided that the agency agrees to pay the incremental cost involved.

RECREATION FEES

Fees charged for use of recreation facilities shall not exceed those charged by other governmental agencies, under comparable conditions as determined by the department, for the use of similar facilities or the provision of similar services, in the general area of the project, nor shall they exceed an amount calculated to return to the agency the total capital and annual cost allocated to recreation, less any grant or grants thereto. The fees may be adjusted from time to time throughout the contract period upon approval by the state.

The fee schedule approved by the state shall apply to all members of the general public without exception.

DEFINITION OF WATER DEVELOPMENT AND DISTRIBUTION SYSTEM PROJECTS
UNDER SECTION 12880(c) AND 12880.2 OF THE ACT

1. A project that involves the development of a new water supply means a project which includes surface or underground storage to develop, conserve, and regulate water resources that are not presently available on a dependable and timely basis. Such a project also involves the development of new basic water supplies. (The commission subcommittee recognizes that in the near future, categories and/or standards within this classification must be adopted for the purpose of establishing priorities. We most strongly recommend, however, that such categories or standards not be absolute, but should serve merely as a guide in judging the weight of various factors of need. These could include financial need, recreational needs, fish and wildlife, sanitary and health considerations, etc., all of which could change in emphasis from year to year and from area to area.)
2. A distribution system project means a project to divert and convey waters from an existing dependable source of surface or underground water supply to or into an area of use. Such a project may include the distribution works that are normally owned by water districts, and would not include domestic service connections or on-farm laterals.

CALIFORNIA ADMINISTRATIVE CODE

Title 23

CHAPTER 2. DEPARTMENT OF WATER RESOURCES

SUBCHAPTER 2. FINANCIAL ASSISTANCE FOR LOCAL PROJECTS

Article 1. General Provisions

400. Definitions. As used in these regulations, the terms listed below shall have the meanings noted:

(a) Department. "Department" shall mean the Department of Water Resources of the State of California.

(b) Project. "Project" shall mean a project as defined in Section 12880(a) of the Water Code.

(c) Public Agency. "Public agency" shall mean any city, county, district, or other political subdivision of the State.

(d) Governing Body. "Governing body" shall mean the body which is empowered by law to govern the business of a public agency.

(e) Act. "Act" shall mean the Davis-Grunsky Act as set forth in Chapter 5 (commencing with Section 12880) of Part 6 of Division 6 of the Water Code, and any and all amendments which may hereafter be made thereto.

(f) Applicant. "Applicant" shall mean any public agency applying for financial assistance under the Davis-Grunsky Act.

405. Purpose and Effect of Regulations. These regulations are adopted for the purpose of carrying out the provisions of the Davis-Grunsky Act. Under no circumstances shall these regulations be construed as a limitation or restriction upon the exercise of any proper discretion that is vested in the department, nor shall they in any event be construed to deprive the department of any exercise of powers, duties, and jurisdiction conferred by law, nor to limit or restrict the amount or character of data or information which may be required for the proper administration of the law.

406. Official Records. Official records of the department may not be taken from the custody of the department, but access thereto and inspection thereof will be permitted during regular office hours and copies will be made and certified as required, the expense thereof to be borne by the person requiring the same.

407. Filing Fees. No filing fee is required to accompany any request for a preliminary determination of eligibility or any application for assistance under the act.

Article 2. Request for Preliminary Determination of Eligibility
for a Project Construction Loan or Grant

411. Form of Request for Preliminary Determination of Eligibility. Applicants for a loan or grant under the act for the construction of a proposed project shall file with the department a request for a preliminary determination of eligibility in duplicate on a form provided by the department.

412. Material to Accompany Request. Each request that is filed with the department shall be accompanied by duplicate copies of the following material:

(a) A resolution by the governing body authorizing the filing of the request, and designating a representative authorized to act on behalf of the applicant.

(b) A generalized sketch of the proposed project on a U.S. Geological Survey quadrangle map or on any other suitable and readily available map.

(c) Applicant's most recent financial statement.

(d) Such other material as the department may require.

413. Omissions in Requests for Preliminary Determination of Eligibility. If a request for a preliminary determination of eligibility submitted to the department is not complete, or if additional information is required, the department will notify the public agency in what respect the request is incomplete. If the request is not completed within 60 days after notice that the request is incomplete, unless the department extends this time for good cause shown, the department will return the request to the public agency without making any finding as to eligibility and without prejudice to the submission of a new request at any future time.

414. Review by Department. Upon receipt of a properly completed request, the department will review it forthwith and will make

preliminary findings regarding eligibility as to type of agency, type of project, purposes of project, conformance with The California Water Plan, statewide interest, and, when a loan is proposed, the reasonable ability of the applicant to finance from other sources.

415. Notice to Applicants. After a review of a request, the department will notify the applicant of the department's preliminary findings. Such findings shall be solely for the information and guidance of the applicant in determining whether or not it wishes to proceed with an application.

416. Time to Complete Applications. Upon notice by the department to a public agency of its findings on a request for preliminary determination of eligibility, the public agency will be given a period of one year to complete an application, as set forth in Article 3. If an application is not completed within one year, or within such additional time as the department may grant for good cause shown, then a new request for preliminary determination of eligibility must be filed with the department.

Article 3. Application for a Project Construction Loan or Grant or Facilities Grant

420. Form of Application. Applicants for a loan and applicants for a grant under the act for the construction of a proposed project, and applicants for a grant under the act for the construction of initial water supply and sanitary facilities, shall also file with the department and application in writing which shall contain a specific request for each type of assistance applied for in a specified amount. Such application may be in the form of a letter and shall be accompanied by twenty-five (25) copies of a feasibility report on the applicant's proposed project and by a resolution by the governing body of the applicant adopting the feasibility report and specifically authorizing the filing of the application by a designated representative who is to represent the applicant until final action is taken by the department on the application. Feasibility reports shall be prepared at the expense of the applicant, under the direction of a licensed civil engineer, except that where an applicant for a loan for an irrigation distribution system project or a municipal distribution system project has no engineer, the feasibility report may be prepared by, or under the direction of, the county surveyor, road commissioner or comparable officer of a county in which the applicant is located, in whole or part. Applicants shall obtain a determination from the department before filing an application whether feasibility reports shall include reports prepared by financial consultants, economists, recreation planners, or by consultants in other special fields. Supporting material with respect to the ability of a public agency to repay a loan and with respect to the reasonable ability of the public agency to finance the proposed project from other sources may be supplied by the county assessor or the county engineer.

In addition to the above, applications for loans for irrigation or municipal distribution system projects which involve extreme hardship which jeopardizes the public health, safety or welfare shall describe, generally, such extreme hardship existing with respect to the water

supply, the financial and economic conditions existing in the area, and the proposed project and shall be accompanied by:

(a) A report by the assessor of the local agency with respect to assessed valuation and tax delinquencies.

(b) In cases involving a health hazard with respect to the domestic water supply, a report by the local health officer or by the Department of Public Health with respect to such health hazard.

420.1. Time of Filing Application for Facilities Grant. Applicants for a grant under the act for the construction of initial water supply and sanitary facilities shall file an application for such assistance at the same time an application is filed for a grant for the construction of a proposed project.

421. Contents of Feasibility Report. The feasibility report should contain sufficient information and data to demonstrate that the proposed project is engineeringly feasible, economically justified, and financially sound. The amount of detailed information required in the feasibility report will vary with the type, purpose, and complexity of the project. In each case, the department will advise the applicant regarding the nature and scope of the information and studies which should be contained in the feasibility report. The department will also advise the applicant of the criteria it will use to evaluate the engineering, economic, and financial aspects of the project. In general, feasibility reports shall contain the following:

(a) A general description of the project plan, purpose, and accomplishments, with a map showing the project features and service area.

(b) Studies of water resources and water requirements, including project operational studies demonstrating the accomplishments of the project.

(c) Status of water rights necessary for operation of the project.

(d) Preliminary designs and cost estimates of the project features in sufficient detail to establish probable cost of the project. Estimates of annual costs of operation and maintenance should also be included.

(e) Economic studies to establish the benefits and economic justification of the project.

(f) An allocation of costs among the purposes of the project, if the project has more than one purpose.

(g) Financial studies indicating the proposed method of financing, sources of revenue, and repayment schedule.

(h) A construction schedule and an estimate of the amount of state funds required each year.

(i) Such other information as the department may require.

422. Omissions in Application. If an application submitted to the department is not complete, or if additional information is required, the department will notify the public agency in what respect the application is incomplete. If the application is not completed within

90 days after notice that the application is incomplete, unless the department extends this time for good cause shown, the department will return the application to the public agency without making any findings on the application and without prejudice to the submission of a new application at any future time.

423. Use of Department's Data. Any pertinent data in the files of the department will be made available to applicants for use in preparing applications and feasibility reports. Such data will be furnished free of charge except for costs of reproduction. If the proposed project has been reported on by the department, the report may be used by the applicant and supplemented by such additional information as may be necessary to complete the application.

424. Review and Report by Department. On receipt of a completed application, the department will review it and will prepare a report containing its findings and recommendations with respect to the application and will file the report with the State Legislature. Copies of the department's report will be furnished to the applicant.

425. Submission to California Water Commission. The department will submit all applications filed under this Article 3 and the department's reports thereon to the California Water Commission before final action is taken by the department. In the case of each application for a construction loan not exceeding \$4,000,000 for a construction grant not exceeding \$400,000, and for a grant for the construction of initial water supply and sanitary facilities, the department will request approval of the commission prior to the making of a loan or grant pursuant to the application. In the case of each construction loan exceeding \$4,000,000 and of each construction grant exceeding \$400,000, the department will request the advice of the commission before final action is taken by the department.

426. Notice to Applicants. The department will notify each applicant of the official action taken by the department and by the California Water Commission with respect to the application.

Article 4. Applications for State Participation

427. Form and Filing of Application. Applications for state participation under Section 12880(f) of the act shall be made to the department by a public agency in the form of a letter stating the conditions under which the state participation is desired, accompanied by a resolution by the governing body of the applicant authorizing the filing of the application by a designated representative who is to represent the applicant until final action is taken by the department on the application. The applicant shall submit to the department such additional information as the department may require to reach a decision in the particular case.

Article 5. Procedure Following Approval of a Project Construction Loan or Grant, or Facilities Grant, or State Participation

431. Contract. State funds will not be advanced to any applicant pursuant to an approved loan or grant until a contract between the applicant and the department setting forth terms and conditions of such loans or grants has been executed.

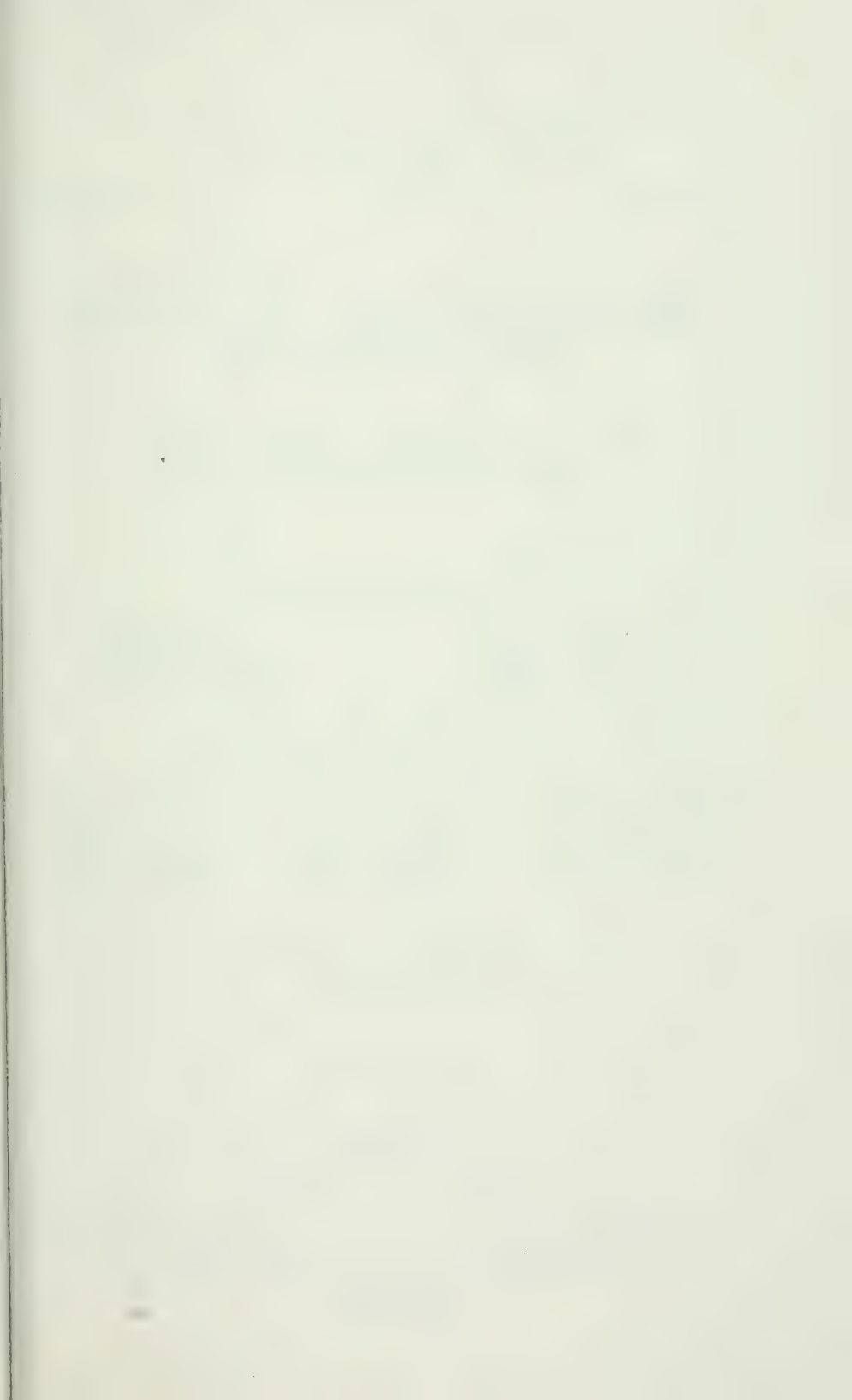
432. Water Rights. The department will not execute a contract with any applicant for a loan or grant for the construction of a proposed project, or grant for the construction of initial water supply and sanitary facilities, or state participation, until the applicant submits evidence satisfactory to the department that the applicant holds or can acquire water rights adequate to permit operation of the project as specified in the application. No funds shall be disbursed under the contract unless or until the applicant has or obtains a right or permit to appropriate the water required for operation of the project.

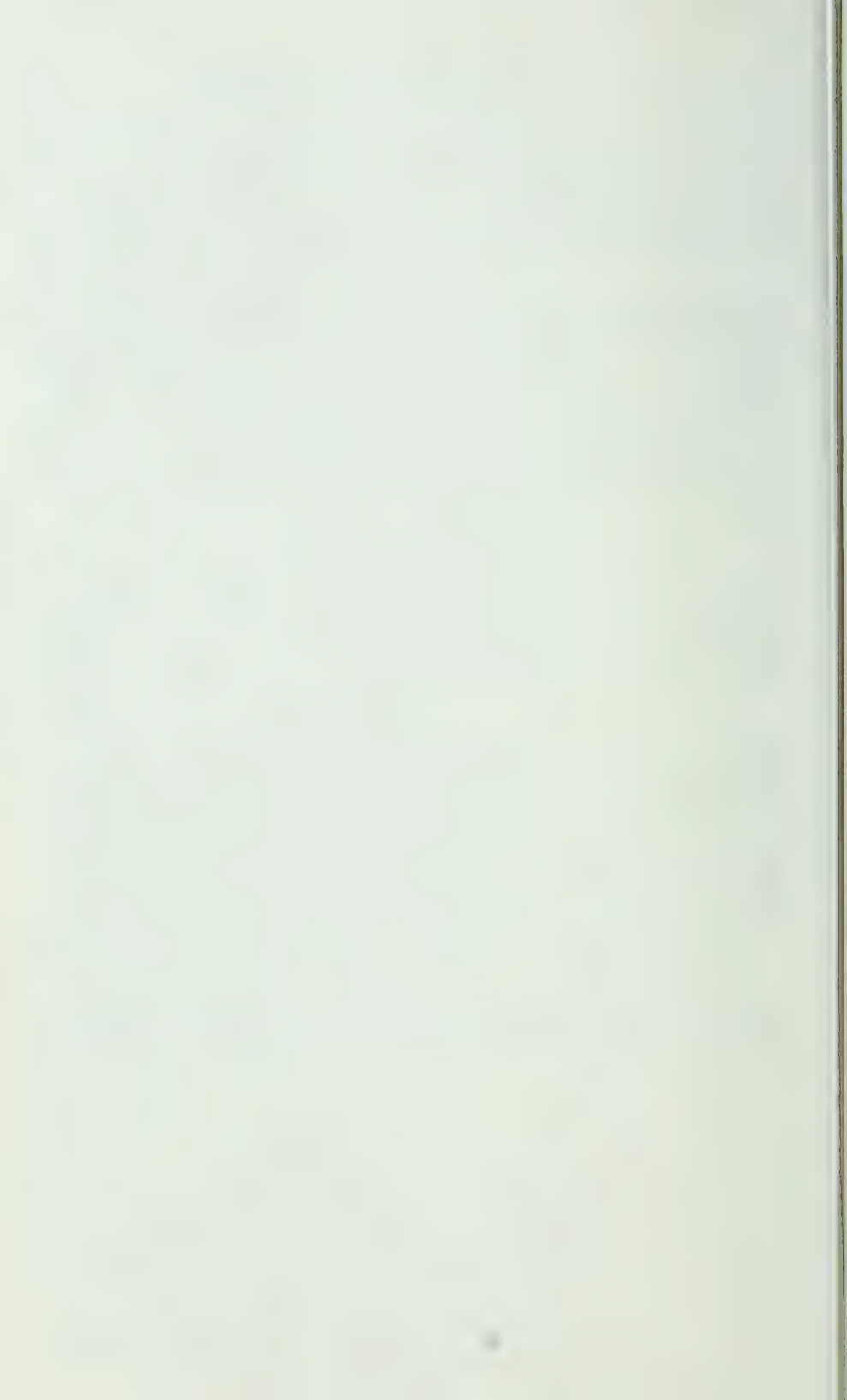
Article 6. Application for Loan for Preparation of Feasibility Report

435. Feasibility Report. As used in this Article 5 of these regulations, "feasibility report" shall mean such report on the feasibility of a public agency's proposed project as the department may require the public agency to file with the department in support of an application by the public agency under the act for a loan for the construction of the proposed project.

436. Form and Filing of Application. Applicants for a loan under the act for the preparation of a feasibility report on a proposed project shall file an application for the loan on a form provided by the department. Such application should be filed after receipt of a favorable written reply from the department on a written request for a preliminary determination of eligibility for a loan for the construction of the proposed project filed with the department by the applicant in accordance with Article 2 of these regulations. The application shall be accompanied by such additional information as the department may determine is required to reach a decision in the particular case.

437. Other Applicable Provisions. The provisions of Sections 422, 423, 424, and 431 of these regulations shall also apply to applications for loans under the act for the preparation of feasibility reports.





ASSEMBLY INTERIM COMMITTEE REPORTS

1963-1965

VOLUME 26

NUMBER 11

**REPORTS OF SUBCOMMITTEE ON
WATER POLLUTION**

A REPORT OF THE
ASSEMBLY INTERIM COMMITTEE ON WATER
TO THE CALIFORNIA LEGISLATURE

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RUTH S. KERVEL, *Committee Secretary*

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DAVID EPSTEIN, *Legislative Intern*

December 1964

Published by the

ASSEMBLY

OF THE STATE OF CALIFORNIA

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Chief Clerk

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
1950

ANALYTICAL CHEMISTRY
FACULTY OF SCIENCE

BY
J. H. HARRIS

CHICAGO, ILLINOIS
1950

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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WATER

December 31, 1964

HONORABLE JESSE M. UNRUH,
Speaker of the Assembly

MEMBERS OF THE ASSEMBLY
State Capitol
Sacramento, California

Gentlemen:

Pursuant to various authorizations cited in each report, your Assembly Interim Committee on Water herewith submits a report of the Subcommittee on Water Pollution and a report of the Full Committee on Sea Water Intrusion From Marinas and Other Excavations.

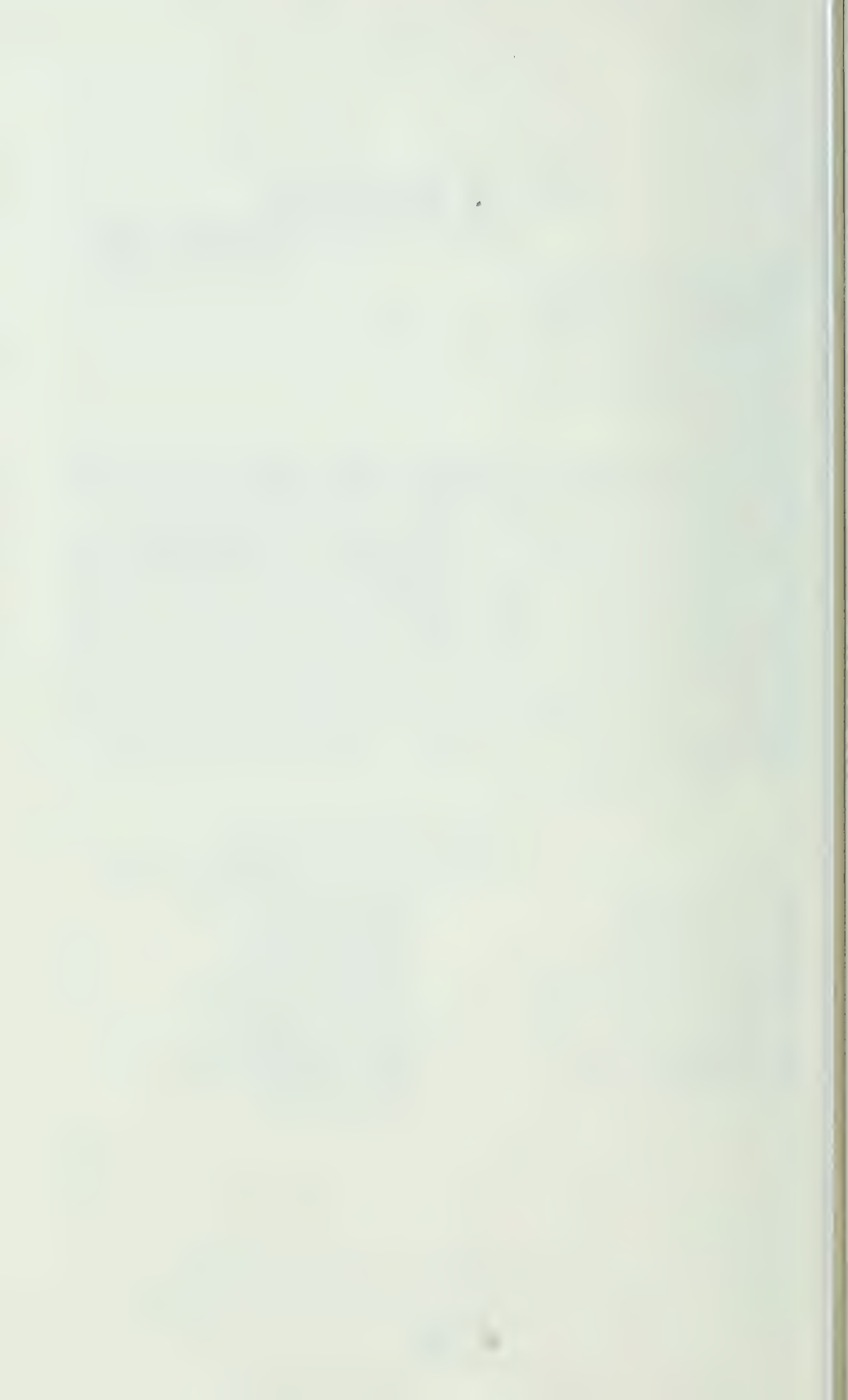
Included in the report of the Subcommittee on Water Pollution are the following: I. Impact of San Joaquin Valley Drainage Waters on San Francisco Bay; II. Water Quality Management, and III. Biodegradability of Detergents. Although pertaining to the matter of ground-water management rather than water pollution, the report of the Full Committee on Sea Water Intrusion From Marinas and Other Excavations is being included in this report as Section IV because it does not warrant separate publication and does not relate to the other reports of the full committee, such as *Arizona v. California* and Pacific Southwest Water Problems.

Respectfully submitted,

CARLEY V. PORTER, *Chairman*
Assembly Interim Committee on Water

HALE ASHCRAFT
FRANK P. BELOTTI
JOHN L. E. COLLIER
GORDON COLOGNE
WILLIAM E. DANNEMEYER
PAULINE L. DAVIS
(with some reservations)
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SUBCOMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WATER

December 15, 1964

HONORABLE CARLEY V. PORTER

Chairman

Assembly Interim Committee on Water

Room 2114, State Capitol

Sacramento, California

Dear Carley:

Transmitted herewith are three reports of the Subcommittee on Water Pollution of the Assembly Interim Committee on Water. These reports are listed with a brief note on the highlights on each report:

1. Impact of San Joaquin Valley Drainage Waters on San Francisco Bay

The subcommittee was unable to establish that the San Francisco Bay will not be adversely affected by the discharge from the San Joaquin Valley drainage system. A need was found for legislation to secure formal determination by established water pollution agencies of the appropriate short and long-range protection needed for the San Francisco Bay and the delta consistent with reasonable provisions for disposal of San Joaquin Valley waste waters. This involves enactment of legislation to place all state discharges under the waste discharge requirements procedure of the regional water pollution control boards and to revise the membership of the State Water Quality Control Board so that the appointive directors of state departments are transferred from the state board to a coordinating and advisory committee designed to assist the state board. These actions are deemed necessary so that the full public interest will be reflected in all waste discharge matters involving state discharges.

2. Water Quality Management

The subcommittee found a continuing widespread support for the regional concept of water pollution control and no justification for any change in the relatively autonomous operation of the present regional boards. In addition, legislation is needed to change the title of the regional water pollution control boards to regional water quality control boards and to add authority to establish water quality policy at the regional board level.

3. Biodegradability of Detergents

The subcommittee found such rapid progress is being made in marketing new biodegradable detergents that there is no need for legislation to control the biodegradability of detergents at this time. However,

the experience with the new detergents should be observed carefully by the State Water Quality Control Board. We recommend passage of a concurrent resolution requesting continued study by the board.

In transmitting these reports to you, I wish to express the appreciation of myself and the subcommittee members for the cooperation and assistance of you and your committee staff. In addition I would like to thank the Office of Legislative Analyst and the Legislative Counsel for their services at hearings and in the preparation of these reports and drafts of bills.

Respectfully submitted,

CHARLES W. MEYERS, *Chairman*
Subcommittee on Water Pollution

FRANK P. BELLOTTI
WILLIAM E. DANNEMEYER
PAULINE L. DAVIS
(with some reservations)
CHARLES B. GARRIGUS

BURT M. HENSON
FRANK LANTERMAN
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CARLEY V. PORTER
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I. IMPACT OF SAN JOAQUIN VALLEY DRAINAGE WATERS ON SAN FRANCISCO BAY

House Resolution 164 (1963 General Session)

FINDINGS

Conflicting testimony and lack of either complete data or conclusive study result in an inability to establish that the San Francisco Bay either will or will not be adversely affected by the discharge of San Joaquin Valley drainage waste waters into San Francisco Bay. The problem is so technically complex and involves so many unresolved considerations that the subcommittee cannot draw responsible conclusions. Instead legislation is needed to secure formal determination by established water pollution agencies of the appropriate short- and long-range protection needed for San Francisco Bay consistent with reasonable provisions for disposal of San Joaquin Valley waste waters. The present problem is only an indication of the magnitude of the future waste disposal problems in and around San Francisco Bay which may occur unless long-range plans and provisions for waste disposal are undertaken now.

RECOMMENDATIONS

The subcommittee recommends that legislation be enacted to place all waste discharges by state agencies (the San Joaquin Valley drainage system to be constructed by the Department of Water Resources is a conspicuous example) under the same regulation by regional water pollution control boards as applies to any private citizens or units of local government. In addition, the decisions of the State Water Quality Control Board should reflect the broadest public interest rather than partially reflecting the views of appointive directors of state departments who may be influenced by their superiors to support a certain type of drainage discharge requirement. The subcommittee therefore recommends that all state officials be transferred from the state board to a coordinating and advisory committee designed to assist the state board.

Finally, to assure that the state's waters are fully protected from undesirable federal waste discharges, the subcommittee recommends that the Legislature adopt a joint resolution urging Congress to pass legislation similar to the original provisions of S. 649, which would place federal waste discharges under a permit system administered by the U.S. Public Health Service.

In making these recommendations, the subcommittee has not found that any state or federal agency has acted or proposed to act in neglect of the public interest with regard to disposal of San Joaquin Valley waste waters in San Francisco Bay. Rather, the subcommittee recommends that in the event of disagreement over the harmful effects of any drainage discharge, state and federal agencies should comply with the

same legal waste discharge requirements that would be imposed upon any citizens or local government making the same discharge.

SCOPE OF THE PROBLEM

The Department of Water Resources and the U.S. Bureau of Reclamation have been active for more than a decade in various phases of planning, designing and constructing the San Joaquin Valley water supply features of the State Water Facilities (located in the southwestern part of the valley) and the San Luis Unit of the Central Valley Project (located in the west central part of the valley). These two water supply projects will jointly supply approximately 2,300,000 acre feet of new water to the west side of the San Joaquin Valley to develop new farming lands and to replace water now being mined from the underground.

Such large additional water supplies are recognized by these state and federal agencies as certain to create drainage problems in the low-lying lands of the service area or at elevations below the water supply service areas. These water deliveries will accentuate the drainage problems that already exist in some areas along the west side of the valley. Therefore, Congress has authorized the Bureau of Reclamation to construct a San Luis Interceptor Drain as part of the San Luis Unit of the Central Valley Project or secure satisfactory assurances of service from the state's drainage system. The authorizing language specified that the interceptor drain should terminate at the Sacramento-San Joaquin Delta.

The Burns-Porter Act provided authorization and financing for a San Joaquin Valley drainage system to serve the state's service area in the southwestern part of the valley and to provide such additional drainage service as the San Joaquin Valley should need. Since fiscal year 1957-1958, the Department of Water Resources has been engaged in extensive planning to formulate its drain. The department was not pressed by the time deadline which confronts the Bureau of Reclamation and has consistently stated that the state's drain would not be needed for a number of years. Subsequent to the initiation of this subcommittee's inquiry, the two drains were integrated into one master drain to be constructed by the Department of Water Resources.

Associated with the formulation of these drainage facilities, various water quality studies have been undertaken by both the state and federal agencies to determine what effect the discharge of these drainage waters would have on the delta. Both the Department of Water Resources and the Bureau of Reclamation have had a special interest in the location of the drainage discharge. Their interest stems not only from the desire to secure the least harmful and most economical point of discharge but also from the fact that the discharge will be close to the intake in the delta of their own water supply facilities serving the San Joaquin Valley and Contra Costa County.

Much discussion has centered around the location of the drainage discharge points. In planning the work of the Assembly Interim Committee on Water, it became evident last summer that serious problems could arise from any major discharge of waste water into the delta or

eastern San Francisco Bay. It was decided that this was the highest priority water pollution problem of the state and that it should be studied under the broad language of HR 164 which authorized the committee to study all problems relative to the pollution of the waters of the state.

Four days of hearings devoted primarily to the impact of San Joaquin Valley waste waters on San Francisco Bay were held as follows:

December 9, 1963	-----	San Francisco
December 10, 1963	-----	San Francisco
August 19, 1964	-----	San Francisco
August 20, 1964	-----	San Francisco

The first two days of hearings were devoted to receiving testimony from representatives of the U.S. Bureau of Reclamation and the Department of Water Resources who are involved in planning and constructing the drainage facilities and those state and federal agencies which had information concerning the effect of these drainage waters on the delta and San Francisco Bay. During the interval between December 1963 and August 1964 a number of important changes in planning for the drainage facilities occurred. Therefore, the hearings in August 1964 were intended to bring the subcommittee's record up to date and to provide testimony from persons and organizations around San Francisco Bay who wished to express their views on the actions which should be taken to resolve the problems defined in the December hearing.

This report is based on the latest information presented to the subcommittee in its August hearing and from official documents readily available to the public. Only when consideration of the rapidly moving events of the past year is needed to understand the findings and recommendations of the subcommittee, does this report trace such historical development. Otherwise reference is always to the latest information or conditions. This limitation is important since the subcommittee's report is not historical but deals only with the current water pollution aspects of the drainage facilities.

Throughout the hearings, a broad difference of opinion among witnesses was evident. The Department of Water Resources and the U.S. Bureau of Reclamation, as the agencies responsible for planning and construction of the drainage facilities, assured the subcommittee that there would be no pollution problem, or if one should eventually develop after the drainage facilities were in operation and discharges increased to significant amounts, that corrective action would then be taken.

The San Francisco Bay and Central Valley Regional Water Pollution Control Boards could offer the subcommittee no assurance that pollution would not occur. Their official position would prohibit any drainage discharges until certainty of no adverse effect is determined. The Department of Fish and Game could offer no specific assurance at this time that the drainage water would not damage fish and wildlife resources in the delta and bay because the department's analysis of the problem is not yet completed.

Both the U.S. Corps of Engineers, as a result of its studies of barriers in the San Francisco Bay and the operation of the San Francisco Bay model, and the U.S. Public Health Service stated that their studies showed a future problem of inadequate waste disposal capacity in the bay. Both agencies suggested an eventual need for ocean disposal of bay area wastes. The Public Health Service pointedly advised that no drainage discharges should be made into the bay until it could be determined that the assimilative capacity of the bay would be adequate.

The broad difference of opinion described above became more difficult to evaluate as further testimony and questioning by the subcommittee revealed that witnesses were not always talking about the same problem. Two questions were continuously discussed but frequently without identification and differentiation. The Department of Water Resources and the Bureau of Reclamation generally limited their remarks and assurances to the effect of drainage discharges on the delta. Their studies are centered around the delta, and while they have considered the problems of the San Francisco Bay, they have not studied them in detail. Their assurances and conclusions relate to the delta. The second group of witnesses centered its attention on San Francisco Bay. Their concern about the effect of drainage discharges is addressed specifically to San Francisco Bay and in some instances also to the delta. The subcommittee had to consider, therefore, the effect of San Joaquin Valley waste discharges on both San Francisco Bay and the delta as separate but related matters.

REVIEW OF TESTIMONY

Description of the Project

In order to understand the inability of the subcommittee and all concerned to resolve the San Francisco Bay and delta water pollution problems, it is necessary to develop a number of important factors. These include a description of the project, the type of wastes proposed to be discharged, the interrelationship of the delta and San Francisco Bay, data on the waste assimilative capacity of the Bay, and other similar factors. The following paragraphs summarize this information and the status of present knowledge as contained in the record of the hearings or other published documents.

During the December 1963 hearings the Department of Water Resources and the Bureau of Reclamation described their individual proposals for drainage systems to serve the San Joaquin Valley. At approximately the same time, considerable public opposition developed in the San Joaquin Valley to the construction of two drainage systems and support developed for a single integrated facility. Members of the subcommittee likewise expressed strong support for an integrated facility during the December hearings.

Subsequently, it was agreed by the Department of Water Resources and the Bureau of Reclamation that the Department of Water Resources would construct an integrated facility and would provide service to the San Luis service area pursuant to a contract to be negotiated between the department and the bureau. The bureau would pay the capital costs of the capacity required to provide the service it needed. Thus the department became the agent for the bureau and in essence

assumed the responsibility for disposing of the wastes. Therefore, the concept of the drainage facility presented below is based on the department's testimony of August 19, 1964, for an integrated facility.

As presently contemplated the drain will be constructed in stages with the first stage basically being the San Luis Interceptor Drain to provide service to the San Luis service area plus some additional areas. The proposed drain will extend 190 miles from Kettleman City to the delta at Antioch Bridge. Generally it will be an open, lined canal with a terminal capacity between 400 and 500 cubic feet per second and will be fully operational in 1970. Timing is currently based on present construction schedules for the San Luis Unit, with construction proposed to start not later than January 1966 in order to be in operation by July 1968. In December 1963 the bureau indicated to the subcommittee that the drainage flow from the San Luis service area and areas immediately adjacent is not expected to exceed 10,000 acre-feet annually during the first 10 years.

The construction cost of the first stage of the drain is expected to be met by a \$34 million contribution from the Bureau of Reclamation, the remaining \$12 million cost will be a state responsibility and will be financed from Burns-Porter Act money. Later stages will be a state responsibility because service will be for the southern San Joaquin Valley. Construction of later stages would extend the drain southward some time after 1975 into Kern and Buena Vista Lakebeds. Eventual enlargement of the first stage to a full capacity of between 900 and 1,000 cubic feet per second would meet requirements until the year 2000. If the department found it necessary, the point of discharge would also be moved westward.

At the time the decision was made to integrate the federal and state drainage systems, the Bureau of Reclamation also explored various methods of ponding the drainage water in the valley and other approaches which were considered to be interim solutions. These interim solutions to the drainage problem were intended to delay the completion date for construction of the San Luis Interceptor Drain in order to provide more time to study the location of its terminus and other problems. However, landowners in the San Joaquin Valley, who now have a drainage problem or who expect to have one when the San Luis Project begins to deliver water, would not agree to any interim solution but instead relied on the San Luis Authorizing Act which requires completion of the interceptor drain by 1968. The pressure to decide all problems now was thereby created.

Constituents of Drainage Water

The drainage waters are expected to contain about 7,000 parts per million total dissolved solids initially and about 3,000 parts per million after the initial leaching periods. Constituents will be principally sodium and sulfate ions, with smaller quantities of chloride, calcium, magnesium and carbonate ions. The principal nutrient is expected to be nitrogen which the department expects may reach 20 to 25 parts per million. Recent tests by the department indicate that pesticides now in drainage water in the San Joaquin Valley are about one-half part

per billion which is about the concentrations of samples taken from rivers and channels of the Central Valley and the Delta-Suisun Bay area.

Discharging drainage water with several thousand parts per million of salts into an already saline San Francisco Bay is not now known to result in any problem. However, the discharge of this same saline drainage water into the western delta, where problems already exist because of salinity intrusion in the summer when outflow of fresh water is reduced, may only aggravate an already serious problem. Furthermore, the future export of more fresh water from the delta by the State Water Facilities and the San Luis Project will reduce the amount of fresh water now available in the delta for dilution and flushing action.

The pesticides in the drainage water are small in quantity at present. There is no reliable data to indicate whether they might increase or decrease with development of degradable pesticides or new methods of application. The tendency of pesticides to be ingested by small organisms and to concentrate in the systems of these organisms has caused alarm among public health officials and others that it may be harmful for fish and wildlife. However, the State Department of Agriculture has the authority to control the application of such pesticides and should actively evaluate whether it is desirable or practicable for it to act in order to reduce their presence in the drainage discharge.

The presence of nutrients such as nitrogen in the drainage water will facilitate the growth of algae in the drainage water and the receiving waters. These algae "blooms" occur periodically and create serious problems of odor and unsightliness as well as depleting the oxygen supply in the water when they die. The presence of organic wastes in the drainage water also depletes the dissolved oxygen content of the receiving water. Reduction of the dissolved oxygen content can be harmful to, or even eliminate, aquatic life depending on the extent of the depletion.

Various possibilities exist to mitigate the severity of these problems and effects, and they are under study by the Department of Water Resources and other agencies such as the Department of Fish and Game. Among these possibilities are (1) the cultivated growth of algae in the drainage water and harvesting of the algae to remove the nutrients from the water, (2) the ponding of the drainage water during low flow periods for release during winter rains when the delta outflow is large, (3) dilution of the drainage waters with good quality water released through a delta water project, and (4) use of brackish water conversion equipment to remove the minerals and leave only a brine for disposal. While all of these possibilities exist, none of them is sufficiently investigated or developed to permit being designated by witnesses before the subcommittee as solutions to the drainage discharge problem.

Effect of the Drainage Discharge

Any proposal to construct a drainage facility which will eventually discharge approximately 500,000 acre-feet of waste water from the San Joaquin Valley into receiving waters of any part of the state must

inevitably result in expressions of strong concern from the areas adjacent to the point of discharge. Contra Costa County is the area most directly concerned with this waste discharge.

Contra Costa County interests have vigorously campaigned to get the terminus of the drainage system moved west to Port Chicago rather than having it at Antioch because their intake for public water supplies and the sources of cooling and processing water for several of their large industrial installations are close to the Antioch point of discharge. The proposed movement of the point of discharge westward to Port Chicago would double the costs of the drainage facility by adding another \$43 million for a 1,000-cubic-foot-per-second capacity and add \$70 million for an extension to Martinez. This would constitute a burden on the San Joaquin Valley which would be in addition to the initial cost of constructing the drainage facility to the delta.

Contra Costa County and adjacent areas secured an amendment to the federal appropriation bill for the current fiscal year which prohibits the expenditure of any San Luis Project construction funds to build drainage facilities in Contra Costa County with a point of discharge east of Port Chicago. The intent of Congress was to preclude a decision during the current fiscal year on the location of the drainage terminus until studies now under way are completed and a "fully informed decision, in the interest of all values affected" can be made.

The location of the terminus for the San Joaquin Valley drainage system cannot be separated from the selection of the type of delta water project constructed to transfer water from the Sacramento River across the delta to the state and federal pumping plants near Tracy. In September 1964 a staff report prepared by the Department of Water Resources, the Corps of Engineers and the Bureau of Reclamation recommended that a peripheral canal be constructed to transfer the water through the eastern part of the delta to the pumping plants. It will be several months before the staff report will be given complete review by the agencies involved and a final decision made on the type of facility selected.

The Department of Water Resources testified on August 19 that the selection of a delta water project would have an effect on the discharge of the drainage water. In essence the Department of Water Resources and the Bureau of Reclamation by recommending a peripheral canal have concluded that the canal is needed because the delta as it now exists will not provide a quality water supply for their export needs in the future. In fact, new facilities to provide better quality water supplies for the western islands of the delta are included in the recommended facilities to be constructed in the delta.

Significantly, the report which recommends the peripheral canal states that questions of water quality resulting from the construction of the drain will have to be evaluated in the light of results of the delta and Suisun Bay Water Pollution Investigation which the Department of Water Resources has had underway for several years. The objective of this investigation among others is to evaluate the impact of the drainage discharges on the delta and Suisun Bay (not San Francisco Bay). A progress report on this investigation will be issued about

the first of 1965 and the final report is presently scheduled for release in July 1965.

In its testimony before the subcommittee, the department stated no more than that the proposed drainage discharge would not adversely affect the delta but it offered no data or substantiation. Substantiation presumably will have to await the publication of the report on the delta and Suisun Bay pollution investigation in about a year and its review and analysis by all interested parties. The results of three critical investigations pertaining to the discharge of San Joaquin Valley waste water into the delta (the Peripheral Canal Report, The San Joaquin Valley Drainage System Report, and the delta and Suisun Bay Pollution Investigation Report) are now available only to the extent that the staff report on the peripheral canal has been released for review and comment.

Thus data to substantiate any statement that the discharge of San Joaquin Valley waste water at Antioch will not be detrimental are not available, nor are such data available on the effect of this waste water on Contra Costa County. However, this is only the delta portion of the problem linked with the discharge of these wastes. These waste waters will be dispersed in the delta and San Francisco Bay by mixing and assimilation through the following processes: (1) the capacity of the bay and delta waters to oxygenize the wastes and purify the water, (2) the flushing action of fresh water flowing out from the delta into San Francisco Bay, (3) the mixing of waste water with fresh water in the delta or released from the peripheral canal or other delta water project, and (4) the action of the tides on the water in San Francisco Bay which tends to transport the receiving water and its waste load to the Pacific Ocean.

The manner by which the tidal action transports the bay receiving waters to the ocean may be extremely important to the entire San Francisco Bay. The best information presently available to the Corps of Engineers from its model studies appears to indicate that the movement of the receiving waters from the delta is along the coast of Contra Costa County and Alameda County and thence across the upper portion of South San Francisco Bay into the ocean. The movement does not appear to be through deep water channels directly into the ocean. The southern part of San Francisco Bay does not receive the same beneficial effect of tidal action as the rest of the bay. This partially explains why the southern part of the bay has had for many years a serious waste disposal problem. Only recently has the San Francisco Bay Regional Water Pollution Control Board partially succeeded in cleaning up these waters. There is no certainty that the tidal action of the bay on waste discharges from the San Joaquin Valley at the delta will not adversely affect the South San Francisco Bay area by preempting the waste assimilating capacity now available to remove South Bay wastes.

Testimony from the Corps of Engineers and the Public Health Service indicated their limited studies showed that large amounts of waste are presently discharged into San Francisco Bay due to the urban and industrial development of the bay area itself. Projections by these agencies show that the amount of these wastes will increase during

future years because of growth of the area and that eventually a piped system to discharge San Francisco Bay wastes into the Pacific Ocean will be needed, even assuming a higher degree of waste treatment.

In its testimony before the subcommittee on December 10, 1963, the Public Health Service stated:

"As a result of our evaluations we have concluded that discharge of wastes from agricultural sewers to the San Joaquin River in the vicinity of the Antioch Bridge is extremely undesirable because of the pollution problem that will inevitably develop in this area, if certain aspects of present state and federal water transfer programs materialize. Other alternative discharge locations mentioned previously become less undesirable (from a pollution control standpoint) because, in each case, the discharge is moved closer to the ocean.

"Because the magnitude and cost of proposed drainage schemes are very large and because their full impact in the area of discharge will not be realized until some time after the year 1990, we believe that agricultural waste discharges deserve very careful consideration and should be viewed in light of projected future conditions rather than existing conditions. Projections 25 years into the future are conjectural; however, if projections are not made, correction of errors which result from our having failed to consider the future could be extremely costly and provide an unnecessary burden which reasonable planning could now avoid.

"We have found in our preliminary investigations that due to a dearth of technical knowledge and methodology a quantitative evaluation of the effects of low net flows on the mixing, dispersion and net transport of pollutants in the estuaries of the delta, Suisun and San Pablo Bays has not been developed. However, we believe that such methodology and technical knowledge now exist and a reasonable evaluation of the problem can be made, if sufficient time and funds were available. . . .

"If the San Luis or other San Joaquin Valley drainage is discharged to the delta, the economic cost of water pollution by water users in the San Joaquin Valley, in effect, would be transferred to water users in the delta-Suisun Bay area As pollution loads in the western delta and bay system increase and outflows decrease, increased treatment costs will be incurred by the local people

"We believe decisions to discharge wastes from an agricultural sewer to the western delta or San Francisco Bay system at this time would be premature in view of the fact that adequate study of and planning for the future consequences of the proposed discharges have not been made. We further believe a decision relative to the disposal of San Luis wastes will establish a precedent for the future disposal of all wastes from the southern San Joaquin Valley and, therefore, such a decision must be made with extreme care." (Transcript of December 10, 1963, pp. 132, 133, 140, and 141.)

The Public Health Service also made a series of recommendations for actions to be taken to resolve problems associated with the drain. To the extent that time has permitted in the intervening period, these recommendations have been included in the drainage facility by the Department of Water Resources. Time, of course, has not permitted undertaking the major bay area studies which were recommended.

The San Francisco Bay Regional Water Pollution Control Board testified that it has worked for years to bring existing waste discharges into San Francisco Bay under its discharge requirements and to clean up the bay. Some significant improvement is recognized by all to have occurred in the past few years. The San Francisco Regional Board indicated its objective to further increase the quality of bay waters by requiring a higher degree of treatment of existing discharges into the bay. Resolution No. 535 has therefore been enacted to prohibit the discharge of San Joaquin Valley waste water into the bay until data are available to show that no harmful effect will occur.

The Department of Water Resources has stated only that the discharge of San Joaquin Valley wastes into the delta will not harm the delta. However, if it should be harmful, the department agrees that the discharge point of the drain should be moved westward to a point, based on experience, where the drainage will not have an adverse effect. The department is proposing to secure agreement from the Bureau of Reclamation that the federal government will contribute its proportionate share of the cost of the extension of the drain if it becomes necessary.

Additional Investigations

Testimony before the subcommittee, as set forth in this report, makes it clear that all witnesses have inadequate data at present, are uncertain, or are being overly cautious because of uncertainty. Much data and study will be needed before certainty and agreement can occur.

Fortunately, work is underway to fill some of the gaps in needed data. The most important project is the San Francisco Bay Investigation of the University of California which was begun at the request of the San Francisco Bay Regional Water Pollution Control Board and is financed by the State Water Quality Control Board. This investigation was begun in 1958 and will be essentially completed in another year. Its purpose is to develop information and data which will permit quantitative resolution of the effects of waste discharges on the beneficial uses of bay waters, with particular emphasis on the fishery resource.

The San Francisco Regional Board in years past has adopted some specific policies covering particular areas of the bay, based on the limited data available. The San Francisco Bay Investigation is intended to provide comprehensive information to permit evaluation of the waste assimilative capacity of the entire bay. In turn this will permit the regional board to establish water quality objectives for the entire bay on which better waste discharge requirements can be based.

The second important source of data is the Marine Resources Survey of San Francisco Bay, which has been under way by the Department

of Fish and Game for less than two years. It is designed to survey types and abundance of existing marine life, to relate the distribution to the existing environment, and assess the future potential of the bay for both sport and commercial fisheries.

The above two investigations are the only sources of comprehensive data on San Francisco Bay presently available. It is still unknown whether the data collected by these surveys will permit a comprehensive evaluation of the impact of San Joaquin Valley drainage waters on San Francisco Bay itself or whether additional information may be needed. It is reassuring, however, to recognize that the San Francisco Bay Investigation and the Marine Resources Survey were undertaken by the state sufficiently long ago to begin to produce useful information at this time.

The Corps of Engineers has received authorization to add the delta to its bay model at Sausalito and to conduct further model studies. The Department of Water Resources, acting through its delta and Suisun Bay water pollution investigation, has been verifying the usefulness of the model for water quality work. Data collection and studies by units of local government such as in Contra Costa County are also under way. In short, much important work is now being done.

The problem of waste disposal in and around San Francisco Bay area is actually much broader than the studies concerned with the severe problems now arising because of the discharge of San Joaquin Valley waste waters. It has already been noted that the San Francisco Bay Regional Water Pollution Control Board is in the midst of a long-range program designed to upgrade the bay waters, to make them fully usable for body contact sports and to improve the fishery which was substantially destroyed in past years because of pollution. At the same time, San Francisco is becoming even more widely known for the beauty and grandeur of its bay. This is both a tourist attraction and an element of pride among bay residents.

However, the wastes, both liquid and solid from a rapidly growing metropolitan center must be disposed of. Solid wastes have been dumped into the bay to form land fills. Elsewhere, major land fills have been made to create airports, housing developments, industrial sites, etc., and many more land fills are being proposed. Besides the conflicting opinions on the esthetic impact of many of these land fills, they also have a serious impact on the ability of the bay waters to assimilate wastes. This occurs because the marshy, shallow waters of the bay, the portion most susceptible to filling, is also important to the natural processes by which the water restores its oxygen content. This oxygen is vital to both aquatic life and to the capacity of the water to purify wastes. Since the actual waste assimilating capacity of the entire bay is not known, the seriousness of the land-filling process on waste assimilation cannot be fully determined at this time. However, witnesses before the subcommittee did indicate that the indiscriminate filling of the bay could eventually lead to a situation in which the waste disposal capacity of the bay would be limited largely to tidal action.

The people of San Francisco Bay and its adjacent areas have recognized that they are confronted with serious problems in assuring their

future welfare and the protection of the bay. The 1964 First Extraordinary Session of the Legislature passed Chapter 98 which created a San Francisco Bay Conservation Study Commission to evaluate the filling of the bay and to recommend a policy and action. The people of the bay area acting through their counties have expressed great concern in testimony before the subcommittee over the possibility that the discharge of San Joaquin Valley waste water into the bay will adversely affect both them and the bay. In recognition of this concern, the Association of Bay Area Governments has announced that it will serve as sponsor for a comprehensive long-range project to dispose of wastes from the central valley, the delta, and the bay area in cooperation with the U.S. Public Health Service. In addition the bay area sportsmen have strongly objected to any action which might harm the bay fishery.

Regulation of State Discharges

The extensive nature of concern around the bay for its future, and the searching now going on to find solutions to local problems require the subcommittee to raise explicitly the questions of equity and public policy presented by the present situation. It has been recognized by all witnesses before the subcommittee that it would be clearly inequitable for the state and federal governments to discharge waste waters into San Francisco Bay which would adversely affect the bay. The inequity would arise because the bay area has spent hundreds of millions of dollars on waste treatment facilities to clean up its own waste disposal problems in order to meet the waste discharge requirements established by the San Francisco Bay Regional Water Pollution Control Board pursuant to state law. In other words, the state would have encouraged and required the bay area to clean up the waters of the bay, while proposing through another state agency (such as the Department of Water Resources) to discharge large quantities of San Joaquin Valley wastes into the same waters. There is neither equity nor a furtherance of the public interest in permitting such an event without compelling reasons of public advantage which have neither been advanced nor suggested in this case.

The Department of Water Resources and the Bureau of Reclamation have clearly recognized that they should not discharge wastes that would be detrimental to the bay area, or which the Central Valley or San Francisco Bay Regional Water Pollution Control Boards would not permit private industry or local government to discharge into the bay. Before the agreement in early 1964 that the Department of Water Resources would construct an integrated drainage facility, the Bureau of Reclamation had complied with a request of the Central Valley Regional Water Pollution Control Board to supply data on its proposed discharges from the San Luis Interceptor Drain. The Central Valley Regional Board is proceeding to set discharge requirements for the San Luis Interceptor Drain which is the only project on which it has information. Meanwhile both the Central Valley and San Francisco Regional Boards have passed resolutions prohibiting San Joaquin Valley drainage discharges in either the delta or San Francisco Bay until they

are satisfied no adverse effect will occur. This action has been taken even though these boards presently have no legal authority to control state or federal discharges. (See chapter on legal problems.)

The position of the San Francisco Bay Regional Board before the subcommittee was stated as follows:

"Resolution No. 535 of February 20, 1964, prohibited waste discharges from the San Luis Drain into the San Francisco Bay region 'until the discharger has submitted evidence and assurances satisfactory to this board that the proposed discharges will not adversely and unreasonably affect the receiving waters for any of the beneficial uses which are now being protected or which will be protected by this board.' Copies of our Resolution No. 535 are included as part of this presentation.

"Thus far the Bureau of Reclamation has produced neither evidence nor assurances satisfactory to this regional board as required by the above resolution. Indeed the evidence gathered thus far by the people who have given this matter the most careful consideration, i.e., the U.S. Public Health Service, casts serious doubt on the whole proposal. They point out that a thorough study of the entire problem should be made *before* designs and decisions are finalized. We concur with them. It seems almost unbelievable to us that a project costing tens of millions of dollars should be built on a trial and error basis. We are now being told in effect that a combination state-federal drain (the San Joaquin Valley Drainage Facility) will be built terminating at Antioch Bridge and that 'a long period of time is available to operate the drain and study its consequences prior to the maximum period use.'

"It is doubtlessly true that a long period of time *will* elapse before the drain reaches its maximum capacity. This, of course, reduces the likelihood of any sudden dramatic change in the condition of the bay and increases the chances of complacency. There is greater probability that such degradation as takes place will be insidious in nature and can thus be attributed to factors other than the discharge from the drain.

"It is our firm conviction that the 'consequences' of the discharge from this proposed drain should be ascertained as nearly as practicable *before*, *not after*, its construction. We want a thorough study in advance rather than an autopsy later.

"Suppose for example that the 'consequences' eventually turn out to be severe due to the effects of nutrients, pesticides, and other wastes and that it becomes apparent that the drain should never have discharged to the ocean, what would then be done about it and who would pay for the necessary rerouting, etc?

"It is well to remember that eventually the diversions of water from the Sacramento River, in connection with the California Water Plan, will leave us with less good quality water for waste dilution than we have at present, while at the same time the increase of population and industry both in the bay area and the Central Valley will result in the production of more wastes—and the need to dispose of them. The state, as you probably know, plans

to allow disposal of treated sewage and industrial wastes into its drain, along with agricultural wastes.

"In short, as the capacity of the bay to assimilate wastes is reduced (by some unknown amount) a huge volume of new wastes (whose effects have not been thoroughly evaluated) is to be placed on it—according to present plans. It is our contention that interim solutions for disposal of San Joaquin Valley agricultural wastes are available and economically practicable and justifiable and that they should be implemented. Meanwhile, the actual construction of the San Luis Drain, or any state drain terminating in the San Francisco Bay system, should not be allowed to proceed. During this interim period of, say, five years, the state and federal governments should study the matter thoroughly and evaluate the effects on the bay. If it appears that ocean disposal is the proper solution then the bay area communities should be consulted as to their participation in a master drain which would take care not only of wastes from the Central Valley but from the bay area as well."

The Administrator of the Resources Agency stated that as a matter of administrative policy he had ordered the Department of Water Resources to comply with discharge requirements set by the regional boards. Since only a prohibition of discharge has been adopted by the regional boards and no discharge requirements have been set, it is too soon to state what the influence of any waste discharge requirements on the drainage discharge may be. However, the point at issue is clearly established that the two regional boards involved will not, based on present data, approve the drainage discharge in the delta or San Francisco Bay. The Department of Water Resources has not stated what it proposes to do to secure such approval which the Resources Agency Administrator has ordered it to secure.

Recapitulation

The foregoing discussion can be recapitulated in several points:

1. While the Department of Water Resources and the Bureau of Reclamation have studied, but not reported on the effect of San Joaquin Valley waste discharges on the delta, they have not made similar studies for San Francisco Bay.
2. The Corps of Engineers and the Public Health Service have completed some studies of San Francisco Bay water pollution problems and they urge caution. The Public Health Service recommends no discharge of drainage until it is established that the discharge will not harm the bay.
3. Local interests and both the Central Valley and the San Francisco Bay Regional Water Pollution Control Board are alarmed over this drainage discharge. The regional boards have officially moved to prohibit it pending further information. The task of establishing water quality objectives for the delta and the bay has only been started.
4. Data for a comprehensive evaluation of the effect of the drainage discharge on the bay is very limited but will be partially available in future years.

5. The urgency to construct the interceptor drain and get it into operation by 1968 springs from the authorizing language of the San Luis Act, which was intended to assist San Joaquin Valley farmers with an existing drainage problem. These farmers have not accepted interim drainage solutions which would permit delaying the drain.

6. Congress has recognized the seriousness of the problem by adding language to the Bureau of Reclamation's appropriation to prohibit construction of any terminal facilities of the drain east of Port Chicago in Contra Costa County. The precedent is thereby established by Congress to delay construction of the drain until adequate evaluation of the location of both the drainage system terminus and the impact of the discharge on San Francisco Bay can be made.

7. The Corps of Engineers has authorization and is seeking funds to add the delta to the San Francisco Bay model at Sausalito. This may permit integrated and more definitive studies of water quality in the delta and San Francisco Bay.

8. The various studies of the Department of Fish and Game are not completed and final decisions on the nature of a delta water project such as the peripheral canal are yet to be made.

9. Some concept of the future waste disposal needs of the San Francisco Bay area itself, and preferably a long-range plan, should be developed to assist in evaluating whether the overall problem in disposing of future San Francisco Bay wastes and San Joaquin Valley wastes, plus possible future wastes from the Sacramento Valley, could best be transported to the Pacific Ocean by an integrated facility.

The subcommittee cannot recommend, after the voices of concern which have been raised, that immediate construction of the San Joaquin Valley drainage system be undertaken with any particular point for its terminus. Instead, the subcommittee believes a wise course of action would be to delay the construction of the drain for several years until adequate data is available to permit full discussion and agreement. Meanwhile, the interim measures suggested by the Bureau of Reclamation should be undertaken in the San Joaquin Valley to handle the small drainage problem which will occur there in the immediate future. The question of how best to undertake a comprehensive approach to the solution of the problem confronting San Francisco Bay in the future remains for consideration in the next chapter.

LOOKING AHEAD

The Association of Bay Area Governments will sponsor development of a long-range waste disposal plan for the San Francisco Bay area, the delta, and the Central Valley to be prepared by the U.S. Public Health Service. Various federal water-oriented agencies are proposing additional studies of the delta and the bay. Numerous state studies are underway at this time and more will probably be undertaken in the future. The number of proposed studies is bewildering and a sound approach to these studies raises many questions. What data is presently available? What additional data will be needed in the future, at what time in the future? Who should collect this data? More impor-

tantly, if the San Joaquin Valley drainage system is delayed for several years, how can the time so gained be most effectively used?

Witnesses before the subcommittee testified only about their present activities, most of which were directed to the immensity of the problems confronting them in trying to evaluate the drainage facility and deciding where it should be located. Very little thought has been given to the next steps and what should be done if a delay of several years were to be secured for study and resolution of the current problems. There is no plan or approach available and the great number of federal, state and local units of government anxious to participate only adds to the difficulty.

The subcommittee by itself cannot establish an approach since the most advanced technical knowledge will be required. The subcommittee therefore recommends that the State Water Quality Board, as the state agency with the most direct responsibility for the quality of the state's waters should establish the approach. The board should empanel a small group of technically qualified outside consultants to perform the following tasks: (1) identify the studies now underway concerned with waste disposal in the San Francisco Bay area, establishing the scope, timing and objectives of each, (2) review the data now being collected on waste disposal in the San Francisco Bay area, (3) review the proposals for studies to be undertaken in the future by all agencies with an interest and responsibilities, (4) recommend such additional data and studies or investigations as may be needed to permit development of a long-range plan and solution for the problems associated with disposition of San Joaquin Valley waste waters, San Francisco Bay wastes and other related wastes. The objective of the panel should be to recommend the participation of those agencies most capable of handling the work based on an orderly approach in order to assure that no gaps or duplication in work occurs and the necessary work is completed on a reasonable time schedule.

In the past, numerous uncoordinated studies have been undertaken on the San Francisco Bay, the delta and adjacent areas. There is no assurance that future studies will be adequate or that substantial gaps will be found when completed studies are compared. Furthermore, the task is sufficiently large and expensive that there is undoubtedly a best role for nearly every agency, if that role is identified and defined. Finally, the highly technical nature of the work to be done and the unique or even research nature of certain parts of it require utmost caution to assure that it is performed by the agency that can best handle it.

The subcommittee believes that the State Water Quality Control Board should proceed immediately with the formation of such a panel and transmit its results to the 1965 General Session of the Legislature before the session ends for such action as may be needed. The state board should finance the panel with any federal funds it may have available or with money from the Department of Water Resources or contributions from federal or local agencies.

LEGAL PROBLEMS

The customary regulatory approach to the discharge of undesirable wastes into the waters of the state has been for the regional water pollution control boards to establish waste discharge requirements which specify quality of the receiving water to be preserved. Normally these discharge requirements can be met most economically by the discharger if he provides some degree of waste treatment through a sewage treatment plant. This system has worked with considerable success in California and has resulted in substantial improvement of the receiving waters of the state although much remains to be done.

The present State Water Pollution Control Act applies to all private citizens, industry, and units of local government. It does not apply to state agencies such as the Department of Water Resources. The actions of the regional boards in prohibiting the drainage discharge into the delta or San Francisco Bay are little more than advisory. The subcommittee inquired whether state agencies and departments should be required to secure waste discharge requirements from a regional board and to comply with them. There was unanimous agreement among witnesses that the law should be amended to place state agency discharges on the same basis as any other discharge in view of the pending discharge of San Joaquin Valley waste waters into the delta and San Francisco Bay. The Administrator of the Resources Agency endorsed such a change and stated that he would support it. The subcommittee is therefore preparing legislation to revise the definition of "persons" to whom the law applies to include state agencies and recommends that such legislation be enacted.

Under our federal concept of government, the states have no power or authority over the federal government or its activity unless the federal government has specifically authorized state action such as in the case of granting water rights to the U.S. Bureau of Reclamation. The prospect that the State of California might be delegated control by Congress over any waste discharges made by federal agencies in California is virtually nil. However, if the Department of Water Resources, as is now proposed, constructs an integrated drainage facility and contracts with the Bureau of Reclamation for capacity in that facility, the authority of the state over the discharge is obscure. The contract might include provisions that could be interpreted to mean that the federal government will agree to any waste discharge requirements set by the state since the state is building the facility and will operate it under federal acquiescence. On the other hand, the contract provisions might be interpreted to mean that the Department of Water Resources, as an agent of the federal government, would not have to meet any waste discharge requirements established by the state. In view of the positive statements of the Administrator of the Resources Agency that San Joaquin Valley drainage discharges should meet the requirements of the regional boards, the subcommittee assumes that the administrator will agree to no contract with the federal government that will threaten state control over these discharges.

At present, the Bureau of Reclamation must consider the water quality and fish and wildlife aspects of the Federal Water Pollution

Control Act and the Fish and Wildlife Coordination Act. Originally when S. 649 was introduced in the 88th Congress, it would have required federal waste dischargers to secure a permit from the Department of Health, Education and Welfare for disposal of any matter into waters of the United States in order to control water pollution which may affect the health or welfare of any persons. The subcommittee believes that legislation of this type should be enacted by Congress to assure that federal agencies do not pollute the waters of the state. In the long run, this is probably the only real assurance the state can have that no federal agency will dispose of wastes into San Francisco Bay either in the form of agricultural drainage or from military or other federal installations which will adversely affect the state's waters. The subcommittee is preparing a joint resolution in support of legislation similar to S. 649 and recommends that the Legislature approve such a resolution.

Customarily the regional boards act to establish waste discharge requirements in line with some concept of the purposes that the receiving waters will serve. This purpose is usually established by investigation and hearing and is stated in the form of objectives that the regional board will seek to protect. These objectives then become the basis for the establishment of waste discharge requirements.

Under Chapter 1463, Statutes of 1963, the Legislature gave the State Water Quality Control Board the authority to establish statewide water quality policy in addition to the objectives set by the regional boards. The regional boards would then be guided by the water quality policies of the state board and their own individual board water quality objectives in establishing waste discharge requirements for the delta, San Francisco Bay, or any other area.

It is important that the State Board Act, as it now is acting, to establish water quality policy for the delta and San Francisco Bay. This is particularly important in view of the fact that the water to be exported from the delta will go into the central and southern parts of the state and the discharge of San Joaquin Valley wastes will involve the interests of both the Central Valley and the San Francisco Bay Regional Water Pollution Control Boards. In event of disagreement over the waste discharge requirements established by a regional board, present law provides for an appeal to the state board. Thus, the state board could become the deciding factor in determining the waste discharge requirements for the drainage facility.

The Administrator of the Resources Agency testified that he has no statutory authority to intercede in the above procedure by reducing any waste discharge requirement set by a regional board or by the State Water Quality Board, but that he could administratively order the Director of Water Resources to meet any discharge requirement or a higher requirement than that established by a regional board. However, testimony developed that the three Directors of Water Resources, Fish and Game, and Conservation are members of the State Water Quality Control Board and are supervised by the Resources Agency Administrator. In addition the Directors of Agriculture and Public Health, while not in the Resources Agency, are also members of the

State Water Quality Board and are responsive to the views of the Administration. Thus, 5 of the 14 state board members are appointive state officials. (All of these directors, except the Director of Conservation, also have their own independent statutory authority which directly or indirectly provide them with power to act on certain matters involving water pollution and water quality.)

The subcommittee believes that these five department directors should be transferred from the State Water Quality Control Board to an advisory and coordinating committee with the responsibility to advise the state board. The state board would then represent the public and could act in behalf of the public rather than the public and certain departments. Transferring these five officials from the state board would also eliminate the possibility that any action of the state board with respect to the San Joaquin Valley drainage system would not fully reflect the public interest but instead might be unduly tempered by the interests of any department with a particular interest in the drain. The subcommittee is preparing such legislation and recommends that it be adopted.

II. WATER QUALITY MANAGEMENT

Assembly Bill No. 3025 (Meyers)

FINDINGS

The subcommittee found a continuing widespread support for the regional concept of water pollution control and no justification for any change in the relatively autonomous operation of the present regional boards. Considerable uncertainty now exists because of the passage of S.B. 1096 (Chapter 1463, Statutes of 1963) in the 1963 session and interpretations of it which require clarification. The various state agencies for water pollution control and water quality are making progress in coordinating their activities but further improvement and better coordination is still needed.

RECOMMENDATIONS

The subcommittee recommends that no legislation be adopted which will weaken the regional approach to water pollution control. No support was found for A.B. 3025 which was developed by the administration and which is no longer supported by the administration. Legislation should be passed to change the title of the Regional Water Pollution Control Boards to Regional Water Quality Control Boards and to add authority to establish water quality policy at the regional board level. The objective should be to retain the relationship between the state and regional boards that existed before passage of S.B. 1096.

APPROACH TO HEARINGS

The primary purpose of the hearing on A.B. 3025 was to investigate the broad question of the need for legislation to revise the present state organization and management policies for water pollution and water quality control. This purpose was broader than the contents of A.B. 3025 itself which only involved one proposal for reorganization of the state and regional boards.

A broader approach was adopted because in the 1963 session of the Legislature, S.B. 1096 was adopted which changed the responsibilities and title of the State Water Pollution Control Board. Subsequent questions regarding the intent and interpretation of this statute were included in the hearing because they properly fitted into the subject matter of A.B. 3025 and were within the assigned responsibilities of the subcommittee. In addition, the Legislature had directed the preparation of a report entitled "An Interagency System for Water Quality Management." The recommendations of this report and the extent of their adoption by the Resources Agency had not previously been reviewed by the Legislature. It was therefore determined to consolidate these three subjects into one hearing which can appropriately be entitled a hearing on water quality management in California.

A hearing was held on September 10, 1964 in Los Angeles. The four days of hearings previously held by the subcommittee on the impact of San Joaquin Valley Drainage Waters on San Francisco Bay provided substantive consideration of certain organizational questions involving water quality. The transcript of those hearings and the subcommittee's findings and recommendations contained in its report entitled "Impact of San Joaquin Valley Drainage Waters on San Francisco Bay" also relate to and support the subject of this report. The legislation recommended as a result of the San Joaquin Valley drainage hearings includes bills pertinent to the hearing on A.B. 3025. None of this material is repeated here but its pertinence should be kept in mind with respect to this report.

REPORT ON "AN INTERAGENCY SYSTEM FOR WATER QUALITY MANAGEMENT"

During the 1962 session, the Legislature added language to the Budget Bill which required the State Water Pollution Control Board to contract with an outside consulting firm for a review of the "water quality, waste discharge, water pollution and contamination data obtained by the Departments of Water Resources, Public Health, Fish and Game and the state and regional water pollution control boards from any and all sources."

On November 30, 1962, Water Resources Engineers, Inc., which had been selected by the State Water Pollution Control Board to do the study, released its report entitled "An Interagency System for Water Quality Management." Various recommendations for specific changes in handling data were made in the report along with some recommendations on organization.

The subcommittee requested a panel of representatives from the agencies studied in the report of Water Resources Engineers to appear at the hearing and to review the progress in adopting the recommendations contained in the report. Where no action had been taken, the reasons for no action were explained by the panel. It became evident that an extensive and thorough review of the report had been made by the Resources Agency and that most of the recommendations had been adopted or were in the process of being adopted.

The subcommittee was pleased that real progress had been made. In two cases, however, the subcommittee did not feel that the recommendations had been sufficiently implemented. The first instance involved the coordination of data collection in the field, its analysis in laboratories, and its storage in a manner to make its recall easy and most useful. The Resources Agency Administrator assured the subcommittee that he had ordered "a study into means for pooling all data processing equipment so that all data necessary, including water quality data, for resources planning and development can be stored, processed and retrieved conveniently and efficiently but on an integrated and coordinated basis. It will be necessary to complete the move into our new building before we can proceed along this line. I am certain, however, that once the move is completed, we will start to progress in the direction of integrated data management for the Resources Agency."

The coordinated handling of water quality data has been a most difficult problem, both with respect to the desire of the agencies to continue present vested operations and the technical problems of developing a system that will efficiently and economically store and recall the data while permitting identification of deficient, unneeded or duplicate data. The subcommittee believes that the proposal of the Resources Agency Administrator to begin by pooling data processing equipment is reasonable. Unfortunately, it leaves the real decisions and implementation for the future, and this may mean that the good intentions of the moment will disappear in future disagreement over details. The subcommittee therefore requests that the Resources Agency Administrator, the Department of Finance, and the Legislative Analyst continue to check future developments to assure that an integrated system is satisfactorily completed. In addition, the subcommittee also requests a brief memorandum report every six months be furnished it as well as the three offices mentioned above to indicate the progress being made.

Directly related to the problem of integrated data handling is the development of a common program framework for budgeting water quality investigations and related work. A start has been made with the publication of a report entitled "Proposed Definitions to be Used by California State Agencies in Recording and Reporting Activities in the Field of Water Quality Control." Much more work remains to be done before the report will become a fully useful tool for analysis of the work involved. The panel indicated that a standard glossary or list of terms is to be developed to facilitate communication among the technical employees involved in water quality work as well as to assist management in understanding the essential relationships and responsibilities of the various agencies and their activities.

In the second instance of difference in view between the Resources Agency and the subcommittee, the report of Water Resources Engineers had recommended that the Department of Fish and Game undertake a review of Section 5650 of the Fish and Game Code with the objective of "redrafting it in modern language consistent with the department's goals and policies." The Department of Fish and Game rejected this recommendation because the law has proved workable and because a change would weaken the law. The department is overlooking the fact that the language involved is so restrictive and arbitrary that excessive discretion is left to the department to determine when it will prosecute. Obviously under the absolute standards of the section the department could not enforce it according to a literal interpretation. The recommendation of the report is that the section be redrafted consistent with the department's goals and policies. It would appear that part of the reluctance of the department results from the administrative problems of stating the department's goals and policies rather than any legal or policy questions. The subcommittee recommends that the department proceed to revise the language and submit it to the Legislature for enactment.

The report of this subcommittee cannot detail the improvements in personnel administration, use of mobile laboratories; and other actions which have resulted from the report of Water Resources Engineers. It believes that a good start has been made and that the initial momentum

for improvement gained from the report should be increased to give the state the best possible interagency system for water quality management.

REORGANIZATION OF THE STATE'S WATER QUALITY WORK

One important recommendation of the report of Water Resources Engineers remains for consideration. The report recommended that the State Water Pollution Control Board be replaced with a Water Resources Management Board and that a staff of water quality management specialists be added to the staff of the state board, along with other changes. This recommended change placed substantial emphasis on water quality management. In another recommendation, the report strongly supported the regional board concept and recommended its continuation.

The Resources Agency sought to carry out the first recommendation for reorganization and proposed a complex reorganization which would have removed all real authority from the regional boards and would have centralized authority over the regional staffs in an administrative office in Sacramento. This approach was the essence of A.B. 3025 as it was introduced in behalf of the Resources Agency.

At the hearing on A.B. 3025, there was no support for the bill and the Resources Agency administrator stated that the Resources Agency was willing to proceed under S.B. 1096 rather than A.B. 3025. The hearing on the bill elicited strong support for the concept of the regional boards from a variety of interests including industry, sportsmen and water users. The regional concept, as a result, is more firmly accepted than ever.

The subcommittee cannot overlook the obvious fact that the original and only support for A.B. 3025 was from the Resources Agency and the Department of Water Resources. The record of the subcommittee's hearings on the impact of San Joaquin Valley drainage waters on San Francisco Bay makes it clear that at present the San Francisco Bay and Central Valley Regional Water Pollution Control Boards are opposed to discharging San Joaquin Valley drainage water into the delta and San Francisco Bay until it is certain no adverse effects will occur. The subcommittee also cannot overlook the well-established record from its hearings that the department has not yet completed studies of its proposed drainage discharges into the delta and San Francisco Bay and that the Regional Water Pollution Control Boards have not yet received any data from the department which the boards can use to set waste discharge requirements.

In its report on "Impact of San Joaquin Valley Drainage Waters on San Francisco Bay," the subcommittee strongly supports the position of the regional boards. It is pertinent to observe here that had the ideas of the Resources Agency and the Department of Water Resources on the state's organization for water quality been adopted and the regional boards reduced in effectiveness and autonomy by losing their staff, their work to date on the San Joaquin Valley drainage discharges might have been impossible and the San Francisco Bay area and the delta left without any protection from possibly damaging drainage waters.

The subcommittee recommends that no further consideration be given to A.B. 3025 by the Legislature.

PROBLEMS INVOLVING SENATE BILL No. 1096

After A.B. 3025 was sent to interim study, the Legislature passed S.B. 1096 which became Chapter 1463. This act changed the name of the State Water Pollution Control Board to the State Water Quality Control Board and added authority for the State Water Quality Control Board to establish water quality policy. Although the principle of adding establishment of water quality policy to the state board's responsibilities was widely accepted when the legislation was passed and still is, important doubts and uncertainties soon arose over the effect of this new authority on the regional boards.

The State Water Quality Control Board sought an opinion from the Attorney General on the changes made by S.B. 1096. Pertinent parts of this Opinion No. 64/218 are quoted below:

"The state board was the agency selected by the Legislature to coordinate water quality activities by formulating and adopting statewide policies for water quality control. Section 13022 was amended to require the state board to adopt a statewide policy of water quality control. The state board's obligation under Section 13022 to adopt a policy for control of water pollution remains tempered in that such policy must be adopted 'with due regard for the authority of the regional boards.' The adoption of the policy of water control, however, is not so qualified. Since the Legislature has determined that the matter of water quality is of statewide interest and concern, it must follow that the policy of water quality control cannot be adopted on a purely regional basis.

"While the statutory responsibility for declaring statewide policy is placed solely upon the state board, it is not to be anticipated that the state board will act differently than it has in the past. The state board has throughout its history followed procedures of consulting with all interested agencies, public and private, in order to glean all possible views and interests before taking action on policy which vitally affects waters of the state. Also in this regard, Section 13003 now provides that the state board will cooperate with other state agencies in all matters of mutual concern 'to the fullest extent practicable.'

"In carrying out the mandate of Section 13022, the state board is guided by Section 13005. Prior to 1963, the state board's concern with water quality was limited to the effect thereon of the discharge of sewage and industrial wastes. For example, we advised the state board by letter in 1950 that deterioration of water quality caused by saline intrusion was not within its jurisdiction since no discharge of sewage or industrial wastes was involved. Section 13005 now allows the state board in setting water quality control policy to consider *any* factor which unreasonably and adversely affects the quality of water for beneficial use. Thus the state board in setting water quality control policy may now consider such matters as saline intrusion, the reduction of waste assimilative capacity caused by reduction of the quantity of water, and watershed management projects as they may affect water quality.

"The 'water quality control policy' to be formulated and adopted by the state board is defined as 'water quality objectives' where they

are needed now or in the future to assure the availability of water of suitable quality.

"The Legislature did not further define 'water quality objectives'. Technically the state board might carry out its responsibilities by adopting objectives in the broadest and most general form. However, it seems clear that the Legislature had something far more specific and effective in mind. It is very possible that to properly carry out its duties the state board will in some cases have to declare objectives in terms of parts per million of various substances which will be permitted in certain waters. . . .

" . . . The state board is not specifically empowered to enforce the water quality policy it adopts, except of course, as it may exercise its powers of long standing under Section 13025. . . .

" . . . it appears clear that the 1963 Legislature intended to improve control practices prevailing under the Dickey Act by requiring that various state agencies and political subdivisions of the state coordinate their actions in maintaining water quality. That in furtherance of this requirement state offices, departments and boards engaged in any water quality activity must, in the performance of their duties, give conscious recognition to, or heed, the statewide policy of water quality control duly formulated and adopted by the state board, and that where the water quality activity of an office, department or board is carried out pursuant to a provision of law which it is specifically required to administer, the state board's policy or ruling in the case is entitled to great weight and consideration and should be adhered to unless to do so would abrogate the duties or responsibilities under other laws of the state of the office, department or board.

"Thus, where specific authorization to engage in water quality activities has been granted by the Legislature to a state department, office or board, the enactment of Chapter 1463 effectively directs them to carry out their functions in the light of such statewide policy on water quality as the state board may from time to time adopt."

The first paragraph quoted from the Attorney General's Opinion No. 64/218 makes it clear that only the state board has the authority to establish water quality policy and that only the state board's authority to adopt policy for water pollution control is tempered by the language "with due regard for the authority of the regional boards." The opinion further states that the adoption of water quality policy by the state board "is not so qualified." Furthermore, the sweeping language and broad implications of the last two quoted paragraphs in the opinion attributes a paramount role to the state board in all water quality matters except where specific statutory language governing other department or agencies would be "abrogated."

The opinion confirms the concern of the regional boards and many water interests that S.B. 1096 provides no role for the regional boards in establishing water quality policy and limits the regional boards to their existing authority to establish water pollution objectives. This was not the intention of the author of S.B. 1096, Senator George Miller, Jr. At a meeting of the policy committee of the state board on April 21,

1964, Senator Miller clearly stated that in Water Code Section 13022, the language "with due regard for the authority of the regional boards" applied to the establishment of policy for water quality control as well as policy for water pollution control. (Page 8, transcript of meeting furnished to the subcommittee by the state board and available in the subcommittee's files.)

The foregoing discussion indicates that the implementation of S.B. 1096 has not developed as expected by the author of the legislation. Difficulties under the language of S.B. 1096 soon arose when the state board, on August 5, 1964, considered a resolution to carry out its new water quality responsibilities. The resolution indicated that the state board would proceed to establish policy on various problems of water quality. It did not indicate any significant intent to work with the regional boards in establishing such policy. The regional boards objected to the absence of any role for them and the state board then amended the resolution to make specific commitments to cooperate with the regional boards. Thus, as a matter of policy, the state board has determined that it will work with the regional boards in establishing water quality policy. Although this decision of the state board determines that the regional boards will contribute to the establishment of water quality policy by the state board, it of course does not and cannot grant authority to the regional boards to establish water quality policy within their respective regions.

Those witnesses before the subcommittee who testified on the matter stated that the relatively autonomous nature of the regional boards should be retained and some of them suggested that the regional boards be given authority over water quality. No objections were expressed to the action of the Legislature in giving authority to the state board to establish water quality policy. Under these circumstances, the obvious solution to the problem is to grant authority to the regional boards to establish regional water quality policy. This solution is also logical since it would provide machinery at the regional level to handle the many local problems relating to water quality which cannot now be approached except through action of the state board.

The subcommittee therefore recommends that authority to establish regional water quality policy be granted to the regional boards. When this is done, the name of the regional boards should be changed to water quality control boards. Such a change in board titles will eliminate an unusually awkward situation at present in which the state and regional boards have different titles. Thus, the state board would establish statewide water quality control policy while the regional boards would establish regional water quality control policy. The regional policy would at all times be subordinate to the statewide policy. The subcommittee also considers it desirable to add language to require a public hearing before either the state or regional boards establish water quality policies.

S.B. 1096 gave the state board no enforcement powers other than its present power to enforce waste discharge requirements where water pollution is involved. No consideration has been given by the subcommittee to granting any enforcement powers to the state or regional boards over matters of water quality. No witnesses suggested such

action. The subcommittee recommends that the water quality authority of both the state and regional boards remain without enforcement powers. The policy is merely an affirmation of desirable objectives to be carried out by all state agencies in the conduct of any affairs which involve water quality and to guide the regional boards in establishing waste discharge requirements.

III. BIODEGRADABILITY OF DETERGENTS

Assembly Bill No. 228 (Allen) and Assembly Bill No. 1686 (Chapel)

FINDINGS

The subcommittee found that the detergent soap industry has made rapid progress in developing and bringing to the market new biodegradable detergents of a high quality. As a consequence there will be no need for the enactment of legislation to establish standards of biodegradability of detergents marketed in California.

RECOMMENDATIONS

The subcommittee recommends no legislation to control the biodegradability of detergents but that experience with the use of new biodegradable detergents be observed carefully by the State Water Quality Control Board.

HEARING ON A.B. 228 AND A.B. 1686

A.B. 228 (Allen) would have given authority to the State Water Pollution Control Board (now the State Water Quality Control Board) to establish standards for the biodegradability of synthetic detergents where necessary to prevent excessive concentrations of the detergent in the waters of the state. The bill further declared it to be unlawful to sell in California any detergent which does not meet the board's standards.

A.B. 1686 (Chapel) would have authorized similar standards to be established by the State Department of Public Health and also would have made it unlawful to sell any detergents which did not comply with the standards. These two bills were used by the subcommittee as a vehicle to determine the progress of the detergent industry in developing new detergents.

The problem of biodegradability of synthetic detergents arises because the housewife and industries using cleaners have come to prefer synthetic detergents to the other types of soaps available. These synthetic detergents are considered to do a better cleaning job, to be more effective in hard water and to produce less objectionable scum. Unfortunately, the alkyl benzene sulfonate, or ABS, contained in these detergents tends to foam and this foaming action is not degraded or reduced rapidly by bacterial decomposition in ordinary sewage treatment plants. As a result, foaming has occurred at sewage treatment plants, on streams where treated sewage is discharged and even in groundwater pumped from basins where synthetic detergents in waste waters eventually percolate back into the groundwater aquifer. The foaming in water supplies has been considered particularly obnoxious by the public, probably because it is a reminder of the reuse of waste water. No adverse effects on humans or other life from the presence of alkyl benzene sulfonate have been demonstrated. Nevertheless, its foaming

characteristic has resulted in many public demands to control the use of this type of synthetic detergent. Having recognized this problem, the detergent soap industry began efforts several years ago to develop a new biodegradable synthetic detergent, that is, one that will decompose and lose its foaming action more rapidly under bacterial attack.

In the 1963 General Session, A.B. 2341 (Quimby) was passed (Chapter 1578) which directed the State Water Quality Control Board together with the Departments of Water Resources and Public Health, to study the need for standards of biodegradability for synthetic detergents. Work on this project has been proceeding and constituted an obvious source of information for the subcommittee to determine the need for biodegradability standards for detergents. In addition, the subcommittee requested testimony from a panel of representatives from the detergent industry to detail their progress in bringing new biodegradable detergents to the market. A hearing to secure this testimony was held in Los Angeles on September 11, 1964.

The State Water Quality Control Board reported that work is progressing on the study required by A.B. 2341 but that no firm conclusions had been reached. Data becoming available on the biodegradability of the new detergents is being collected by the University of California under other statutes but is being reported as part of the project. This data indicates to date that the new detergents have the biodegradability claimed for them which is roughly equivalent to the biodegradability of other organic substances in waste water.

A panel of representatives from the synthetic soap industry appeared before the subcommittee to report on the industries' progress in developing new biodegradable detergents, the best known of which is called linear alkylate sulfonate, or LAS. The panel consisted of a representative of the Soap and Detergent Association, a representative of a company which is manufacturing raw materials for detergents, and two representatives of firms marketing synthetic detergents.

The panel reported that the original schedule of the industry to have all production of detergents shifted to the new biodegradable detergents by the end of 1965 would be exceeded and that it should be completed by June 30, 1965. The panel also indicated that ample capacity to produce the new detergents is being constructed, that the price of the new material will be about the same as present detergents, and that its cleaning quality is considered equivalent to present detergents. The panel further indicated the industry planned to shift to the new detergents without making a public announcement of the change.

In view of the information developed at the hearing, the subcommittee found no basis for recommending enactment of regulatory legislation such as A.B. 228 and A.B. 1686. The subcommittee cannot anticipate the final results of the technical evaluation of LAS and other new detergents being made by the State Water Quality Control Board under A.B. 2341 or the possibility that new and unforeseen problems will arise when the new detergents become widely used. It therefore recommends that the State Water Quality Control Board observe carefully the actual experience with LAS and other new detergents and advise the Legislature immediately if any difficulties occur from its use.

IV. REPORT OF FULL COMMITTEE

SEA WATER INTRUSION FROM MARINAS AND OTHER EXCAVATIONS

(House Resolution 71, 1963 General Session)

FINDINGS

The committee's investigation and hearing identified only two areas where problems were suspected to exist or may exist because of the intrusion of sea water into ground water basins due to the construction of marinas or other excavations such as navigation or flood control channel construction. Subsequent investigation since the hearing indicates that no evidence of a problem presently exists in the Huntington Harbor area while there is still uncertainty about the causes of intrusion along the Ballona Creek flood channel. In other areas, sea water intrusion appears to result from overpumping of ground water basins and has not been attributed to excavations which remove the impervious clay or other similar barriers to movement of sea water into fresh ground water basins.

Since the committee's hearing, the State Water Quality Control Board has adopted Resolutions Nos. 64-4 and 64-5 which provide state policy on intrusion and administrative machinery adequate for the severity of the problem presently existing and foreseeable in the immediate future. This action has been taken under the provisions of S.B. 1096 (Chapter 1463, Statutes of 1963) which empowered the board to establish policy for maintaining the water quality of the state.

RECOMMENDATIONS

The committee recommends the enactment of no legislation at the present time but recommends that the construction of marinas and other works be initially observed along with the results obtained from the water quality policy established by the State Water Quality Control Board. If a clearly identifiable problem arises in the future, legislation should then be considered.

REPORT ON HEARING

House Resolution 71 (Porter) was introduced by the committee chairman because of indications that problems were developing, particularly in southern California, from the intrusion of sea water into ground water basins due to the construction of marinas and other coastal facilities. The resolution directed a legislative study of the problem and the preparation of a report to the Legislature on the result of the investigation along with appropriate recommendations for legislation.

A hearing was held in Fullerton, California, on December 18, 1963, to receive testimony on the problems involved. A first objective of the

committee was to determine the existence or the extent of the existence of the problem. Testimony was therefore requested from all state and federal agencies having any authority or data pertaining to the construction of marinas, flood control channels, navigation works or other facilities involving coastal or tidewater excavation. Letters were also sent to all the coastal counties in southern California to elicit information on any problem areas which might be unknown at the state and federal levels.

Only two problem areas were identified. The first was the construction of Huntington Harbor in Orange County. Testimony from representatives of the Orange County Water District and the Huntington Harbor Corporation indicated that the possibility of sea water intrusion due to the construction of the project was recognized by all concerned. As a result the corporation undertook a study of the possibility that intrusion would occur and agreed to establish five monitoring wells to determine whether any intrusion did occur. An inquiry to the Orange County Water District and the Department of Water Resources during August 1964 showed that almost a year after the committee's hearing, no intrusion had occurred to date but there can be no certainty that it will not occur in the future.

The second intrusion area was around the Marina Del Rey and the flood control channel of Ballona Creek. At the time of the hearing last year, data were being collected that showed some possibility of intrusion. A further check with the Department of Water Resources during August 1964 indicated that the department has found evidence of intrusion in its sampling of wells in the area. A check with the Los Angeles County Flood Control District brought the response that intrusion was evident in years past and that responsibility of the Ballona Creek flood control work for this intrusion was not clear. Thus the cause and significance of the intrusion appears to remain in doubt but not the fact of its existence. This is the only area in the state where intrusion which may be attributable to excavation or construction activity was found.

Normally a ground water basin along a coastline has good quality water because the ground water is under hydraulic pressure from the ground water at higher elevations in the inland portions of the basin. This pressure forces the fresh water into the portions of the ground water basin under the coastline and even under the ocean. The fresh water thus acts as a barrier to the intrusion of sea water into the aquifer. However, if overpumping of the ground water basin reduces the level of water in the basin, eliminates the hydraulic pressure or even results in an inland flow of water from the portions of the aquifer under the ocean, intrusion of the sea water will occur even without being facilitated by construction or excavation works. When these same conditions occur and construction activities remove the impermeable layers of clay or other material which separate the fresh water basin from sea water, intrusion of sea water is further facilitated. If, however, the ground water basin were under pressure, the intrusion of sea water still would not normally occur. Thus, overpumping of a ground water basin is normally a prerequisite to the existence of intrusion due to construction works.

In its study of ground water problems two years ago (see *Ground Water Problems in California*, December 1962, Volume 26, Number 4, of Assembly Interim Committee Reports), this committee concluded that the nature of the corrective action needed to solve ground water overdraft and recharge problems was largely local. Local understanding of the problem and a local recognition of the benefits to the area from preventing overdraft or financing its correction are the major steps leading to improvement.

The committee's conclusions in its report on ground water are pertinent to the present problem of sea water intrusion. The construction of works with an intrusion potential is presently not a state responsibility. The financing of corrective action to recharge ground water basins is essentially a local responsibility with the benefits received by local water users.

One approach that was overlooked at the time of the committee's hearing was the augmented authority granted to the State Water Quality Control Board by the Legislature in 1963 when it enacted S.B. 1096 (Chapter 1463). This legislation amended the State Water Pollution Act to add a definition of water quality control as "the control of any factor which adversely and unreasonably impairs the quality of the waters of the state for beneficial use." (Sec. 13005.) Section 13022 was also amended to read "The state board shall formulate and adopt a statewide policy for control of water pollution with due regard for the authority of the regional boards and shall formulate and adopt a statewide policy of water quality control. Such policies shall be in conformity with the policies set forth in Chapter 1 (commencing with Section 13000), and state offices, departments, and boards shall take cognizance of such policies in carrying out water quality activities."

Pursuant to this new authority to establish statewide policy for water quality control, the State Water Quality Control Board on April 8, 1964, adopted Resolution No. 64-4. After setting forth the nature of the intrusion problem, the resolution states as follows:

Resolved, That the State Water Quality Control Board (1) reeognizes that sea water intrusion is a major and urgent water quality control problem in California (2) finds that the problem of sea water intrusion falls within the statutory definition of "water quality control," and (3) declares its intention to establish water quality control policy in this subject area; and be it further

Resolved, That the state board declares that all reasonable measures should be taken to reverse existing encroachments of sea water in ground water basins and to prevent intrusion into basins not yet damaged; and be it further

Resolved, That the state board request the Department of Water Resources to provide technical counsel, submit recommendations for state board policy actions, and report periodically to the board on all aspects of sea water intrusion; and be it further

Resolved, That the state board establish water quality control policy for those areas in which ground water quality could be adversely affected by sea water intrusion resulting from coastal or embayment dredging or excavation; and be it further

Resolved, That the U.S. Corps of Engineers, the State Department of Parks and Recreation (Division of Small Craft Harbors), the State Lands Division of the Department of Finance, and the U.S. Geological Survey be urged to give consideration to the possibility of ground water quality degradation by sea water intrusion whenever said agencies are reviewing or appraising projects which entail coastal or embayment dredging, and to advise the state board whenever it appears that such projects might threaten ground water quality by sea water intrusion; and be it further

Resolved, That the Department of Water Resources be requested to have made a review of all projects of proposed coastal or embayment dredging to determine whether such practice will threaten to accelerate sea water intrusion into coastal ground water basins, and to report such findings to the State Water Quality Control Board; and be it further

Resolved, That copies of this resolution be transmitted to the appropriate representatives of the U.S. Corps of Engineers, the U.S. Geological Survey, and the state departments of Water Resources, Parks and Recreation, and Finance.

At the same time the board also adopted Resolution No. 64-5 which states "That the regional water pollution control boards be requested to advise the State Board whenever it appears that projects of coastal or embayment dredging might threaten coastal basin ground water quality by sea water intrusion;".

By adopting these two resolutions, the state board set up machinery for the state to be informed of projects which may involve sea water intrusion, to provide for the technical review of these projects by the Department of Water Resources, to request the federal agencies to give consideration to the possibility of ground water quality degradation by sea water intrusion at federal projects, and finally to state the policy of the state board that all reasonable measures should be taken to reverse existing encroachments of sea water in overdrafted ground water basins and to prevent intrusion into basins. These steps are substantially in line with the recommendations for corrective action made to the committee at its hearing. Although some more stringent legislation was recommended at the hearing, the testimony did not develop evidence of a problem severe enough to warrant steps any stronger than that taken by the State Water Quality Control Board which action was directly responsive to the hearing held by the committee.

The introduction of H.R. 71 and the committee's hearing coincided with active investigation and determination of courses of action in Orange County for construction of the Huntington Harbor Project. This may have been fortunate, since it focused considerable attention on this project. The record indicates that the Huntington Harbor Corporation recognized its responsibilities and acted to fulfill them. This has set a pattern of investigation of geologic conditions and agreement on establishing monitoring wells which the committee believes can serve as a precedent for any future conditions of a similar type which may arise.

At its hearing, the committee was also pledged the full cooperation of all federal and state agencies which have responsibilities for planning, constructing, or approving harbor and other coastal projects. State agencies with the primary responsibility are covered by Resolution 64-4 of the State Water Quality Control Board. The circumstances involved in each project are different. The best assurance that the intrusion problems will be properly evaluated and resolved lies in the expressed intentions of these agencies to live up to their commitments. This is further reinforced by the policy pronouncements of the State Water Quality Control Board.

The committee requests the State Water Quality Control Board and the Department of Water Resources to inform the Legislature if any conditions arise in the future that existing machinery cannot handle and specifically to seek corrective action if subsequent data verify beyond doubt the existence of an intrusion problem at Ballona Creek.

APPENDIX

PROPOSED SUBCOMMITTEE LEGISLATION

A.

An act to amend Section 13005 of, and to add Section 13025.5 to, the Water Code, relating to water pollution.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13005 of the Water Code is amended to
2 read:

3 13005. "State board" means the State Water Quality Con-
4 trol Board.

5 "Regional board" means any regional water pollution con-
6 trol board created pursuant to this division.

7 "Person" as used in this division also includes any city,
8 county, ~~or~~ district, the state or any department or agency
9 thereof.

10 "Sewage" means any and all waste substance, liquid or
11 solid, associated with human habitation, or which contains or
12 may be contaminated with human or animal excreta or excre-
13 ment, offal, or any feculent matter.

14 "Industrial waste" means any and all liquid or solid waste
15 substance, not sewage, from any producing, manufacturing
16 or processing operation of whatever nature.

17 "Waters of the state" means any waters, surface or under-
18 ground, including saline waters, within the boundaries of the
19 state as defined and described in Section 1 of Article XXI
20 of the Constitution and as given greater precision in Sections
21 170, 171, and 172 of the Government Code.

22 "Contamination" means an impairment of the quality of
23 the waters of the state by sewage or industrial waste to a de-
24 gree which creates an actual hazard to the public health
25 through poisoning or through the spread of disease. "Con-
26 tamination" shall include any equivalent effect resulting from
27 the disposal of sewage or industrial waste, whether or not
28 waters of the state are affected.

29 "Pollution" means an impairment of the quality of the
30 waters of the state by sewage or industrial waste to a degree
31 which does not create an actual hazard to the public health
32 but which does adversely and unreasonably affect such waters
33 for domestic, industrial, agricultural, navigational, recrea-
34 tional or other beneficial use, or which does adversely and
35 unreasonably affect the ocean waters and bays of the state
36 devoted to public recreation.

1 "Nuisance" means damage to any community by odors or
2 unsightliness resulting from unreasonable practices in the dis-
3 posal of sewage or industrial wastes.

4 "District attorney," as used in this division, means "county
5 counsel" with respect to any county having such an officer and
6 "city attorney" with respect to any city and county having
7 such an officer as to all matters except the prosecution of
8 crimes.

9 "Water quality control" means the control of any factor
10 which adversely and unreasonably impairs the quality of the
11 waters of the state for beneficial use.

12 "Water quality control policy" means water quality objec-
13 tives for affected waters of the state where water quality con-
14 trol measures are necessary or may be needed in the future
15 to assure suitable water quality for beneficial use.

16 SEC. 2. Section 13025.5 is added to said code, to read:

17 13025.5. In the event a waste discharge in one region affects
18 the waters in another region and there is any disagreement
19 between the regional boards involved as to the requirements
20 which should be established, either regional board may submit
21 the disagreement to the State Water Quality Control Board
22 which shall determine the applicable requirements.

B.

An act to add Section 13009 to, and to amend Sections 13000, 13001, 13003, 13005, 13022, 13050, and 13052 of, and to amend the heading of Chapter 4 (commencing with Section 13040) of Division 7 of, and to repeal Section 13000.4 of, the Water Code, relating to water quality control.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13000 of the Water Code is amended
2 to read:

3 13000. The Legislature finds and declares that it is neces-
4 sary to the health, safety and welfare of the people of this
5 state to provide means for coordinating the actions of the vari-
6 ous state agencies and political subdivisions of the state in
7 the control of water pollution and the maintenance of water
8 quality.

9 The Legislature further declares that it is necessary to
10 provide means for the regional control of water pollution and
11 water quality since problems of water pollution and water
12 quality in this state are primarily regional and dependent
13 upon factors of precipitation, topography, population, and
14 recreational, agricultural and industrial development which
15 vary greatly from region to region, and to provide for co-
16 ordinated statewide control of water quality since where water
17 quality is a matter of statewide interest and concern.

18 SEC. 2. Section 13000.4 of said code is repealed.

19 ~~13000.4. The Legislature finds and declares that, because~~
20 ~~of the widespread demand and need for the full utilization of~~
21 ~~the water resources of the state for beneficial uses, maintenance~~
22 ~~of water quality is a matter of statewide interest and concern.~~

23 SEC. 3. Section 13001 of said code is amended to read:

24 13001. No provision of this division or any ruling of the
25 State Water Quality Control Board or a regional water pollu-
26 tion quality control board is a limitation:

27 (a) On the power of a city or county to adopt and enforce
28 additional regulations not in conflict therewith imposing fur-
29 ther conditions, restrictions, or limitations with respect to the
30 disposal of sewage or industrial waste or any other activity
31 which might result in the pollution of water.

32 (b) On the power of any city or county to declare, prohibit,
33 and abate nuisances.

34 (c) On the power of a state agency in the enforcement or
35 administration of any provision of law which it is specifically
36 permitted or required to enforce or administer.

37 (d) On the right of any person to maintain at any time any
38 appropriate action for relief against any private nuisance as
39 defined in the Civil Code or for relief against any contamina-
40 tion or pollution.

1 SEC. 4. Section 13003 of said code is amended to read:
2 13003. It is the intent of the Legislature that the State
3 Water Quality Control Board and each regional water ~~pollu-~~
4 ~~tion~~ *quality* control board shall cooperate with the Depart-
5 ment of Water Resources and other state agencies in all mat-
6 ters of mutual concern to the fullest extent practicable.

7 SEC. 5. Section 13005 of said code is amended to read:

8 13005. "State board" means the State Water Quality Con-
9 trol Board.

10 "Regional board" means any regional water ~~pollution~~ *qual-*
11 *ity* control board created pursuant to this division.

12 "Person" as used in this division also includes any city,
13 county or district.

14 "Sewage" means any and all waste substance, liquid or
15 solid, associated with human habitation, or which contains or
16 may be contaminated with human or animal excreta or excre-
17 ment, offal, or any feculent matter.

18 "Industrial waste" means any and all liquid or solid waste
19 substance, not sewage, from any producing, manufacturing
20 or processing operation of whatever nature.

21 "Waters of the state" means any waters, surface or under-
22 ground, including saline waters, within the boundaries of the
23 state as defined and described in Section 1 of Article XXI of
24 the Constitution and as given greater precision in Sections
25 170, 171, and 172 of the Government Code.

26 "Contamination" means an impairment of the quality of
27 the waters of the state by sewage or industrial waste to a
28 degree which creates an actual hazard to the public health
29 through poisoning or through the spread of disease. "Contam-
30 ination" shall include any equivalent effect resulting from the
31 disposal of sewage or industrial waste, whether or not waters
32 of the state are affected.

33 "Pollution" means an impairment of the quality of the
34 waters of the state by sewage or industrial waste to a degree
35 which does not create an actual hazard to the public health but
36 which does adversely and unreasonably affect such waters for
37 domestic, industrial, agricultural, navigational, recreational or
38 other beneficial use, or which does adversely and unreasonably
39 affect the ocean waters and bays of the state devoted to public
40 recreation.

41 "Nuisance" means damage to any community by odors or
42 unsightliness resulting from unreasonable practices in the dis-
43 posal of sewage or industrial wastes.

44 "District attorney," as used in this division, means "county
45 counsel" with respect to any county having such an officer and
46 "city attorney" with respect to any city and county having
47 such an officer as to all matters except the prosecution of
48 crimes.

49 "Water quality control" means the control of any factor
50 which adversely and unreasonably impairs the quality of the
51 waters of the state for beneficial use.

1 "Water quality control policy" means water quality objec-
2 tives for affected waters of the state where water quality con-
3 trol measures are necessary or may be needed in the future to
4 assure suitable water quality for beneficial use.

5 SEC. 6. Section 13009 is added to said code, to read:

6 13009. The state and regional boards shall not adopt a
7 water quality control policy unless a public hearing is first held
8 respecting the adoption of such policy.

9 SEC. 7. Section 13022 of said code is amended to read:

10 13022. The state board shall formulate and adopt a state-
11 wide policy for control of water pollution *and water quality*
12 *control* with due regard for the authority of the regional boards
13 ~~and shall formulate and adopt a statewide policy of water~~
14 ~~quality control~~. Such policies shall be in conformity with the
15 policies set forth in Chapter 1 (commencing with Section
16 13000), and state offices, departments, and boards shall take
17 cognizance of such policies in carrying out water quality ac-
18 tivities.

19 SEC. 8. The heading of Chapter 4 (commencing with Sec-
20 tion 13040) of Division 7 of said code is amended to read:

21
22 CHAPTER 4. REGIONAL WATER ~~POLLUTION~~ QUALITY
23 CONTROL BOARDS
24

25 SEC. 9. Section 13050 of said code is amended to read:

26 13050. Each regional board shall:

27 (a) Establish an office.

28 (b) Select one of its members as chairman at the first
29 regular meeting held each year.

30 (c) Appoint as its confidential employee, exempt from civil
31 service, under Section 4(a)(5) of Article XXIV of the Con-
32 stitution, and fix the salary of, an executive officer who shall
33 meet technical qualifications as defined by the State Water
34 *Pollution Quality* Control Board. The executive officer shall
35 serve at the pleasure of the regional board.

36 Notwithstanding the amendment of this subdivision at the
37 1963 Regular Session, any person incumbent in the position of
38 executive officer on the effective date of such amendment shall
39 continue to serve at the pleasure of his appointing board.

40 (d) Employ such other assistants as may be determined
41 necessary to assist the executive officer.

42 SEC. 10. Section 13052 of said code is amended to read:

43 13052. Each regional board, with respect to its region,
44 shall:

45 (a) Obtain coordinated action in the abatement, prevention
46 and control of water pollution and nuisance by means of for-
47 mal or informal meetings of the persons involved;

48 (b) Encourage and assist in self-policing waste disposal pro-
49 grams for industry, and upon application of any person shall
50 advise the applicant of the condition to be maintained in any
51 disposal area or receiving waters into which the waste is being
52 discharged;

- 1 (c) Require any state or local agency to inspect and report
2 on any technical factors involved in water pollution or nuis-
3 ance;
- 4 (d) Request enforcement of laws concerning water pollution
5 or nuisance by appropriated federal, state and local agencies;
- 6 (e) Formulate and adopt long-range plans and policies with
7 respect to water pollution control *and water quality control*
8 within the region in conformity with the policies set forth in
9 Chapter 1 (commencing at Section 13000) *and any water*
10 *quality control policy adopted by the state board.*
- 11 (f) Recommend to the state board projects for the reduction
12 of water pollution which the regional board considers eligible
13 for any financial assistance which may be available through the
14 state board;
- 15 (g) Report to the state board and appropriate local health
16 officer any case of contamination in its region which is not
17 being corrected.
- 18 (h) File with the state board, at its request, copies of any
19 official action with respect to any particular case of actual or
20 threatened pollution.
- 21 (i) Have the power to require any state or local agency to
22 obtain and submit analyses of well water.

C.

An act to amend Section 13011 of, and to add Section 13014 to, the Water Code, relating to reconstituting state officials as a technical coordinating and advisory committee.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13011 of the Water Code is amended to
2 read:

3 13011. The state board consists of nine members appointed
4 by the Governor and the following officers of the State or their
5 nominees:

6 (a) ~~The Director of Public Health;~~

7 (b) ~~The Director of Water Resources;~~

8 (c) ~~The Director of Conservation;~~

9 (d) ~~The Director of Agriculture;~~

10 (e) ~~The Director of Fish and Game.~~

11 Of the nine these members appointed by the Governor, at
12 least one shall be selected from qualified persons engaged in
13 each of the following fields:

14 (a) Production and supply of domestic water;

15 (b) Irrigated agriculture;

16 (c) Industrial water use;

17 (d) Production of industrial waste;

18 (e) Public sewage disposal;

19 (f) City government;

20 (g) County government.

21 Of the two members appointed by the Governor who are not
22 selected from qualified persons engaged in a field specified in
23 this section, one member shall be a person, not employed by
24 any governmental agency, from a responsible organization
25 associated with both recreation and wildlife, and one member
26 shall be a person not specifically associated with any of the
27 foregoing interests representing the public at large.

28 Insofar as reasonably practicable the Governor shall appoint
29 a member from each of the nine regions defined in Section
30 13040.

31 Of the members originally appointed to the state board,
32 three members shall be appointed for a term of two years com-
33 mencing on the effective date of this act; three members shall
34 be appointed for a term of three years commencing on the
35 effective date of this act; and three members shall be appointed
36 for a term of four years commencing on the effective date of
37 this act. Thereafter, all members shall be appointed for a term
38 of four years. Vacancies shall be immediately filled by the
39 Governor for the unexpired portion of the terms in which
40 they occur.

- 1 SEC. 2. Section 13014 is added to said code, to read:
2 13014. The following officers of the state or their nominees
3 shall act as a technical coordinating and advisory committee
4 to the state board but shall not be members thereof:
5 (a) The Director of Public Health;
6 (b) The Director of Water Resources;
7 (c) The Director of Conservation;
8 (d) The Director of Agriculture;
9 (e) The Director of Fish and Game.

D.

*Assembly Joint Resolution No. ----
Relating to water pollution*

1 WHEREAS, The control of pollution of the waters of this
2 nation is fast becoming one of the most pressing problems
3 faced by conservationists desiring to preserve our water re-
4 sources for the future; and

5 WHEREAS, Although vast improvement has been made in
6 recent years in many areas in the control of water pollution,
7 there yet remains much which must be done to properly pro-
8 tect the water resources; and

9 WHEREAS, The ever increasing pressure of an expanding
10 population has extended the burden of protecting our water
11 purity to every level of civilian and governmental activity;
12 and

13 WHEREAS, Federal governmental agencies are presently di-
14 rected, in keeping with the Federal Water Pollution Control
15 Act, to do no more than cooperate with the Department of
16 Health, Education and Welfare in controlling pollution from
17 any property over which the agencies have jurisdiction; and

18 WHEREAS, The State of California has enacted laws to con-
19 trol pollution of its waters and is endeavoring to maintain
20 high quality water for all beneficial uses; and

21 WHEREAS, There is a strong belief in California that both
22 federal and state waste discharges should be controlled, and
23 the California State Legislature is now considering such legis-
24 lation; such legislation to apply to state agencies; and

25 WHEREAS, In direct implementation of the declared policy
26 of Congress and as necessary to provide effective control of
27 water pollution which may adversely effect the health and
28 welfare of the public, S. 649 of the 88th Session as originally
29 introduced would have required a permit from the Department
30 of Health, Education and Welfare for any federal agency to
31 dispose of any matter into waters of the United States; now,
32 therefore, be it

33 *Resolved by the Assembly and Senate of the State of Cali-*
34 *fornia, jointly, That the Congress of the United States is*
35 *memorialized to favorably consider a permit system for federal*
36 *agencies disposing of wastes into waters of the United States;*
37 *and be it further*

38 *Resolved, That the Chief Clerk of the Assembly be hereby*
39 *directed to transmit copies of this resolution to the President*
40 *of the United States, to the President pro Tempore of the*
41 *Senate, to the Speaker of the House of Representatives, and*
42 *to each Senator and Representative from California in the*
43 *Congress of the United States.*

E.

Assembly Concurrent Resolution No. ---—Relating to water pollution by detergents.

1 WHEREAS, The Subcommittee on Water Pollution of the
2 Assembly Interim Committee on Water has completed a two-
3 year study of the biodegradability of synthetic detergents; and

4 WHEREAS, Said committee recommended in its report that
5 the State Water Quality Control Board observe carefully the
6 actual experience with LAS-type and other new detergents and
7 advise the Legislature if difficulties occur from their use; and

8 WHEREAS, The report of a study by the State Water Quality
9 Control Board, State Department of Water Resources, and
10 State Department of Public Health pursuant to Section 103026
11 of the Water Code shows the progress already made in control
12 of pollution from detergents and notes the advancements made
13 by the detergent industry in converting from hard (ABS-type)
14 detergents with a low level of biodegradability, with a hopeful
15 solution to the major problems when such conversion is com-
16 pleted; now, therefore, be it

17 *Resolved by the Assembly of the State of California, the*
18 *Senate thereof concurring,* That the State Water Quality Con-
19 trol Board is directed to continue to study the effect of biode-
20 gradable detergents on the quality of the waters of the state;
21 and be it further

22 *Resolved,* That the board report briefly to the Legislature at
23 the 1967 Regular Session on the results of its study including
24 recommendations as to whether or not standards of biodegrad-
25 ability for detergents should be enacted into law; and be it
26 further

27 *Resolved,* That the Chief Clerk of the Assembly shall trans-
28 mit a copy of this resolution to the State Water Quality Con-
29 trol Board.

OFFICE OF THE ATTORNEY GENERAL
STATE OF CALIFORNIA

STANLEY MOSK
Attorney General

OPINION

of

STANLEY MOSK
Attorney General

J. M. SANDERSON
Deputy Attorney General

No. 64/97
June 23 1964

THE SAN FRANCISCO BAY REGIONAL WATER POLLUTION CONTROL BOARD requests the opinion of this office on the following questions:

“Does this Regional Board have the power to regulate the discharge of wastes *into* this Region (including sewage and industrial wastes) when such wastes originate *outside* the boundaries of this Region and are conveyed to San Francisco Bay (within this Region’s boundaries) by means of drainage canals, it being understood that such drainage canals would be constructed as part of the California Water Plan?

“Does this Regional Board have power to regulate waste discharges which originate outside its regional boundaries but which enter the Region by means of natural streams?”

The conclusions are:

1. A regional water pollution control board has no authority to prescribe requirements for discharges from works operated by the State of California or by the United States or by a joint venture of the State and the United States.

2. The San Francisco Regional Water Pollution Control Board has no authority to prescribe water discharge requirements for discharges originating outside its regional boundaries and entering the region through natural streams. If the waste is carried by means of drainage canals and discharged into the region, the board would have authority to prescribe requirements.

ANALYSIS

Both of the questions propounded include to some extent the problem of regulating waste discharges which occur outside of the particular region involved but are carried into the region by means of natural stream channels.

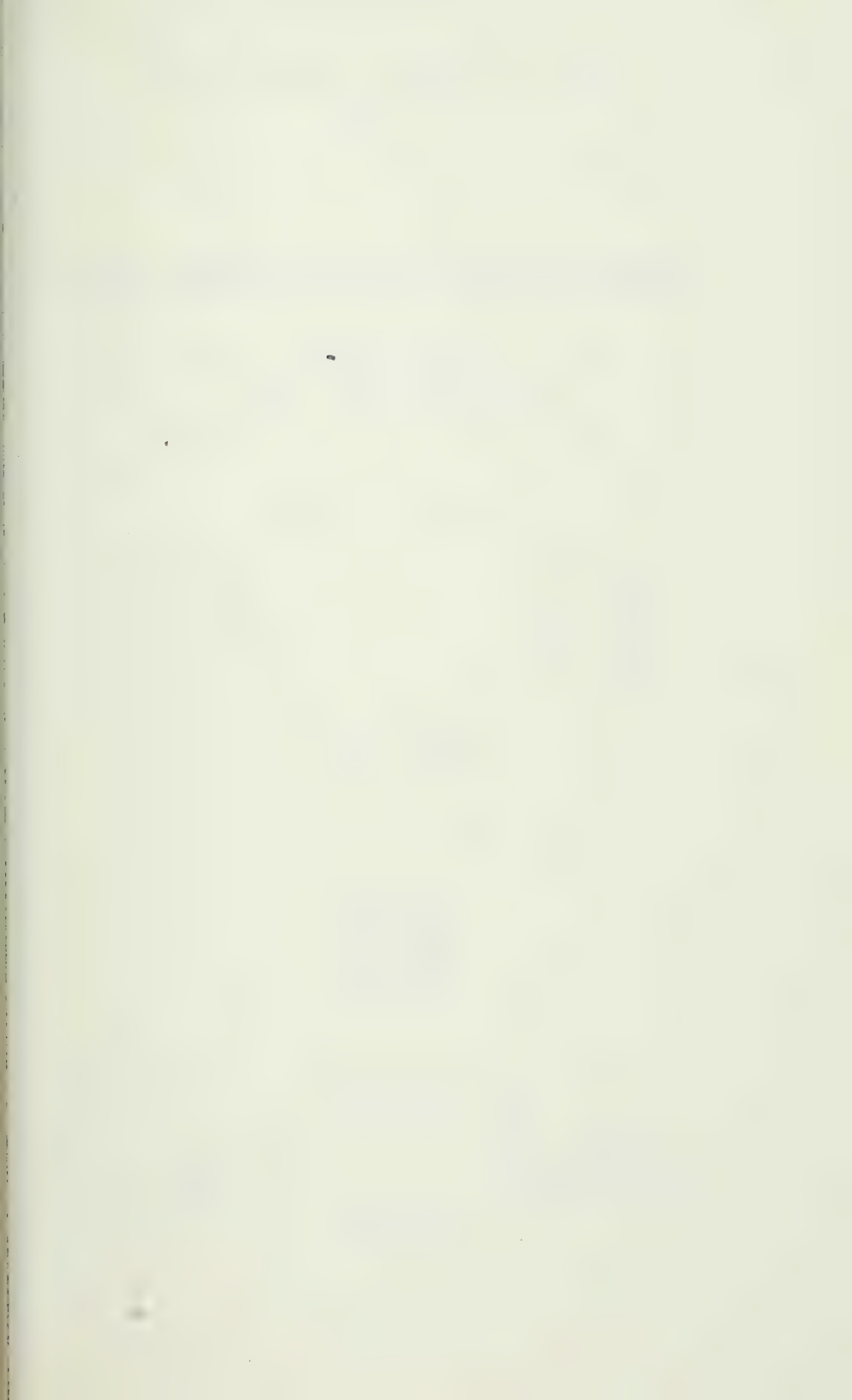
The Water Pollution Control Act was established by the Legislature on a regional basis with each region to be responsible for conditions of pollution or nuisance within that region. Section 13000 of the Water Code provides as follows: “The Legislature further declares that it is necessary to provide means for the regional control of water pollution since problems of water pollution in this state are primarily regional. . . .” (All section references are to the Water Code.) For this pur-

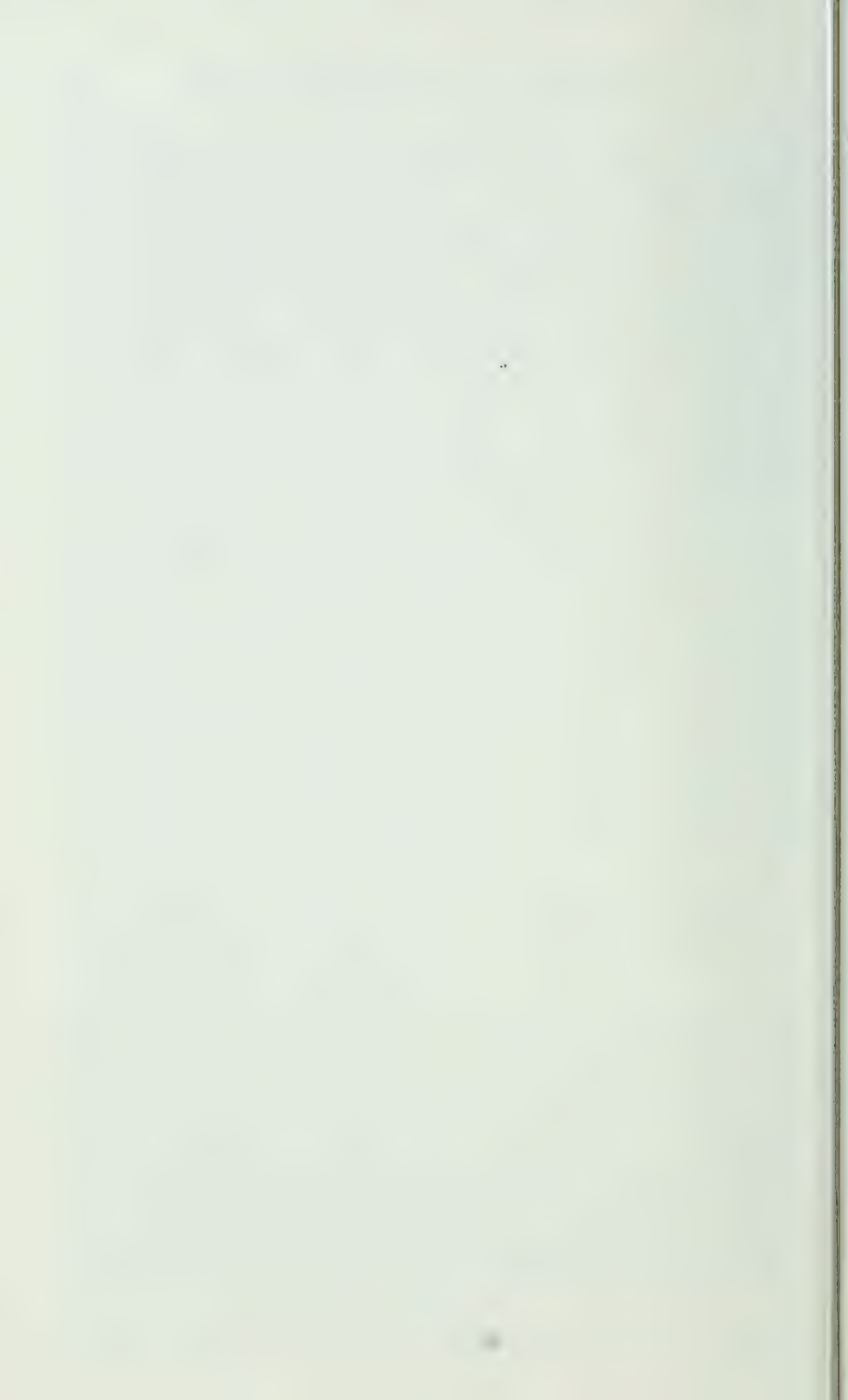
pose section 13040 divides the State into nine separate regions. The entire State is included within these nine regions and no overlap of regions occur. In addition, the control program established by the Water Pollution Control Act is also set up on a regional basis. Section 13053 provides as follows: "Each regional board shall prescribe requirements relative to any particular condition of pollution or nuisance, existing or threatened *in the region.*" (Emphasis added.) Other sections are similarly worded and clearly indicate that a regional board may act with regard to waste discharges only on such discharges as occur in its own region. For example, see sections 13054, 13054.1, 13054.3, 13055, 13060 and 13080. Further, section 13025 provides that the State Board may act when a regional board fails to take appropriate action to correct conditions of pollution or nuisance. (Therefore if conditions of pollution or nuisance were permitted in a region adjoining the San Francisco Bay region and adversely affecting the San Francisco Bay region, the State Board could be called upon to correct the situation.)

It is therefore our conclusion that the San Francisco Bay Regional Water Pollution Control Board does not have power to regulate waste discharges originating outside of its regional boundaries. The regional board, however, would have power to regulate the discharge of wastes by means of drainage canals in which discharges occur within the region. A drainage canal would present no different situation than would that where an industrial concern establishes its plant in one region but conveys by pipeline its discharge into a different region. The region wherein the discharge occurs has the jurisdiction to regulate the nature of that discharge. The material carried by drainage canals, however, might not fall into the definitions of either sewage or industrial wastes. It is possible that drainage canals would carry runoff materials which are not the result of a producing, manufacturing or processing operation, nor would such runoff material constitute sewage. In such a case the discharge would not be of the nature over which a regional water pollution control board would have jurisdiction.

Assuming, however, that the drainage canals carry return waste resulting from the irrigation of farm land, then such water would constitute liquid waste resulting from a producing, manufacturing and processing operation and would, therefore, be subject to the control of a regional water pollution control board.

Assuming further, however, that the drainage canals are operated by the State of California under the California Water Plan or by the United States or by a joint venture of the State and the United States, a regional board has no authority under the Water Code to prescribe requirements upon either of those two agencies. The regional board's authority to prescribe requirements applies to persons as that word is defined in sections 19 and 13005. Since neither the State of California nor the United States is mentioned in that section, the regional board has no legal authority to prescribe requirements for discharges by either of those agencies. 45 Cal. Jur. 2d, *Statutes*, §§ 123, 133 (1958). The regional board could, of course, make recommendations to these agencies to assist them in developing programs and projects which would avoid the creation of conditions of pollution or nuisance.





ASSEMBLY INTERIM COMMITTEE REPORTS
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SALINE CONVERSION AND NUCLEAR ENERGY

A REPORT OF THE
ASSEMBLY INTERIM COMMITTEE ON WATER
TO THE CALIFORNIA LEGISLATURE
House Resolution 501 (1963 Regular Session)

MEMBERS OF COMMITTEE

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December 1964



Published by the

**ASSEMBLY
OF THE STATE OF CALIFORNIA**

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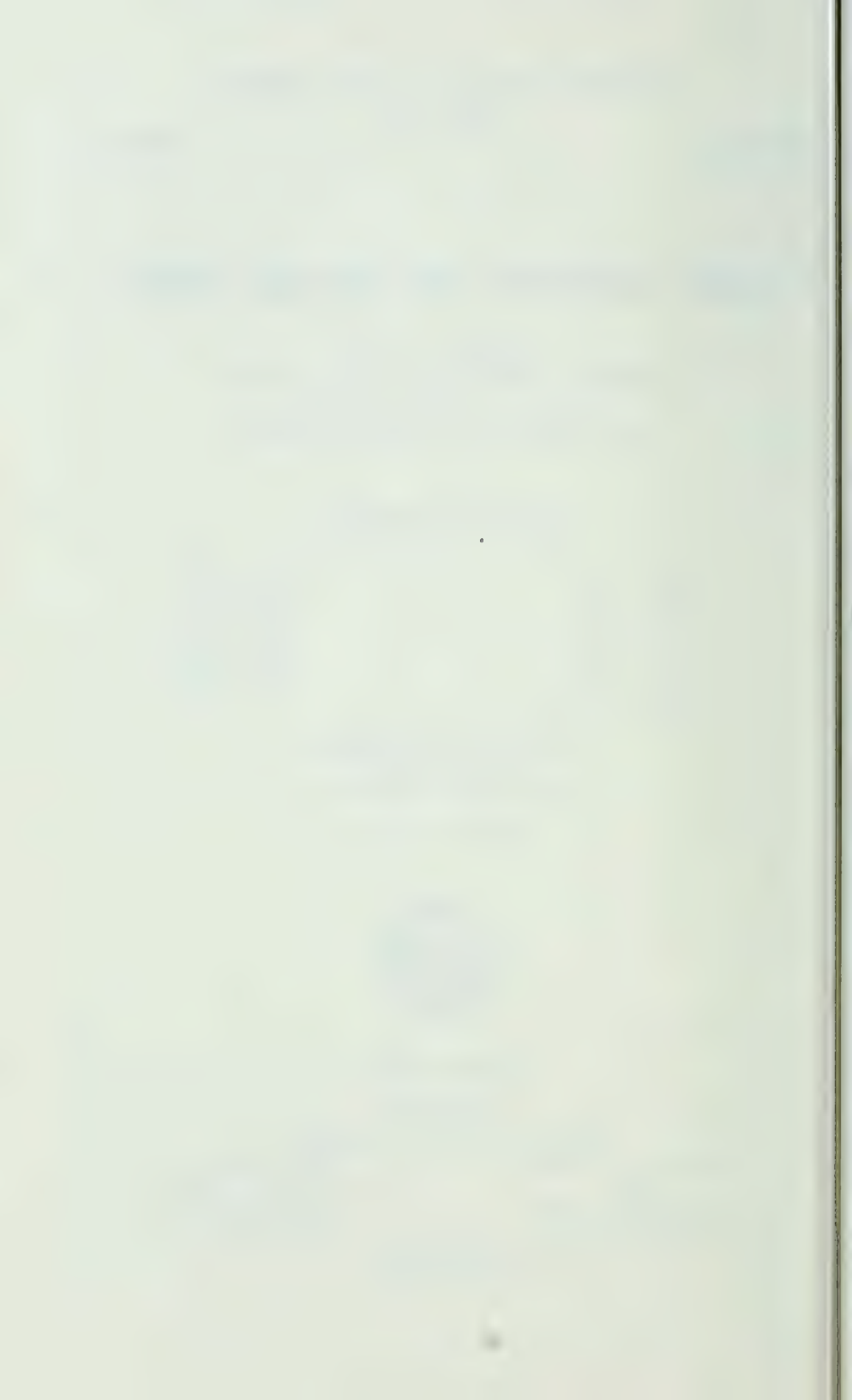
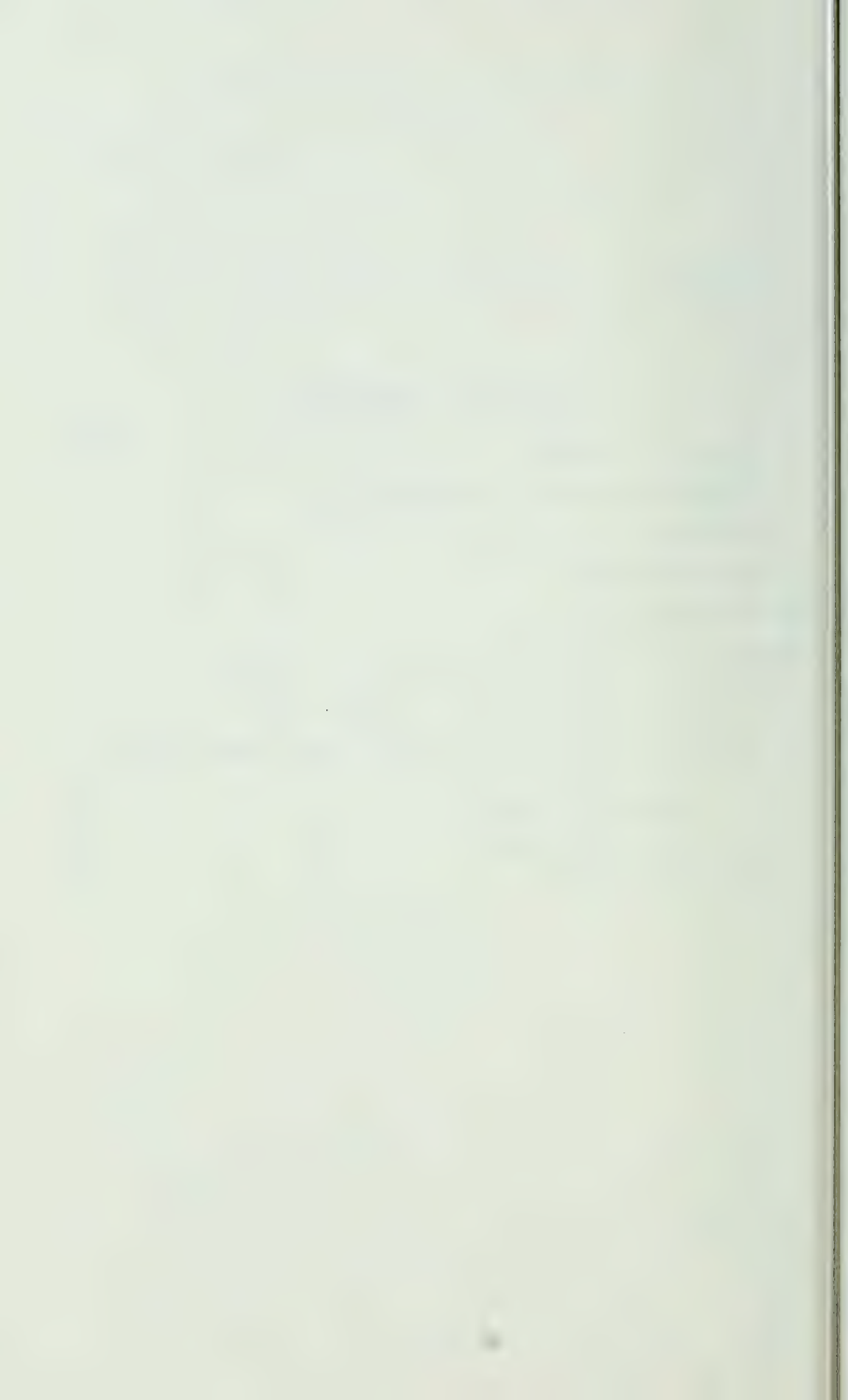


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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WATER
December 31, 1964

HONORABLE JESSE M. UNRUH,
Speaker of the Assembly
MEMBERS OF THE ASSEMBLY
State Capitol
Sacramento, California

Gentlemen:

I have the pleasure to transmit herewith the latest progress report of the Assembly Interim Committee on Water covering recent developments in saline conversion and nuclear energy as they apply to the water problems of California and specifically to the State Water Project. The report was prepared by the Subcommittee on Saline Conversion and Nuclear Energy and was adopted by the full committee.

Respectfully submitted,

CARLEY V. PORTER, Chairman
Assembly Interim Committee on Water

Hale Ashcraft
Frank P. Belotti
John L. E. Collier
Gordon Cologne
William E. Dannemeyer *
Pauline L. Davis (with some reservations)
Houston I. Flournoy
Myron H. Frew
Charles B. Garrigus

Burt M. Henson
Harvey Johnson
Frank Lanterman
Charles W. Meyers
Robert T. Monagan
John P. Quimby
John C. Williamson
Edwin L. Z'berg

* For additional comments by Mr. Dannemeyer see page 27.

SUBCOMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WATER
December 24, 1964

ASSEMBLY INTERIM COMMITTEE ON WATER
Assembly Post Office Box 38
State Capitol
Sacramento, California

Gentlemen:

Transmitted herewith is the report of the Subcommittee on Saline Conversion and Nuclear Energy of the Assembly Interim Committee on Water. The subcommittee's report is entitled "Report on Saline Conversion and Nuclear Energy."

The report reviews developments in the field of saline conversion and nuclear energy which have occurred since its last report two years ago. These developments have been rapid since both saline conversion and nuclear energy are presently being evaluated for major application to water problems here in California.

The subcommittee recommends that the Metropolitan Water District of Southern California proceed with its studies to determine the feasibility of constructing a large-scale sea water conversion plant. The timing of the engineering studies for this large scale plant coincides closely with the reconstruction of the Point Loma Demonstration plant by the Department of Water Resources and the Office of Saline Water, United States Department of the Interior. It is not clear from the evidence available to the subcommittee whether the Point Loma plant will serve any useful purpose if the much larger plant is constructed by the Metropolitan Water District of Southern California at about the same time. Therefore, the subcommittee has recommended that the Department of Water Resources exercise caution in proceeding with the reconstruction of the Point Loma plant until it can be determined that a useful purpose to the state exists.

The subcommittee has already communicated its major recommendation to the interested parties because of the limitations of time involved. This recommendation is that the Department of Water Resources, the Los Angeles Department of Water and Power, the California Power Pool Companies, the Atomic Energy Commission, the water contractors and other interested groups cooperatively study the unresolved problems discussed in the body of the report and report to the Legislature at least 30 days prior to committing the state to an energy source for the State Water Project pump lifts but in any event no later than June 1, 1965. This recommendation was made because of the subcommittee's finding that more work needed to be done before a commitment is made. The parties listed in the recommendation have already replied to the chairman and indicated their intentions to proceed in line with the recommendation.

The subcommittee chairman and the members of the subcommittee wish to express their appreciation for the staff assistance received from the office of the Legislative Analyst and for the cooperation and excellent testimony presented by witnesses.

Respectfully submitted,

CARLEY V. PORTER, Chairman
Subcommittee on Saline Conversion and
Nuclear Energy

Hale Ashcraft
Gordon Cologne
William E. Dannemeyer *
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Myron H. Frew
Burt M. Henson
John C. Williamson

* For additional comments by Mr. Dannemeyer see page 27.

FOREWORD

It should be understood in reading the following report that it was prepared between the dates of November 5 and December 8. Furthermore, any and all references and conclusions with regard to nuclear reactor systems are made almost solely on the basis of the testimony submitted to the Assembly Water Committee at the November 5 hearing. The Legislature and its Water Committees are not provided with technical staffs to make detailed engineering analyses and judgments between the different relatively new nuclear systems presently being developed. All references to the seed-blanket reactor (LSBR) in the report are based upon information presented to the Assembly Water Committee by the Department of Water Resources. In the report the term "experimental" is used in contrast to "commercially available" reactors to describe a reactor design on which more research or development work is required before construction can be undertaken. The AEC prefers the term "developmental" instead of "experimental."

I. FINDINGS

The subcommittee found that developments in saline conversion and nuclear energy have been both rapid and spectacular during the last two years. These developments have brought both technologies to the point of final determination of feasibility for limited application to California's water problems.

The Metropolitan Water District is making engineering studies of the feasibility of immediate construction of a sea water conversion plant in the size range of 50 to 150 million gallons per day. The Department of Water Resources is working with the Atomic Energy Commission on the possibility of constructing a seed-blanket, thorium-fueled reactor to supply pumping energy for the State Water Project. If actually constructed, the saline conversion plant and the nuclear reactor would bring to fruition the work undertaken in 1957 by this subcommittee and its predecessor subcommittees to establish the practicability of using saline conversion and nuclear energy in solving California's water problems.* The subcommittee commends all federal, state and local officials as well as the University of California, business firms and many private individuals who have contributed toward the approaching goal.

The subcommittee found that the Department of Water Resources has committed itself by a Memorandum of Understanding to the joint construction with the AEC of a seed-blanket reactor before all the study and evaluation recommended by the Fluor Corporation in its report entitled "Energy Source Study" has been completed and before the views and testimony presented before the subcommittee at its hearing have been adequately considered. The subcommittee found that testimony at its hearing generally indicated it is premature to concentrate on any given source of pumping energy at this time.

* See the following Assembly Interim Committee Reports: *Report of Subcommittee on Water Project Uses for Atomic Power*, Vol. 13, No. 16 (1955-57); *Power for Water*, Vol. 13, No. 27 (1957-59); *Report of Subcommittee on Saline Conversion and Nuclear Energy*, Vol. 26, No. 3 (1959-61); *Saline Conversion and Nuclear Energy*, Vol. 26, No. 7 (1961-63).

II. RECOMMENDATIONS

The subcommittee recommends that the Metropolitan Water District proceed with studies to determine the feasibility of constructing a large-scale sea water conversion plant.

The subcommittee recommends that the Department of Water Resources not make any commitments for joint construction with the AEC of a seed-blanket experimental reactor until (1) an engineering review has been made comparing this reactor with other commercially available reactors and demonstrating the desirability of including this reactor in the State Water Project from the point of view of the State of California and the water contractors, (2) negotiations have been undertaken with the California Power Pool Companies on the purchase of power for project pumping, whether as a major or supplemental source, and a contract has been executed for the sale of Oroville-Thermalito power, and (3) all available data including several recent changes directly involving the power needs of the State Water Project have been established and more fully studied as recommended by the Fluor Corporation report entitled "Energy Source Study."

The subcommittee has always been anxious that the state provide the lowest cost energy for pumping in the State Water Project. The Fluor Report and other recent work have greatly narrowed the choice of energy sources to only a few remaining alternatives. As befits a possible investment of \$80 million in an initial nuclear reactor and a similar amount in a second reactor in the near future, careful study will best serve the needs of the state while refraining from premature decisions. The Fluor Report has indicated that the state has about one year remaining before it must make an initial decision on the first major sources of pumping energy. The subcommittee recommends that the Department of Water Resources, the Los Angeles Department of Water and Power, the California Power Pool Companies, the AEC, the water contractors and other interested groups use this time as profitably as possible in cooperative study of the unresolved problems discussed in the body of this report and such others as may be pertinent and report to the Legislature at least 30 days prior to committing the state to an energy source but in any event no later than June 1, 1965.

III. INTRODUCTION

The Subcommittee on Saline Conversion and Nuclear Energy had its origin in 1957 when then Assemblyman Jack Beaver conceived the idea that nuclear energy might at some future date become a source of low-cost energy for the pump lifts of the State Water Project. Although the project had not been fully authorized and financing had not been provided, Assemblyman Beaver began steps to evaluate the usefulness of nuclear energy. These early evaluations, as set out in the subcommittee's report of 1957, pointed out that "present estimates of the Atomic Energy Commission that atomic energy will become competitive with conventional sources by 1965 are predicated on private development. Consequently, with the historically lower cost of public financing and extended amortization, atomic power may not only be economically feasible but may also be the cheapest source by the time power is needed for pumping in the Feather River Project."

It soon became evident that if a reactor offered low cost energy for transporting water into southern California, this same low-cost energy could also be used to convert sea water. The development of low cost conversion processes could eliminate transporting water over long distances and provide a more direct and easily managed water supply. Assemblyman Beaver secured funds to provide a small staff in the Department of Water Resources to monitor the state's interest in developments involving saline conversion and nuclear energy. Over the intervening years the subcommittee worked closely with the Department of Water Resources in shaping the state's program for nuclear energy and saline conversion. Continuity in the subcommittee's work was maintained by utilizing the staff services of the Office of the Legislative Analyst. Members of that staff have kept contact with the department, the University of California, and other organizations involved in pertinent work so that the subcommittee could be fully informed on all developments.

Since 1957, the subcommittee has produced biennial progress reports which have recorded the developments in nuclear energy and saline conversion that appeared to have significance to the state's water problems. The work of the Department of Water Resources and the University of California have been supported as well as the activities of the Atomic Energy Commission and the Office of Saline Water. An effort was made to secure an early demonstration of the usefulness of saline conversion and nuclear energy when these two techniques were coupled in the initial proposal for the Point Loma sea water conversion demonstration plant. When it became impossible to locate the reactor at the chosen site, a conventional oil-fired boiler was used instead. Since the conversion equipment being demonstrated and the reactor were too small to demonstrate an optimum coupling, no technical loss occurred,

but the opportunity to demonstrate jointly the potential of two new developments was lost.

During the period since 1957, many technical developments have occurred in both saline conversion and nuclear energy. Most of the credit for these developments goes to the Atomic Energy Commission, the Office of Saline Water and the Congress which has authorized extensive research and development programs and provided adequate funding for them. The subcommittee is able to report that the initial goals of applying both saline conversion and nuclear energy to the solution of California's water problems are nearing achievement. Emphasis must still be placed on the term "nearing" for the goal is not reached at this time.

IV. SALINE CONVERSION, HEARING OF DECEMBER 17, 1963

In its last report, the subcommittee was largely guided by the then current technical thinking that there was little possibility for any substantial cost reduction in conversion processes unless basic technological breakthroughs occurred. To this end Congress and the Office of Saline Water had just revised the federal conversion program to add major emphasis on basic research as recommended by the Woods Hole Conference of the National Academy of Sciences.

Meanwhile, Dr. Phillip Hammond, while working at the Los Alamos Laboratories and at Oak Ridge under the auspices of the Atomic Energy Commission, had produced a new concept of optimizing the size of a combined electric generation and sea water conversion plant using a reactor for energy to produce up to one million acre-feet of water per year and several thousand megawatts of electric energy. While some new design concepts were involved, the rumored low cost of about \$35 per acre-foot was the result of greatly increasing the size of the plant and the use of low-cost nuclear energy.

The purpose of the subcommittee's hearing in Fullerton on December 17, 1963 was to secure testimony on various studies that had been made of large scale combinations of electric generators with conversion equipment and using reactors for a heat source. Besides reviewing the progress of the saline conversion research program of the University of California, Professor Everett Howe also discussed the concepts involved in Dr. Hammond's work. Subsequent to the hearing, a report on Dr. Hammond's work entitled, "Large Nuclear Powered Sea Water Distillation Plants" dated March 1964, was released by the United States Office of Science and Technology. This report reviewed the Hammond concept and generally supported its ability to produce water at 20 to 25 cents per thousand gallons and electric energy at 2.3 to 2.5 mils per KWH in about 1975 if adequate development work is done in the intervening years. Because this publication by the federal agencies involved in the work has now been issued, no further data will be provided in the report.

The San Diego Gas and Electric Company testified at the hearing on a study it had completed of a 25-million-gallon-per-day multiple-effect flash evaporator using steam supplied from one of the company's steam-electric generating stations. The study showed that converted sea water could be produced at 41.1 cents/1000 gallons or \$134 per acre-foot, based upon 90 percent load factor, a 6 percent annual fixed capital charge and current fuel costs.

A companion study was made by the City of San Diego to determine whether it could use this water. The city concluded it was unable to utilize the output of the plant because, after the necessary blending of the product water with other water supplies, the production of the plant would substantially exceed the minimum daily demand of the city for water. Furthermore, any reduction in the output of the conversion unit to meet lesser demands would have increased the unit costs

of water sharply. The city studied two alternatives, that of pumping the product water to a major storage reservoir and remineralization of the product water at the conversion plant site for direct pumping into the city's system. The first alternative would have resulted in water costing 46.6 cents/1000 gallons or \$152 per acre-foot. The second would have cost 44.7 cents/1000 gallons or \$145.75 per acre-foot. This price was approximately twice the cost of imported water from the State Water Project. The proposal for a 25-million-gallon-per-day conversion plant was abandoned, but it provided valuable information on the costs of such a plant computed by responsible operating agencies and based on their own knowledge of current operating costs.

The Fluor Corporation described a study of a plant sized for 140,000 acre-feet per year, using nuclear heat and today's technology. This plant, financed by a public agency would produce water at \$101.30 per acre-foot if producing water only, or at costs ranging down to \$83 per acre-foot if various combinations of nuclear-powered steam electric generation were added.

In its testimony the Department of Water Resources stated that "our analyses of large-scale sea water conversion possibilities have indicated that favorable economic comparisons for municipal and industrial water supplies between conversion and extensive imports from northern California may be achieved by projects to be constructed 25 years hence." (Transcript of December 17, 1963, p. 70). In Bulletin 136, p. 145, the North Coastal Investigation, the department also made the same observation.

The purpose of the hearing had been to evaluate whether recent rapid developments in sea water conversion and nuclear energy could supply water competitive with additional imported supplies from the north coastal area by approximately the year 1985 or 1990 when new supplies may be needed. The answer seemed to be yes. More consideration to this conclusion is not given in this report because major events occurring in 1964 overshadowed the conclusions reached in the December 1963 hearing.

V. SALINE CONVERSION, HEARING OF NOVEMBER 5, 1964

During the summer of 1964 the Metropolitan Water District of Southern California reached an agreement with the Office of Saline Water for joint financing of a study involving preliminary design for a sea water conversion plant to be constructed by the district to augment its surface water supplies. This step was extremely important because of the proposed 1970 completion date for the plant, because the Metropolitan Water District has scheduled this water into its supplies available to meet increased demands during the next few years, and because a combination of events leads the district to believe that the plant will be economic for the particular timing and uses proposed. The district proposes to undertake immediate construction of the plant if the 15 months' study shows the expected feasibility.

Because of the significance of the move to saline conversion by the Metropolitan Water District, testimony on this project was requested from the district at the subcommittee's second hearing, which was held in Sacramento on November 5, 1964. The district testified that its interest in conversion had begun when it contracted for a study in 1959 which showed that, based on conservative assumptions with regard to expected technological advances, fresh water from a combination nuclear steam plant and multistage flash distillation plant producing 140,000 acre-feet per year would cost about \$102 per acre-foot if scheduled for completion in 1972, and that under optimistic predictions of future technological advances, a water cost of \$77 per acre-foot could be realized. Early in 1964 the district approved a program leading toward the acquisition of a suitable site for a sea water conversion plant of approximately 150,000-acre-foot-per-year capacity and authorized consultations on the possibility of constructing such a plant.

On August 18, 1964, the district signed a contract with the Office of Saline Water for a joint study to determine the engineering, economic feasibility, and preliminary design of a combination power and desalting plant in the size range of 50 million to 150 million gallons of water per day and 150 to 750 megawatts of electric power production. The contract covers all aspects of plant location, economics, disposition of product water and electric energy, detailed costs and preliminary designs and specifications. The district will pay one-third and the Office of Saline Water two-thirds of the cost of the work which is estimated to total \$450,000.

The district testified that it is undertaking this project with a hoped-for completion date of 1970 even though it will begin to receive water from the State Water Project by 1972. It is doing this for the following reasons:

1. The period prior to delivery of water from the State Water Project is a critical supply period for the district because of questions regarding the sufficiency of the Colorado River water supply of the district. The product water from the plant would be a useful auxiliary source of

supply if there were any delay in completing the State Water Project or the district's connecting facilities to receive the water.

2. The district's service area will be supplied water through three long aqueducts which cross the San Andreas Fault. The conversion plant could serve as an emergency water supply should a major geologic disturbance disrupt the water supply through these three aqueducts.

3. The distilled water would improve the quality of the district's supply. Depending on the location chosen for the plant, the distilled water may be transported to Orange County where it could eliminate the need to add a softening plant and would provide a better water for use in a fresh water barrier to repel sea water intrusion.

4. The plant will furnish the district with reliable cost figures for sea water conversion to be used in evaluating the various regional plans for transporting additional water supplies to augment the supplies of the Pacific Southwest.

The subcommittee's hearing clearly showed that the Metropolitan Water District has evaluated recent developments favorably enough to conclude that it should construct a large-scale sea water conversion plant if more detailed study and design work substantiate these conclusions. If the district's conclusions are substantiated by more detailed study, it will mean that the day when large-scale sea water conversion will be economically feasible under certain conditions is at hand. A year ago, the subcommittee concluded that large-scale conversion would no doubt be competitive with importation of water from the north coastal area in 1985 or 1990. The recent action by the Metropolitan Water District indicates that because of certain circumstances, the present technology of sea water conversion, nuclear energy and large steam-electric plants may have developed to the point that conversion is economically feasible as a backup to an initial supply of water from the State Water Project.

Testimony from Atomics International, a southern California firm which designs and constructs reactors, discussed a recent proposal it had made to construct a combination saline conversion and electric generating plant with energy derived from a reactor. The company stated:

"The United States Atomic Energy Commission has publicly announced its interest in seeing a large sodium graphite reactor demonstration power plant built, and its readiness to provide financial support for the engineering of such a project and for certain of the fuel cycle costs in the initial year's operation. Taking such support into consideration, including Atomics International's fixed price for the energy plant, the water plant cost estimates, and estimates for the owner's costs during construction, it appears that . . . electric power could be sold for 4.0 mills kwhr and water produced for 25.6¢/1000 gallons." (Transcript of November 5, 1964, pp. 144-145.)

Ionics, Inc. of Cambridge, Massachusetts, presented a different approach using the electrodialysis process. Ionics proposed transmission of low-cost electric energy from a nuclear electric generating plant to the location of brackish water or water suitable for reclamation on the premise that it is cheaper to transport the electric energy to the elec-

trodiyalysis plant than transport product water from a sea water conversion plant to the point of use. According to the data of Ionics, water produced from an electrodiyalysis plant in the size range of 50 to 150 million gallons per day would cost between 9 and 16 cents per thousand gallons. As a first step toward the construction of such a large scale plant, the company proposed the construction of an electrodiyalysis demonstration plant of 5 to 10 million gallons per day capacity which it is prepared to build now. Ionics also stressed the need for continued development of brackish water conversion processes to provide water supplies for municipalities and local areas in California.

On September 22, 1964, the Secretary of the Interior transmitted a "Program for Advancing Desalting Technology" to the President who approved it on October 25. The program includes an increase in the expenditure authorization of the Office of Saline Water to \$200 million. Emphasis will be placed on distillation and membrane processes, particularly reverse osmosis. The program also states:

"An experimental facility is planned on the West Coast where full-scale components will be subjected to conditions approximating those anticipated in the finished plant. Such a facility with a common supply of steam and sea water will provide a much needed central location for comparing alternate component designs by standardized methods, and for evaluating the group performance of components. The test station will be particularly necessary for the evaluation of hydraulic design which is still largely based on operating experience."

In addition to the West Coast test facility the program includes the start of construction of at least one 50-million-gallon-per-day plant by 1967.

After the President requested the preparation of the above report last summer, the Director of Water Resources wrote to the Secretary of Interior on August 10, 1964 and proposed that the Department of Water Resources cooperate with the Department of Interior in the construction of a combination electric power and saline water conversion plant utilizing nuclear energy. The Department of Water Resources has evaluated a possible site in Ventura County as well as in the Tehachapi Mountains for the construction of a nuclear plant to supply electric power for the pumps of the State Water Project. Included in its proposed plans for a possible plant in Ventura is a provision for adding a sea water conversion plant of approximately 15 million gallons per day capacity. The department has suggested that if this nuclear plant is built in Ventura, the conversion plant should be associated with the federal test site. The Director of Water Resources urged the subcommittee to consider participation by the state in the construction of the test facility and the 50-million-gallon-per-day plant.

The problems and the costs involved in this proposal by the Department of Water Resources are sufficiently large to warrant careful study and the time is available for such study. The need for comprehensive economic analyses and development of brackish water processes to produce local water supplies should not be overlooked. The subcommittee

has not had time to evaluate the department's proposal but will consider it in detail in the future.

Another event of importance to the state occurred in February 1964 when the Secretary of Interior turned the Point Loma demonstration plant over to the Navy for transport to Guantanamo Bay, Cuba, to provide a water supply at that base. It was agreed between the Departments of Water Resources and Interior that a new plant should be constructed at Point Loma which would replace the state's investment in the original plant. The new plant would be of the same size but would be constructed as a one-fiftieth slice of an up-to-date design for a 50-million-gallon-per-day flash distillation plant. The money to construct the new plant would be furnished by the Navy and the replacement of the plant would be at no cost to the state.

The subcommittee attempted to determine whether the construction of the replacement plant at Point Loma would return full value if the Metropolitan Water District is to construct a full-scale plant on the order of 50 to 150 million gallons per day, based on a determination of economic feasibility and using substantially the same design. If the replacement plant at Point Loma can be constructed and operated on such a schedule that it will provide useful data for design of the district's plant it may serve a useful purpose, otherwise the wisdom of reconstructing the plant appears questionable. This view is based on the probability that a small test plant at Point Loma would have no value if a full-scale plant were simultaneously being built by the Metropolitan Water District. The subcommittee could not determine that the timing of the reconstruction of the Point Loma plant would permit it to serve a useful purpose if the district proceeds with immediate construction of a 50-to-150-million-gallon-per-day plant. Therefore, the subcommittee recommends that the Department of Water Resources exercise caution in proceeding with this proposal until it can be determined that the reconstructed plant will serve a useful purpose to the state.

VI. ALTERNATIVE ENERGY SOURCES FOR STATE WATER PROJECT PUMPING

FLUOR REPORT

A second objective of the subcommittee's hearing on November 5, 1964 was to review the report prepared by the Fluor Corporation for the Department of Water Resources on alternative energy sources for pumping in the State Water Project. This report by the Fluor Corporation, which had been 22 months in preparation was a broad evaluation of all possible sources of pumping energy ranging from nuclear reactors and off-peak electric energy purchases to importation of coal, oil and natural gas.

The report narrowed down the choice to three cases:

Case 1 involved state-owned nuclear generation as the principal energy source. The small amount of power required for project operations during the period through 1970 would be purchased. The state would construct the first unit of a two-unit nuclear generating station by 1971. The second unit would be installed in 1976, and the two units would then supply all of the pumping energy requirements. (All energy in all three cases would be transmitted over the transmission systems of the California Power Pool Companies.)

Case 2 used energy purchased from the California Power Pool Companies except that from 1967 through 1982 energy obtained from the Northwest-Southwest Intertie would also be used. Thereafter, all energy would be supplied by the Power Pool.

Case 3 covered a combination of Cases 1 and 2. From 1967 through 1981, energy would be obtained from the Northwest-Southwest Intertie supplemented by energy from the California Power Pool Companies. In 1982, a state-owned nuclear generating plant would be placed in operation and would supply the energy to the end of the study period. (Pp. II-2 and II-3 of the Fluor Corporation Report entitled, Energy Source Study, September 1964.) The major differences between Case 1 and Case 3 are the date for construction of a nuclear power plant by the state, that is, 1971 or 1982 and the length of time the state would buy power, once again, whether until 1971 or 1982.

Figures prepared by the Department of Water Resources from cost data developed by Fluor indicate costs per acre-foot for state water delivered at Perris Reservoir in 1992 will be \$44.90 for Case 1 and \$47.40 for Case 2, compared to \$61.20 previously estimated several years ago by the department for power approximately equivalent to Case 2. A general decrease in the value of power in the last few years, while resulting in some loss of revenues from sale of project generated hydroelectric power, will overall result in a major reduction in water costs for water contractors.

The department briefed the conclusions of Fluor as follows:

"Fluor concluded that Case 2 should not be adopted on the basis of the Power Pool proposal of December 1963, and that comparisons show that no firm choice can be made between Case 1 and Case 3 on the basis

of the final report. Fluor recommends that the state reevaluate both Case 1 and Case 3 on the basis of firm data that may be developed in negotiations between the state and other agencies. The report indicates the state may delay a final decision until as late as about September 1965 without incurring any penalty." (Statement of Director of Water Resources, pp. 2 and 3.)

Considerable confusion has occurred because during the preparation of the Fluor Corporation Report, the Department of Water Resources has been negotiating a cooperative agreement with the AEC for the construction of a seed-blanket reactor for pumping power. The department may have proceeded on the basis of the expectation expressed in an interim report that the final Fluor Report would recommend immediate construction of a nuclear reactor as the lowest cost energy source. As noted above, the report did not make this recommendation but instead found no basis to select Case 1 over Case 3 which deferred construction of a reactor until 1982. Furthermore, Fluor stated on page II-6 of its report that changed conditions "would have an effect on the findings of the study. Further evaluation should be made using values developed as a result of negotiations" with the utilities.

However, the department testified that it has signed a Memorandum of Understanding with the AEC leading to the negotiation of a contract to construct the seed-blanket reactor for operation by 1971. Since Fluor did not specifically recommend this course of action, a course which Fluor made clear at the subcommittee's hearing that it had not studied or evaluated, the department's determination to proceed appears to be based on the explanation contained in the following paragraph taken from its statement to the subcommittee:

"The final Fluor Report confirmed the findings of Fluor's interim reports that state-owned nuclear power plants would provide the lowest cost power source for project pumping. Fluor's final report considered two plans for staging the nuclear plants. In one plan the first unit of a two-unit nuclear plant would be placed in operation in 1971 and the second unit in 1976. In the other plan, the nuclear plant would be placed in operation in 1982. Based on cost levels now prevailing, the Fluor study shows no significant difference in project pumping costs between the two plans. Such a study, of course, is purely academic. There is no assurance that a decision by the state in 1964 to build a nuclear plant in 1982 could ever be carried out. If the state were to proceed on this basis its position to bargain effectively for low-cost power from existing sources would be anything but strong. If the State Water Project is to be assured of the benefits of low-cost power, positive steps must be taken now to put the state in position to proceed with construction of a state-owned nuclear power plant.

"It then follows that the proposed AEC-state cooperative arrangement may logically be compared with Fluor's plan for construction of a nuclear plant, the first unit of which would be placed in operation in 1971." (Transcript of November 5, 1964, pp. 27 and 44.)

The two paragraphs quoted above are the sole justification advanced to date for immediate joint construction of a seed-blanket reactor with the AEC. Several aspects of these two paragraphs warrant special consideration. The first sentence of the first paragraph is only partly correct since the Fluor Report also recommended a reevaluation of at least Case 3 on the basis of more current data and after further negotiations with the utilities. On page 10 of the department's statement to the subcommittee is the following promise for further study of Case 2, "On the face of it, it doesn't appear that the above advantages (enumerated in the statement) are particularly substantive, . . . but the department's engineers will further study this matter." The promise and the quoted conclusion are inconsistent.

The first quoted paragraph also states that further study of Cases 1 and 3 is "purely academic." While the type of evaluation used by Fluor in these three cases can only rest on approximations, it is nevertheless the only basis presently available for decision-making by the state. To dismiss the further study recommended by Fluor as academic at this time is equivalent to dismissing as academic the whole Fluor Report. However, the department has already chosen to adopt part of the report to the extent that it justifies immediate construction of a nuclear power plant. Furthermore, the statement that the department must proceed immediately with the construction of a nuclear power plant otherwise "its position to bargain effectively for low-cost power from existing sources would be anything but strong" implies that the department must be committed to a nuclear plant before it can bargain with the utilities for a supplemental or alternative supply of power. This is illogical because if the department has established nuclear energy as its source of power for the State Water Project, there is no need to bargain with the utilities for an alternative source of power and little need for a supplemental source. In other words, the justification for building a nuclear plant cannot rest on prejudging the outcome of negotiations but must be based on the results of the negotiations themselves.

The second paragraph quoted above states that the proposed cooperative construction of a plant with the AEC may "be compared with Fluor's plan for construction of a nuclear plant, the first unit of which would be placed in operation in 1971." The participation by the AEC in the plant is to pay the research and developmental costs for this plant, the extra construction costs for innovations and instrumentation, and finally to provide and warrant the initial core, estimated to last for nine years if operated at 90-percent load factor, for which the state would pay a stipulated rate for energy from the nuclear fuel as the energy is delivered. After the first nuclear core the state would have to provide nuclear fuel. It is possible that some savings may eventually result, but no one can know at this time.

SEED-BLANKET REACTOR

The proposed cooperative seed-blanket reactor must be understood in order to appreciate why the AEC is interested in it and why the

reactor is not the same as the commercial reactors now being used for electric power generation by the electric utilities. The reactor is a new, advanced design reactor which will demonstrate breeding in its initial core. Breeding reactors are reactors which produce as much fuel as they consume. Successful demonstration of breeding will permit using thorium as a major source of reactor fuel and will thereby extend the world's nuclear fuel supplies almost without limit. The reactor will also demonstrate new techniques of pressure vessel construction to house the fuel elements and demonstrate field assembly of the pressure vessel. This permits constructing the reactor to the presently proposed size of 525 mw of electrical power which would be the largest reactor yet constructed. With this technique even larger reactors up to 1,000 mw may be constructed. While all these advances would be demonstrated in the reactor core and fuel assembly, the electrical generation equipment and the light water technique used to transmit heat from the core of the reactor to the heat exchanger will be relatively well-developed and engineered equipment scaled up in size.

The subcommittee has made an effort to obtain information on the advantages and disadvantages of the proposed seed-blanket reactor compared to commercially available reactors for use in the State Water Project. The Fluor Corporation specifically testified that it had not included the seed-blanket reactor in its study for the Department of Water Resources because the department did not ask for it. Fluor further stated that the conclusions of its report were arrived at without considering the seed-blanket reactor because Fluor had not studied it. Therefore, the subcommittee will require further information to establish whether or not the proposed seed-blanket reactor is a wise investment for California.

It should be understood that the AEC has an important interest in demonstrating the seed-blanket reactor and that the pump lifts of the State Water Project may be an ideal place for such a demonstration. The AEC is fulfilling its responsibility. However, it is for the state to independently determine whether the reactor is desirable from its own point of view considering the long term requirements of the State Water Project and the interests of the water contractors. The state's responsibility is to provide an economical and dependable water supply to its citizens. Accordingly, the subcommittee requests that the Department of Water Resources present to the subcommittee the results of a careful objective study of the use of the seed-blanket reactor for the state water project.

The subcommittee has always encouraged innovation and development of new technology whenever and wherever these advances are soundly documented and studied. It still takes that position but suggests that the Department of Water Resources must demonstrate by well-documented analysis and careful study the desirability of the seed-blanket reactor before the state commits itself to construction of it.

The department presently has a posture of being ready to proceed immediately with the construction of the seed-blanket reactor, when discussing the reactor or when negotiating with the AEC, that is inconsistent with its statements to this subcommittee and the Power Pool Companies that no decision will be made on a source of project pumping power until all possible sources of energy have been fully explored and discussed in detail. This dual posture leads to confusion and apprehension regarding the position of the department. For example, in a letter to the Governor dated October 22, 1964 in which the Director of Water Resources transmitted copies of the Memorandum of Understanding between the department and the AEC for construction of the seed-blanket reactor, the director stated:

"In his memorandum, Chief Engineer Golzé points out that positive steps must be taken now to put the state in a position to proceed with construction of a state-owned nuclear power plant if the State Water Project is to be assured of the benefits of low cost power. It is his judgment that final studies substantiate the indicated economics of the proposed arrangement with AEC. Following his recommendation, I have signed the Memorandum of Understanding with AEC for the department.

"I propose to proceed with negotiations with AEC on a draft of contract which could be entered into when the proper authorities have been established. This will be done following established procedures of state government involving the Departments of Finance and General Services. In the meantime, I will be advising, consulting and otherwise conferring with public and private agencies in California regarding the desirability and advantages to be derived from proceeding with the proposed joint arrangement with AEC for a nuclear power plant."

It will be noted that the above language infers only further negotiations on the AEC proposal and not on alternative sources of energy as recommended by Fluor. In transmitting the signed Memorandum of Understanding to Dr. Seaborg, Chairman of the AEC, the director stated:

"I am appreciative of the opportunity afforded through our joint efforts to participate in this impressive undertaking. I believe that substantial benefits will accrue both to the state and to the nation in the contribution of this plant toward the delivery of low cost water in our project and to the advancement of nuclear power technology."

There is no suggestion in the letter of transmittal that any course other than construction of the seed-blanket reactor is under consideration or a possibility. This is reinforced by the language in the Memorandum of Understanding as follows:

"It is the intent of the parties that, subject to any required authorizations and approvals, they will endeavor to negotiate and execute, as soon as practicable, a definitive contract containing the principal features set forth in this memorandum."

The Memorandum of Understanding then proceeds to develop the details of the respective responsibilities and duties of the AEC and the department for construction of the reactor. It is apparent that these statements are inconsistent with deferment of any decision during a one-year period of detailed study.

OTHER CONSIDERATIONS

Assuming that the construction of the seed-blanket reactor or any other reactor is the best answer to low cost energy for the State Water Project, the department testified it presently has no funds to construct a reactor. The available financing from the California Water Fund, water bond proceeds, and the revenue bonds to be issued for the power facilities at Oroville are all fully committed. Therefore, the department must find additional sources of money and it testified that issuing more Central Valley Project revenue bonds is the only method now showing much promise. The department admitted that there will be many difficult legal and financial problems to be overcome before it can use the revenue bond authority and that it has not solved these problems. The use of revenue bonds will increase the state's costs over the general obligation bond interest rate used by Fluor and should therefore be used in future calculations of costs for a state-constructed reactor.

Even assuming that the construction of the seed-blanket reactor is eventually found desirable, the department has not yet undertaken negotiations to determine what it will have to pay for the short-term power it must purchase even if it builds a reactor. While the three cases analyzed by the Fluor Corporation all differed, each one involved some purchase of power by the department. The major difference was the timing and amount of power to be purchased. Even with the seed-blanket reactor, the department must negotiate for purchase of power for the initial years of project operation while the reactor is being built. Therefore, the department should undertake negotiations to determine the price of power it will have to purchase under all three cases before it makes any decision on sources of pumping power.

The department has undertaken no significant negotiations as yet for the sale of power it generates at Oroville and Thermalito. It has indicated that offers will be sought in December 1964. Arrangements for the disposition of Oroville-Thermalito power should be completed at least to the extent of ascertaining its disposition and price before any commitment is made to secure pumping power. This is a reasonable precaution to cover the remote possibility that the power will not be sold but must be used for pumping purposes within the project. While this would be an economic loss to the project, it would be still more

serious if the department had already made commitments for a reactor that it would not need if Oroville-Thermalito power cannot be sold outside the project.

The California Power Pool Companies testified after reviewing the Fluor Report, that in view of major power developments during the past year, such as the agreement to construct the Northwest-Southwest Intertie, further study should be given to Cases 2 and 3. The Pool Companies then recommended that no commitment on state-owned nuclear generation be made until the end of the one-year period which the Fluor Report indicated is available for study before a decision need be made. The Pool Companies further indicated their willingness to negotiate with the department for a supply of off-peak power under Case 3 which would permit the department to defer any decision about the construction of a reactor until the late 1970's at which time advances in nuclear technology might have occurred which would be of even greater advantage to the water contractors and the project than at present.

The subcommittee felt that some consideration should be given to taxes foregone if the state were to build the pumping power plants. Therefore, the California Power Pool Companies indicated in a letter of November 23 to the subcommittee chairman the taxes they would pay under Case 2. Their estimate was an eventual \$6,300,000 per year consisting of \$4,000,000 in state and local taxes and \$2,300,000 in federal taxes. Over a 75-year period this would total \$199,000,000 in state and local taxes and \$115,000,000 in federal taxes, with a present worth of \$58,000,000 for both which would approximately balance the present worth of Cases 1 and 2.

However, these figures appear too high. The companies have proposed to supply power to the state at their minimum cost of generation rather than their average costs, therefore, not all of the above taxes would be derived from revenues resulting from sale of power to the state but would partially come from other power sales. In addition, to the extent that the federal government should need to raise \$115,000,000 in new revenues, California's share would only be about \$14,000,000 and the rest would come from other states. The lesser figure appears to be more appropriate for California to use for evaluation purposes although the full \$115,000,000 would be appropriate at the federal level. Another factor which is beyond computation is the loss of state and federal income taxes on earnings of utility securities used to finance the plants compared to use by the state of tax free bonds. Finally, to the extent that the Los Angeles Department of Water and Power or other publicly-owned utilities furnished power to the state, no taxes would result.

Testimony from the Los Angeles Department of Water and Power also urged further study and stated:

"The Los Angeles Department of Water and Power is vitally interested in all facets of the State Water Project as they affect the cost of delivered water, not only because of our continuing responsibility to provide for the future water needs of Los Angeles at the lowest possible cost, but also because of the influence of the

cost of water on the economy of the city, of Southern California, and in fact the whole state . . .

"There have been important developments in the power supply picture in California in recent years. One of these is the downward trend in the cost of production of electrical energy due primarily to more efficient units of larger size. There is every reason to believe that this trend will continue as utilities find it possible to add larger and more efficient generating units to their systems, and as they make the best use of their resources through pooling agreements and large scale interconnections. Another development is the recent agreement on the principal features of the Pacific Intertie. This makes available to California a large source of relatively low cost hydroelectric power and surplus energy from the Pacific Northwest . . .

"Considering these and other developments, it appears to us that at least for the period from 1968 through 1982 the lowest cost of pumping power would result under an arrangement whereby the energy requirements, over and above those to be supplied from the Pacific Northwest, would be purchased from the California utilities, including the Department of Water and Power. In this way the state would automatically gain the advantage of improved cost of production on the utility systems. Whereas, if the state decides at this time to build its own generating plant, costs will be fixed from the time it goes into operation until the end of its life.

"The great advantage of the plan proposed here is, I am sure, entirely evident to this committee. The state can defer decision for up to 15 years on a capital expenditure of over 150 million dollars for a nuclear generating plant of its own. It will not be committed to a design which admittedly is in the development stage. Every authoritative source in the United States agrees that there will be significant developments in the atomic energy field during the next decade, and that these developments can only lead to lower costs. Capital costs will decrease as experience is gained with prototype plants now in operation or under construction, and energy costs will be reduced due to lower cost of manufacturing nuclear fuel and increased efficiency in its use. The state will under our proposal have complete flexibility in reviewing these developments as well as others as they take place, and can therefore select at the proper time the source of power for pumping which will truly result in the minimum long-range overall cost of the project.

"Furthermore, it appears to us that in order to gain the highest revenue from the power produced on the project, power developments need to more nearly match the present and future load requirements of the utilities in the area. This applies in particular to the project south of the Tehachapi where we believe the state plans are still subject to change.

"It is our recommendation, therefore, that before the state becomes committed to a program of constructing thermal generating plants and interplant transmission lines, a comprehensive load and resource study be undertaken jointly by the California utilities and

the state and its consultant to determine the optimum use of the facilities of the State Water Project and those of the utilities . . ." (Transcript of November 5, 1964, pp. 102-105.)

Testimony from Atomies International made it clear that the seed-blanket reactor design is not the only new design that the AEC is anxious to see developed. Atomies International has developed the sodium graphite reactor system for use both as a power source and as a source of heat for a conversion system. The company stated with respect to a reactor for pumping power:

"... We have developed a preliminary design of a 510 mg electric sodium graphite reactor plant for this service. We are prepared to offer such a plant, and its fuel, at fixed prices with warranties on electrical output and fuel cycle cost. Based on Department of Water Resources financing and ground rules, we estimate the total power cost should be 3.25 mills /kwhr at 80 percent plant factor. This power cost is based on a capital cost for the plant, including estimated client's costs, of \$78.9 million and AEC Round III type of assistance." (Transcript of November 5, 1964, pp. 147-148.)

A final consideration which should not be overlooked is the fact that the report by the Fluor Corporation was very general, its conclusions were mostly expressed in terms of present worth and its approximation of pumping loads for the State Water Project were totals for the whole project. As previously noted it did not consider disposition of Oroville-Thermalito power as having any relationship to pumping energy requirements. Furthermore, the loads were not adjusted to take into consideration the increased demands for pumping power from the recent expansion of the aqueduct into southern California by 500,000 acre-feet. For these reasons, the study by Fluor Corporation should be kept in perspective because it did not purport to designate finite answers to the question of how best to meet the energy needs for the pumps. Instead it dealt in major quantities and generalizations in order to sift the three best approaches from among approximately 40 alternatives under consideration. Having done this, Fluor stated the next step is more detailed study of the three cases in order to determine more precisely the merits of each. The Fluor Report is not a basis for immediate selection of a pump energy scheme but is only the first step.

The subcommittee recommends that the Department of Water Resources enter into a further contract with Fluor or some other suitable firm to review the advantages and disadvantages of all possible reactor designs for the State Water Project. While this is being done the department should be negotiating with the California Pool utilities to arrive at precise contract values for the purchase and transmission of amounts of power needed for each of the three cases outlined by Fluor. The department should continue its negotiations with the AEC for assistance in the seed-blanket reactor, but not to the exclusion of other types of reactors. Finally, all this information should be put together before June 1, 1965 in a report to the Legislature to show the best method of meeting the pumping requirements of the project.

The subcommittee believes that the department should be commended for its aggressiveness and willingness to employ nuclear energy in the State Water Project. However, the subcommittee does not agree that nuclear energy from a state reactor, whether a seed-blanket reactor or other type, has been conclusively demonstrated to be the best solution to the energy problem. The subcommittee appreciates the assistance and sincere concern of the AEC in working with the department to solve our water project energy problems. It further recognizes that the proposal of the AEC may prove to be very beneficial to the state and that the AEC has faithfully performed its responsibility. However, it is the responsibility of the state to determine whether the seed-blanket reactor or any other reactor is a desirable energy source for its project and the basis for this decision has not yet been determined.

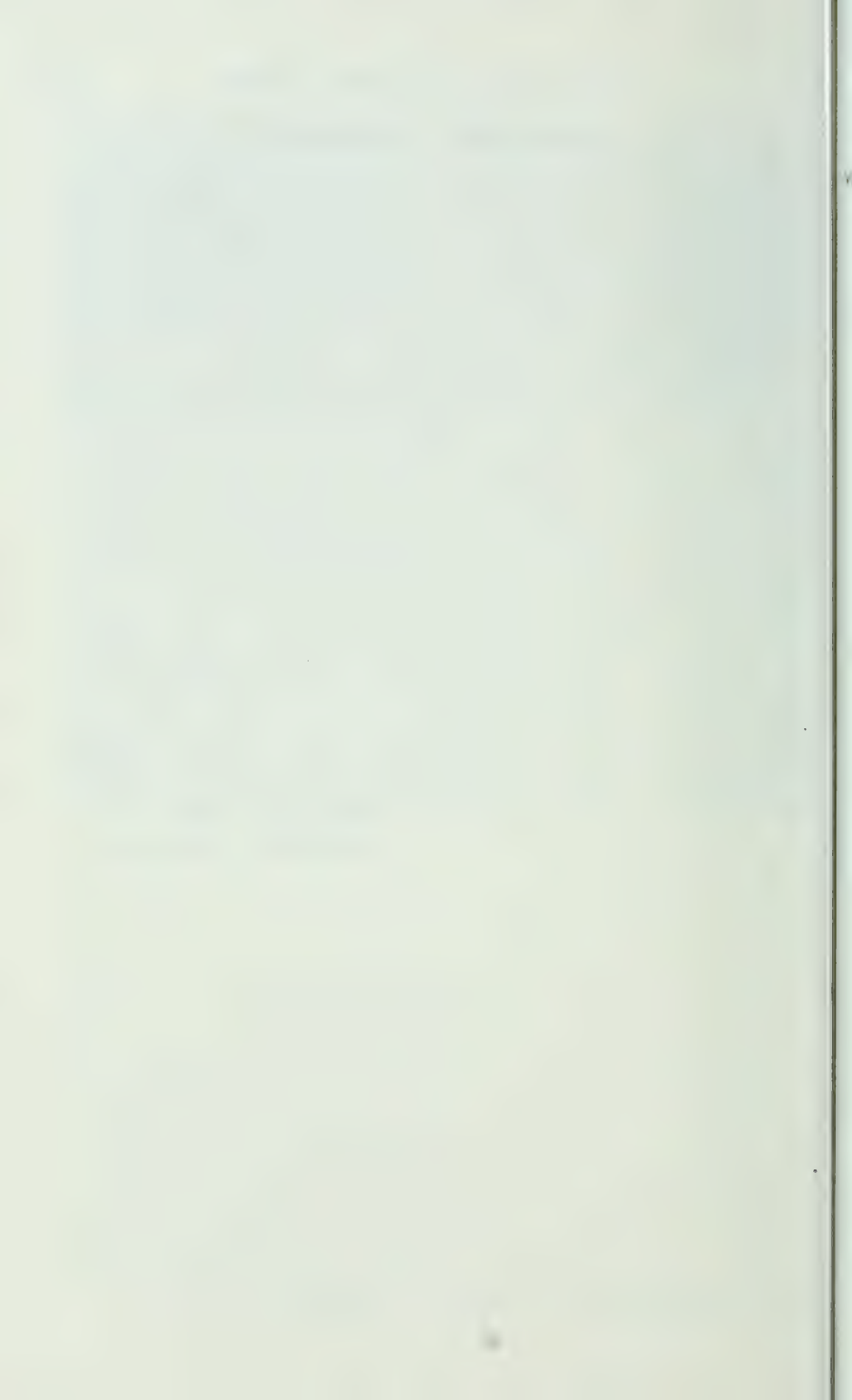
ADDITIONAL COMMENTS

The water needs of southern California have long sought a solution outside of the geographical region known as southern California. Presently we are engaged in a dispute with Arizona, notwithstanding the decision of the Supreme Court, as to water on the Colorado. This dispute will ultimately take years, and perhaps generations, to resolve, if the premise that is currently at the base of the thinking being used by way of an approach to this problem is followed. That premise is that the ultimate solution of the water needs of southern California are outside the geographical location of southern California.

The point is that the long-term solution of the water needs of our area are immediately adjacent to us. A lake of inexhaustible supply is readily available. There is creditable evidence that technology in its present form has the capacity to build sea water conversion plants in southern California and produce water at a price that is competitive with what we expect to pay for water in northern California. It is important to understand this because it will necessitate the accommodation of our people in the geographical region known as southern California to the presence of atomic reactors close at hand. This will take an adjustment of great magnitude and the sooner that people begin to understand this the closer we will be to achieving a long-term solution of the water problem in southern California. One continues to hear of schemes for the delivery of water from the northern part of the state and from the northern part of the United States to southern California and to other regions for the solution of water problems. These public works projects are of great magnitude and great cost. It seems to me that too much of the energy of our engineering capacity has been devoted to studying and proposing such schemes and too little of our energy has been devoted to the conversion of sea water to fresh water.

WILLIAM E. DANNEMEYER

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PACIFIC SOUTHWEST WATER PROBLEMS

A REPORT OF THE
ASSEMBLY INTERIM COMMITTEE ON WATER
TO THE CALIFORNIA LEGISLATURE

Assembly Concurrent Resolution 1, 1963 First Extraordinary Session
House Resolution 10, 1963 First Extraordinary Session

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December 1964

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LETTER OF TRANSMITTAL

December 20, 1964

HONORABLE JESSE M. UNRUH, *Speaker of the Assembly*
Members of the Assembly
State Capitol
Sacramento 14, California

Gentlemen:

Pursuant to ACR 1 and HR 10 of the First Extraordinary Session of 1963, the Assembly Interim Committee on Water herewith submits its final report on "*Arizona v. California* and Pacific Southwest Water Problems."

Under the same authorization this committee published a report, *The Pacific Southwest Water Plan*, Volume 26, No. 8, November 8, 1963. This first report was limited specifically to our comments on the initial Pacific Southwest Water Plan proposed by Secretary of the Interior Stewart L. Udall. It was issued last year because the plan was "so important that it was incumbent upon this committee to make its views known and formulate appropriate comments on the policy considerations involved." The committee's comments were forwarded to the secretary by the Governor together with California's Official State Comments.

During 1964 additional proposals for Pacific Southwest water planning were made, several of which were introduced in Congress as project authorization bills. None, however, were enacted into law. During this period the committee held three days of public hearings and conducted staff study and research, and held two executive sessions. The concern of the State Senate in these plans was demonstrated when its Factfinding Committee on Water Resources scheduled a two-day joint hearing with the Assembly committee.

The report submitted herewith consists of a comprehensive summary of the decision in *Arizona v. California* and the basic Pacific Southwest water problems faced by California and other states of the West today. The committee has selected several major policy areas which have proved to be the most important to California and concerning which there is substantial disagreement in California and the Congress. The committee has endeavored to present its views on the most desirable policies for California to pursue in supporting a program of regional planning for the Pacific Southwest.

The committee has felt compelled to present its views because of the adverse conditions confronting California, that is, its representatives have negotiated a compromise with Arizona which has no support in California among the water interests involved. As a result of modification of this compromise by the U. S. Senate, California has withdrawn

its support of the bill containing the compromise and now seems to have no position. The committee's report is an effort to reestablish basic elements of a position which will have broad public support in California.

In our report of November 1963 the committee stated:

There should be no state acceptance of the proposed plan or commitment to alter the State Water Facilities *without the express approval of this Legislature.*

In our 1964 report, the committee reaffirms its belief that the State of California should make no commitment to support a regional plan or legislation implementing such a plan without the express approval of the Legislature.

The committee wishes to thank the many federal, state and local public and private agencies in California who have been of assistance to it in this study. We are particularly indebted to the Office of Legislative Analyst and the Colorado River Board of California.

Respectfully submitted,

CARLEY V. PORTER, *Chairman*
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INTRODUCTION

Assembly Concurrent Resolution 1 (1963 First Extraordinary Session) coauthored by Assemblyman Porter and Senator Cobey, was referred to the Assembly Interim Committee on Water and requests this committee to study the effect of the United States Supreme Court decision in *Arizona v. California* on state water planning. The resolution states, "... it is appropriate at this time that the Legislature undertake a study of the effect of the decision including an analysis of any state action which may be required as a result of the decision. . . ."

During the 18 months which have elapsed since the issuance of the decision, this committee has made an intensive staff and committee study of all aspects of the Supreme Court decision.

On October 31, 1963, this committee met jointly with the Senate Factfinding Committee on Water Resources and received testimony on the initial Pacific Southwest Water Plan which was then pending before the Governors of the affected states. On November 8, 1963, the committee issued a report, *The Pacific Southwest Water Plan*.¹ which was transmitted to the Secretary of the Interior together with the State's Comments prepared by the Governor.

In January 1964, the Secretary of the Interior submitted a revised Pacific Southwest Water Plan, and in April the six agencies of southern California which utilize Colorado River water sponsored S. 2760, introduced by United States Senator Thomas Kuchel. In addition, a number of other proposals for solution of Pacific Southwest water problems were made, some of which were introduced in Congress.

During 1964 this committee held two public hearings pursuant to ACR 1. On July 23, the committee met in Santa Monica and received testimony from state officials. On August 13 and 14 the committee met jointly with the Senate Factfinding Committee on Water Resources in Sacramento and received testimony from federal, state, and local officials with regard to the wide range of proposals pending for solution of Pacific Southwest water problems.

During the First Extraordinary Session of 1964, Chairman Porter coauthored SCR 22 with Senator Cobey. This resolution requested the University of California to make "a thorough, exhaustive, disinterested, objective, and analytical study of the January 1964 Pacific Southwest Water Plan . . . and seek to ascertain the respective advantages and disadvantages of a regional approach . . . and the individual state approach contained in the California Water Plan. . . ." In response to this resolution the university submitted a report by Fred A. Clarenbach of the University of Wisconsin entitled, "Western Regional Planning of Water Resources" to the joint committee meeting on August 13. This study has been published separately; however, comments on it are included in the report which follows.

¹ *Assembly Interim Committee Reports*, Vol. 26, No. 8 (1963-65).

At this time the opinion of the court in *Arizona v. California*, which was released on June 3, 1963, has been followed by a final decree. Proposals are now before Congress for a regional solution to the problems of the Pacific Southwest. In this report this committee attempts to gather together all pertinent material related to the Colorado River decision in a comprehensive presentation and to comment specifically upon proposals for solution of the more important aspects of Southwest water problems now pending.

Chapter VI includes a brief summary of the committee's recommendations.

As is developed in this report, a regional program to develop water for the Pacific Southwest and the West is by necessity a multibillion-dollar program involving many of the states of the West. Commitment of the State of California (or any other individual state) to any specific water development proposal represents a major policy decision by that state. As an area of need and an area of potential replacement supplies for the Colorado, California must be deeply involved in regional planning for the Pacific Southwest and the West.

The committee believes that the Legislature must have an important role in the formulation of state water policy, particularly with regard to regional development. The record of the Resources Agency and its constituent departments during the past two years with regard to regional planning has not been satisfactory.

The committee was particularly disturbed by the unusual events which culminated in a modification of Senators Hayden and Goldwater's original Central Arizona Project Bill, S. 1658, into the "Lower Colorado River Basin Project Act," through the "Abbott Goldberg Amendment."

In mid-May 1964 California water interests were first apprised of the fact that for some four weeks, representatives of the Department of Water Resources including Mr. Abbott Goldberg, the Chief Deputy Director, and Mr. Wesley Steiner, the chief adviser on Colorado River problems, had been secretly negotiating in Washington with representatives of Senator Hayden to develop compromise legislation to authorize the Central Arizona Project. This clandestine period of negotiation was in sharp contrast to the highly publicized solicitation of comments from all California interests on the original Pacific Southwest Water Plan.

The first official explanation of this unprecedented method of solving California's Colorado River problems was given by the Resources Agency Administrator at the committee's hearing in Santa Monica in July 1964:

At the request of President Johnson that Arizona and California negotiate their differences and at Senator Hayden's invitation, Governor Brown assigned Abbott Goldberg, Chief Deputy of the Department of Water Resources, and Wesley Steiner, departmental staff expert on Colorado River matters and staff adviser to the agency administrator, to negotiate with staff counterparts from Arizona. These negotiations resulted in a regional approach which the administration of both states and apparently a majority of the members of the [U.S.] Senate subcommittee believe should prove acceptable.²

² Hearing transcript, July 23, 1964, at 10.

These Washington negotiations had been conducted in such secrecy that neither the California Legislature, California's U.S. Senators, members of our congressional delegation, nor the water agencies in southern California whose water was involved were aware of the negotiations. The meetings, which began in mid-April, did not conclude until mid-June.

Representatives of southern California water interests having rights to Colorado River water involved in the negotiations expressed concern over this unusual interstate bargaining. This displeasure was shown by the statement of James Krieger, Chairman of the Southern California Water Conference, a large group of southern California water leaders, to this committee in August 1964:

On May 22, 1964 we discussed with the Governor the fresh draft of what was then called the "Goldberg Amendment" to S. 1658. Inasmuch as that bill had been drafted by members of the Governor's staff in conjunction with representatives from Arizona and the Interior Department it seemed to us an appropriate moment to discuss the water-policy-making procedures of this state. The six agency members of the Colorado River Board were the parties immediately affected by the 1963 decree in *Arizona v. California*. It was the responsibility of these six agencies to provide water for their inhabitants and lands. Still their water was in a sense being negotiated by state officials who did not have the primary responsibility of supplying water to the people within these six agencies.

Mr. Krieger added that:

We urged the Governor to broaden the base of his policymaking team to include representatives from the Legislature and from these affected agencies.³

The negotiators returned to Washington, however, to continue their secret negotiations, without any additional consultation.

Substantially the same language as the Goldberg Amendment was offered as an amendment to S. 1658 on July 21, 1964, by Senator Frank Moss of Utah, Chairman of the Senate Subcommittee on Irrigation and Reclamation. The full Senate Interior and Insular Affairs Committee considered the amendment in executive session and by a 15-to-1 vote (Senator Kuchel dissenting) reported the bill to the Senate floor on July 31, 1964.

Mr. Goldberg and California's negotiators had previously returned to California to resume their duties with the Department of Water Resources. They returned to Washington, however, for the task of preparing a committee report for S. 1658. This report, No. 1330, was ordered to be printed by the U.S. Senate on August 6, 1964. With regard to authorship of this report, the following colloquy between Chairman Porter and Mr. Goldberg at this committee's August hearing is of interest:

Mr. Goldberg: . . . this is the official Senate report, which under their rules is required to accompany a bill going to the floor.

³ Statement for Hearing, August 14, 1964, at 3, 4.

Assemblyman Porter: Is this the one that you helped write?

Mr. Goldberg: Yes, Mr. Steiner and I worked on parts of this.

Assemblyman Porter: Good. So you are quoting yourself? ⁴

This odd juxtaposition of officials—with a leading California water official as a spokesman and ghost writer for a bill authorizing a project which an Arizona Senator termed, “. . . the most important piece of legislation in his congressional career,”⁵ — has not been adequately explained to this committee and has placed California at a disadvantage in all subsequent actions regarding Colorado River water.

Concern over this activity of California officials was expressed by the Vice Chairman of the California Water Commission immediately following a presentation to the commission by Mr. Steiner on the Goldberg Amendment:

Mr. Jennings: Mr. Steiner, I have some comments and some questions in regard to your material. *I would like to preface it by saying you make a very good advocate for the position of Arizona.* How good an advocate you make for the position of California I'm not too sure of.

Then followed this interesting colloquy:

Mr. Jennings: . . . I would like to ask you this, from the viewpoint of California alone without regard to political possibilities and false premises whether of one nature or another in connection with a project bill with a priority for existing uses, of course, limited to California's adjudicated 4.4 million for all projects wherever located, would not that be to California's advantage if it could be obtained?

Mr. Steiner: Yes, it would be advantageous.

Mr. Jennings: So it is a position then that is a legitimate position for California to take when it is addressing its view to the best of California, is that not true?

Mr. Steiner: Yes.⁶

The long series of events since April 1964—negotiation of the Goldberg Amendment, the subsequent preparation of arguments in favor of it through the medium of the Senate Committee Report No. 1330, and the continuing statements of support for the Goldberg Amendment by administration officials—have served to divide California and have not advanced the interests of California, particularly those Californians who rely upon Colorado River water for their supply.

Regrettably, it is true the public pronouncements of Mr. Goldberg and Mr. Steiner do indeed sound more as if they were speaking for Arizona than for California. For example, referring the California Water Commission to a chart showing water supply available in the lower basin, Mr. Steiner stated that the

Chart . . . demonstrates why Arizona will never willingly agree to, and Congress, in my view, will never force her to accept, an in perpetuity priority to California.⁷

⁴ Hearing Transcript, August 13, 1964, at 108.

⁵ Sacramento Bee, August 4, 1964, at A11.

⁶ Transcript of California Water Commission meeting, August 7, 1964, at 23, 24. (Emphasis added.)

⁷ Ibid., at 16.

And before the same commission Mr. Steiner lectured that body on California's chances for success in Washington :

There is a lesson to be learned from the actions of the Senate subcommittee and of the full committee. California cannot expect to get everything she desires in a regional program. We will have to be realistic in our demands . . . These votes clearly indicate that support in United States Senate for permanent priority to 4.4 million acre-feet for California is and will be "scarce as hen's teeth." To demand provisos in the act authorizing the Central Arizona Project that are unattainable is tantamount to outright obstruction.⁸

The transcript of the committee's August 13-14 hearing indicates conclusively that there is no support in California for the compromise to S. 1658 negotiated by its representatives. Its sole support came from Mr. Goldberg. A major purpose of this committee's work and of this report is to explore the alternatives which thereby confront California and to suggest a position more consonant with California's true interest.

This committee feels that California requires and will have vigorous and positive leadership in water matters. The future prosperity and economic and physical well-being of the people of our state are at stake. Our state has learned that we can ill afford to put forth water policies developed more closely with representatives of the State of Arizona than with our own water agencies and our own State Legislature.

The appendix of this report includes the texts of the Colorado River Compact, the Boulder Canyon Project Act, the California Limitation Act, the Supreme Court decree in *Arizona v. California*, and legislation proposed by the committee. Pertinent excerpts from proposed legislation (S. 1658, as amended (Goldberg Amendment) S. 2760, and draft Pacific Southwest Water Plan) are found within the text of Chapter V.

⁸ *Ibid.*, at 22.

Chapter I

THE COLORADO: ITS DEVELOPMENT AND USE

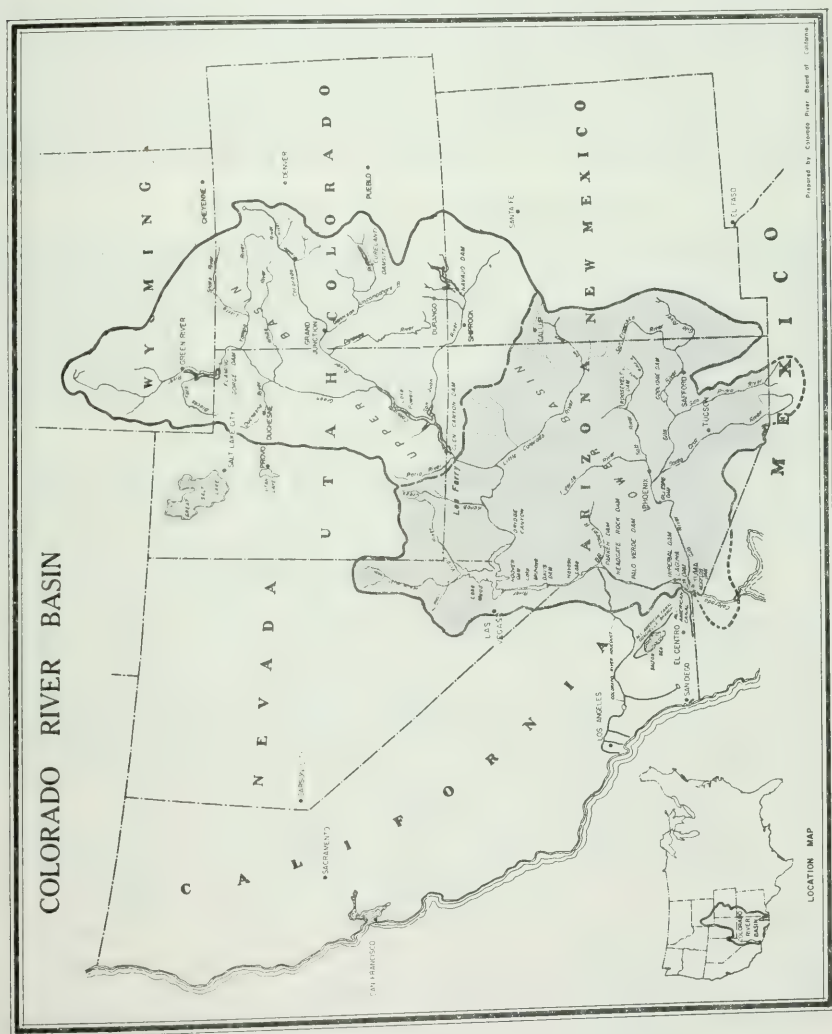
THE COLORADO RIVER BASIN

The Colorado River, from its headwaters in the mountains of north central Colorado, travels approximately 1,300 miles through Colorado, Utah and Arizona to its mouth at the Gulf of California. It flows 245 miles between Arizona and California to form their boundary and drains a total area of 242,000 square miles in the United States, approximately one-twelfth of the continental United States. The drainage basin of the river includes portions of Wyoming, Colorado, Utah, New Mexico, Arizona, Nevada and California. The 3,599 square miles of the basin within California represent 1.5 percent of the total basin area, compared with 107,242 square miles or 44.3 percent of the total basin area in Arizona.

California is the only basin state without a major tributary to the Colorado. The map which follows on the next page shows the Colorado River Basin. The Colorado's tributaries and the states in which they flow are as follows:

<i>Tributaries</i>	<i>States</i>
The Green	Utah, Colorado, Wyoming
The Gunnison	Colorado
The Dolores	Colorado, Utah
The San Juan	Utah, Colorado, New Mexico, Arizona
Johnson Creek	Utah, Arizona
Kanab Creek	Utah, Arizona
The Little Colorado	Arizona, New Mexico
The Bill Williams	Arizona
The Gila	Arizona, New Mexico
The Virgin	Nevada, Utah, Arizona

The Colorado River Compact divides the basin into an Upper Basin and Lower Basin. The Upper Basin is defined in the Compact as the area "within and from which waters naturally drain into the Colorado above Lee Ferry (in Arizona)" and the lower basin is the area "within and from which waters naturally drain to the Colorado River System below Lee Ferry."



LEGISLATIVE HISTORY

The need for major development on the Colorado was widely recognized in the early part of the century. In 1920, the Congress passed the Kinkaid Act which directed the Secretary of the Interior to make a study of some of the River's problems. Subsequently, the Fall-Davis Report was submitted to Congress in February 1922. One of this report's recommendations was that "through suitable legislation the United States undertake the construction with government funds of a reservoir at or near Boulder Canyon. . . ." ¹

A political problem blocked such a project, however. The more slowly developing Upper Basin states were apprehensive that such a Lower Basin facility would result in rapid expansion of irrigation in the Lower Basin and would form the basis for *appropriative rights* in the Lower Basin to the detriment of Upper Basin needs. At that time, as today, the doctrine of *prior appropriation* governed water rights in all Colorado River Basin states including California, which also recognizes *riparian* rights.

THE COLORADO RIVER COMPACT

In 1921, at the request of the affected states, Congress authorized the states to enter into a compact "providing for an equitable division and apportionment among said states of the water supply of the Colorado River and of the streams tributary thereto. . . ." Commissioners were appointed and a compact was signed in Santa Fe, New Mexico, on November 24, 1922, *by representatives of the seven states and the United States.*

The compact has several main provisions:

1. It divides the Colorado River Basin into two parts as shown on the map on p. 15.
2. It apportioned from the "Colorado River system" in perpetuity 7,500,000 acre-feet a year to each of the two basins for beneficial consumptive use.
3. It authorized the Lower Basin the right to increase its beneficial consumptive use by 1,000,000 acre-feet a year.
4. It recognized the rights of Mexico to waters of the Colorado. This share was to come from the surplus over the 16,000,000 allocated to the two basins. The compact provided, however, that if this surplus was not available, the Mexico share shall be met equally by the Upper and Lower Basins.
5. It required the states of the Upper Basin to "not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of 10 consecutive years . . ."

The compact was promptly ratified by the Legislatures of all of the states except Arizona.²

¹ *Arizona v. California, Report of the Special Master*, at 21.

² According to the U.S. Supreme Court, one of the reasons for Arizona's refusal was the Compact's inclusion of tributary flow, particularly the Gila, in its allocation scheme. See 10 L.Ed.2d 554.

Between 1922 and 1927 three attempts were made in Congress to obtain legislation authorizing the construction of a mainstream dam and a canal located entirely in the United States to replace the existing facility serving Imperial County. Congressman Philip Swing and Senator Hiram Johnson of California spearheaded these three efforts.

BOULDER CANYON PROJECT ACT

The fourth attempt to obtain approval, a fourth Swing-Johnson bill, was successful. When approved by Congress in December 1928 it became the Boulder Canyon Project Act and authorized the construction of Hoover Dam and the All-American Canal. (45 Statute 1057)

In the act Congress consented to the compact, waived the compact requirement of seven-state approval, and provided "this approval shall become effective when the State of California and at least five of the other states mentioned, shall have approved or may hereafter approve said compact as aforesaid and shall consent to such waiver, as herein provided."

The Project Act provided that it not take effect until (1) all seven states ratified the contract, or (2) if the seven states did not ratify within six months, until the compact was ratified by six states, including California, and further including agreement by California to limitations on its consumptive use of Colorado River water.

Arizona did not ratify the compact within the six-month period. California's Legislature then passed the *California Limitation Act* in 1929.³ This accepted the limitations imposed by the Project Act of: (a) 4,400,000 acre-feet a year of the 7,500,000 acre-feet allocated to the Lower Basin, plus (b) one-half the surplus or excess water available.

The mainstream supply only is to be considered in this computation since the Project Act's apportionment of waters among the states of the Lower Basin, in the court's opinion "... was a complete statutory apportionment intended to put to an end the long-standing dispute over Colorado River waters."⁴

The limitations on California in the Project Act were again a protection to the Upper Basin states. As the court stated, "The Upper Basin states feared that, if Arizona did not ratify the Compact, the division of water between the Upper and Lower Basin agreed on in the Compact would be nullified. The reasoning was that Arizona's uses would not be charged against the Lower Basin's apportionment and that California would therefore be free to exhaust that apportionment herself. Total Lower Basin uses would then be more than permitted in the Compact, leaving less water for the Upper Basin."⁵

* The Project Act authorized Arizona, Nevada and California to enter into an agreement further apportioning the Lower Basin share between them as follows (beneficial consumptive use):

1. Apportioning to Nevada, 300,000 acre-feet annually.
2. Apportioning to Arizona, 2,800,000 acre-feet annually.
3. Providing that Arizona may annually use one-half of the excess or surplus waters "unapportioned by the compact."

³ Stats. of 1929, Ch. 16. See appendix for text of this legislation.

⁴ 10 L.Ed.2d 555.

⁵ Loc. cit.

4. Granting Arizona "the exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of said state."
5. Apportioning to California 4,400,000 acre-feet annually. Providing also that California may annually use one-half of the excess or surplus waters unappropriated by the compact.
6. Subjecting the agreement to all provisions of the compact and conditioning the tristate agreement on ratification of the compact by all three states.

The tristate apportionment agreement authorized by the Project Act was *never entered into* by the states involved.

On June 25, 1929 President Hoover declared the Boulder Canyon Project Act to be effective. It was almost 15 years later, however, before Arizona finally approved and ratified the Colorado River Compact.

The Project Act authorized the Secretary of the Interior "under such general regulations as he may prescribe, to contract for the storage of water in said reservoir (Lake Mead) and for the delivery thereof at such points on the river . . . as may be agreed upon, for irrigation and domestic uses . . ." The act added, "No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated."

THE MEXICAN TREATY

The compact provided as follows with regard to a Mexican Treaty:

Article 3(c) if, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River system such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantity specified in paragraph (a) and (b) [7.5 million acre-feet to Upper and Lower Basin and Lower Basin option to increase use by one million acre-feet], and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the states of the Upper Basin shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d) [75,000,000 acre-feet for any period of ten consecutive years].

The United States signed a treaty with Mexico on February 3, 1944 (59 Stat. 1219). The treaty guarantees annually to Mexico one and one-half million acre-feet annually provided that in times of surplus the United States would endeavor to deliver not to exceed 1.7 million acre-feet and provided further that in the event of extraordinary drought or serious accident to the irrigation systems of the United States making it difficult for the United States to deliver the guaranteed 1.5 million acre-feet per year the water delivered to Mexico would be reduced in the same proportion as consumptive uses in the United States are reduced.

Thus today the rights of Mexico are fixed by the treaty and the duty of both the Upper Basin and the Lower Basin to deliver water to Mexico is required by the compact. The Upper Basin therefore insists that Lower Basin tributaries be taken into account in computing the "surplus" available for Mexico, even though such tributaries as the Gila River furnish no physical supply for Mexico. The requirement that 1.5 million acre-feet be delivered to Mexico has implications with regard to the efforts of United States entities to meet water needs within the United States.⁶ Serious problems have also resulted from the recent high quantities of salt in waters transported to Mexico.

PRESENT DEVELOPMENTS

Lower Basin

First large-scale use of Colorado River water for irrigation purposes in California was in the Palo Verde area in 1901. California has made constant use of the river's supplies through several pioneering projects. The importance of the Colorado River was made clear by Special Master Rifkind:

Today it is perfectly clear that the viability of numerous communities in the Lower Basin is conditioned on and limited by the availability of Colorado River System waters.

It is thus manifest that in the Lower Basin the water of the Colorado River System is "more than an amenity"; it is more than a "treasure." It is indispensable to life; no substitute for it has yet been invented or envisaged.

Described below are the major storage and irrigation projects now in existence in the Lower Basin along the Colorado and its tributaries. It has been appropriately pointed out that California's investment alone in Colorado River development of dams, aqueducts and canals is in excess of \$600,000,000. In addition the federal government has invested millions of dollars. These facilities supply more than 5,000,000 acre-feet of water a year to more than 8 million persons and a major part of California's agricultural economy.⁷

MAINSTREAM

Hoover Dam

This is the largest single dam on the river with a usable storage capacity of 27,200,000 acre-feet. Located in Black Canyon 330 miles above the Mexican border this dam first impounded water on February 1, 1935 and was constructed and is operated by the Department of the Interior.

Parker Dam

This is the diversion point on the river for the Colorado River Aqueduct of the Metropolitan Water District and is located 155 miles below Hoover Dam and 17 miles above Parker, Arizona. The dam, which has a capacity of 648,000 acre-feet, first impounded water on June 29, 1938,

⁶ For an interesting comment on the Mexican treaty see "The Colorado Waters Dispute," *Foreign Affairs Quarterly Review*, April 1964 at 495, which includes a large amount of historical material.

⁷ Northcutt Ely, "The Supreme Court's Decision in *Arizona v. California* and its effect on California's water supply," statement before Feather River Project Association, Long Beach, July 12, 1963, at 5.

and is operated by the Department of the Interior, and owned by the United States although paid for in full by the Metropolitan Water District.

Davis Dam

Located 67 miles below Hoover Dam west of Kingman, Arizona, this dam, which has a capacity of 1,820,000 acre-feet serves to reregulate releases from Hoover Dam. It first impounded water on January 17, 1950. It also is operated by the Department of the Interior.

Headgate Rock, Imperial, Laguna and Morelos Dams and Palo Verde Dam

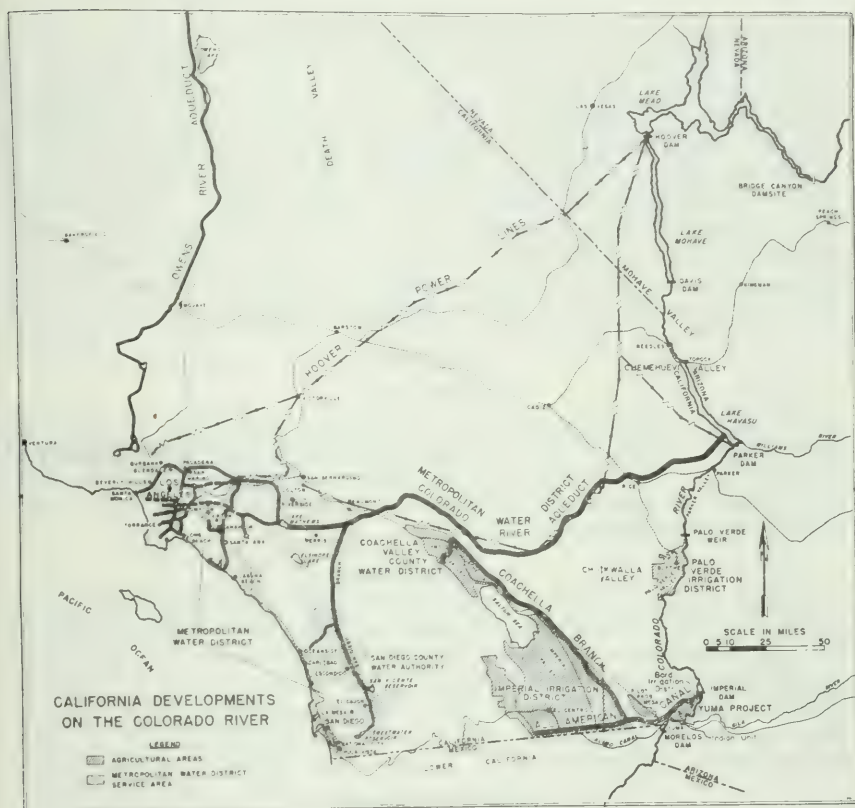
These five dams are diversion dams for irrigation projects and have no appreciable storage capacity.

Headgate Rock Dam is located 15 miles below Parker Dam and serves as the diversion point for the Colorado River Indian Reservation in Arizona. Palo Verde Dam completed as a permanent structure in 1957, and located 42 miles below Headgate Rock Dam, serves as the diversion point for the Palo Verde Irrigation District. The Imperial Dam, located 90 miles below Palo Verde Weir and 18 miles above Yuma, Arizona, is the diversion point for the All-American Canal, the Yuma Project, and the Gila Project. Laguna Dam, located 5 miles below Imperial Dam was formerly used as the diversion point for the Yuma and North Gila Valley projects and dates back to 1910. Morelos Dam is located below Pilot Knob between Arizona and Mexico and serves as a diversion point for the Mexican Canal irrigating Mexicali Valley.

The All-American Canal System

The All-American Canal System received its first significant use in 1940, replacing the older Alamo Canal which was mostly in Mexico. From its headworks at Imperial Dam the canal stretches westward across Imperial County roughly parallel to the Mexican border for 36.2 miles. The facility is used by the Imperial Irrigation District, which was formed in 1911 and is the largest such district in the state, encompassing about one million acres. First diversions in this area were in 1901. At this point the Coachella branch of the canal then leads in a northwesterly direction for 123 miles while the main canal extends westward another 44 miles. The Coachella branch also serves the Coachella Valley County Water District and was completed in 1948. The Coachella District, which was formed in 1918, includes more than 267,000 acres and is located in Riverside and Imperial Counties. First diversions to Coachella were in 1949.

Diversions through the All-American Canal for the period 1951-55 averaged 5,232,000 acre-feet per year, with 3,836,000 acre-feet diverted annually for the Imperial Irrigation District and the Coachella Valley County Water District, and 1,396,000 diverted annually for the Yuma Project. This Project's Reservation Division serves about 15,000 acres of land in California in the area between the Colorado River and the All-American Canal across from Yuma, Arizona. The project receives water from the All-American Canal and includes a large amount of Indian land.



Yuma Project

This project consists of three separate divisions.

The Yuma Project's Valley Division serves about 50,000 acres south of Yuma, Arizona, along the east side of the Colorado River to the Mexican Border. The water is diverted at Imperial Dam through the All-American Canal and crosses under the Colorado at a siphon 15 miles from Imperial. This project was authorized in 1904 with the project works completed in 1913.

The Yuma Project, California Division, was authorized in 1904 with first diversions coming in 1910.

The Yuma Auxiliary Project serves 3,305 acres near the Yuma Project in Arizona and receives water from the Gila Gravity Canal.

Palo Verde Irrigation District Project

The Palo Verde Irrigation District was formed in 1923 and encompasses more than 120,000 acres in the Palo Verde Valley and Mesa, located in Riverside County midway between Parker and Imperial Dams. A distribution system constructed and operated by the district leads from Palo Verde Dam. First diversions at Palo Verde were prior to 1900.

The Colorado River Aqueduct

This 242-mile-long aqueduct leads from Parker Dam to Lake Mathews in Riverside County. It serves the Metropolitan Water District of Southern California, formed in 1928, and the City of San Diego and the San Diego County Water Authority (a member of the Metropolitan Water District since 1946) through the San Diego Aqueduct, all of which aqueduct service area is located outside the drainage area of the Colorado River but within the "Compact Basin." The Colorado River Aqueduct was financed, and is owned and operated, by the Metropolitan Water District. First used in 1941, it was recently completed to its maximum capacity of 1,212,000 acre-feet a year. In 1962, 1,073,410 acre-feet were delivered through the aqueduct.

TRIBUTARIES

The Gila Project

This project also originates at the Imperial Dam. The Gila Gravity Canal, with a capacity of 2,200 c.f.s., extends southward from Imperial Dam to serve three separate areas through branch canals. The total area capable of service is 103,000 acres. First authorized in 1937, this project was reauthorized in 1947.

San Carlos Project

This is a joint project by the U.S. Bureau of Indian Affairs and others and serves about 100,000 acres on both sides of the Gila River in Arizona southeast of Phoenix and the Salt River Project. The project includes Coolidge and Ashurst-Hayden Dams on the Gila River. Coolidge Dam has a capacity of 1,285,000 acre-feet while Ashurst-Hayden is a diversion dam. For the 20-year period ending in 1955, annual surface diversions of the project were 187,000 acre-feet.

The Salt River Project

This project has a capability of serving about 240,000 acres and is located in Central Arizona along the Salt River east of its confluence with the Gila River. The project, which includes the City of Phoenix, was built by the Bureau of Reclamation and is now owned and operated by the Salt River Valley Water Users' Association. It includes the Granite Reef Diversion Dam, Stewart Mountain Dam, Horse Mesa Dam, Mormon Flat Dam and Roosevelt Dam on the Salt River; Bartlett Dam and Horseshoe Dam on the Verde River, and a flood control dam on Cave Creek.

The Las Vegas Valley

The Las Vegas Valley, including more than 200,000 acres, receives water pumped from Lake Mead behind Hoover Dam. In 1963 a total of 26,442 acre-feet was utilized from this source, for Boulder City and Henderson, Nevada.

The Seven Party Agreement

The Secretary of the Interior contracted with water users beginning in 1930. At the request of the Secretary, however, the various water users in California signed an agreement on August 18, 1931 setting forth relative priorities among the California users. This agreement is known as the Seven Party Agreement. Its terms were recommended by the State Division of Water Resources and the Secretary of the Interior incorporated these priorities in September 1931 in regulations relating to contracts for the storage and delivery of mainstream water impounded by Hoover Dam. The provisions of the agreement are included in all these contracts.⁸

The various priorities resulting from this agreement are as follows: (when more than one agency is listed in a priority the rights of each "are equal in priority.")

Priority	Agency	Amount (acre-feet)
I	Palo Verde Irrigation District (district lands in 1931) ----	Unspecified *
II	Yuma Project (Bureau of Reclamation)-----	Unspecified *
III	(a) Imperial Irrigation District	} --- Unspecified *
	(b) Palo Verde Irrigation District (16,000 mesa acres) }	
	Total of Priorities I, II, and III-----	3,850,000 †
IV	Metropolitan Water District and/or City of Los Angeles ‡--	550,000
V	(a) Metropolitan Water District-----	550,000
	(b) City and/or County of San Diego ‡-----	112,000
VI	(a) Imperial Irrigation District	} --- 300,000
	(b) Palo Verde Irrigation District (16,000 mesa acres) }	
VII	For use in Colorado River Basin-----	All remaining water available
	Total Priorities I-VI-----	5,362,000

* Based upon acres to be irrigated. (Note, however, total set for Priority 1, II, and III.)

† Beneficial consumptive use.

‡ Now merged with Metropolitan Water District priority.

Thus, this agreement contemplates the distribution of 5,362,000 acre-feet of water, with only part of the Los Angeles Area/San Diego supplies included in the 4,400,000-acre-foot figure. Priorities I, II, and III are considered agricultural uses.

California has fully developed its available supplies from the Colorado River, but both Nevada and Arizona have only used part of their basic entitlement to date. Probably the key to water availability in the Lower Basin (and thus a major determination of whether or not immediate importation of new supplies to the river is needed) is the rate of development in the Upper Basin and other Lower Basin states, which with California, share the waters of the Colorado River. A summary of existing lower basin development, together with estimates of future annual needs for these existing or authorized developments for the lower basin (as estimated by the Colorado River Board and assuming a total of available supply from the Colorado River in California of 4.4 million acre-feet) is shown on the following table.

⁸ Report of Special Master *op. cit.*, at 28.

TABLE I
EXISTING LOWER COLORADO RIVER BASIN MAINSTREAM PROJECTS

Project	1963 Net diversions (acre feet)	Estimate of annual requirement in futures	Constructed by ⁴	Type of project
California				
1. Palo Verde Irrigation District	367,030		U.S.B.R. and P.V.I.D.	Irrigation
2. Yuma Project, California Div.-01	45,300	27,550,000	U.S.B.R.	Irrigation
3. Imperial Irrigation District	3,092,490		U.S.B.R. and I.I.D.	Irrigation, M. and I.
4. Coachella Valley County Water District	537,040	550,000	U.S.B.R. and C.V.C.W.D.	Irrigation
5. Metropolitan Water District	1,046,190		U.S.B.R. and M.W.D.	M. and I. Irrigation
Total	5,058,050	4,000,000		
Arizona				
6. Colorado River Indian Reservation				
7. Fort Mohave and Goshute Indian Reservation	186,660	331,000	Federal and leases	Irrigation
8. Gila Project	600,000	450,000		
9. Yuma Auxiliary Project	10,000	600,000	U.S.B.R.	Irrigation
10. Miscellaneous Small Users	50,000	13,000	U.S.B.R.	
11. Yuma Project	169,610	485,000	U.S.B.R. and private	
12. City of Yuma	⁵	156,000	U.S.B.R.	Irrigation
Total	1,016,270	50,000		M. and I.
Nevada				
13. Boulder City, Las Vegas-Henderson	26,442	⁶	Federal and nonfederal	M. and I.
Three-state total	6,101,362	5,689,000	⁷	

Source: Colorado River Board.

- 1 U.S.B.R. construction for P.V.I.D. limited to reconstruction of diversion dam, and for M.W.D. to construction of Parker Dam and Powerplant.
- 2 Under Seven Party Agreement when California supply limited to 4.4 million acre-feet per annum.
- 3 Assumed to be developed by 1980.
- 4 Private development outside irrigation districts, Warren Act lands, and special use contracts.
- 5 Approximately 10,000 acre-feet assumed to be included in diversion to Yuma Project during year 1963.
- 6 For total see estimate of future developments, p. 30.
- 7 Does not include estimated average annual reservoir evaporation of 1,200,000 acre-feet from Lake Mead, Lake Mohave and Lake Havasu.
- 8 California uses limited by assumption of 4.4 million acre-foot supply, not by need.

Source of data:

- U.S. Bureau of Reclamation Water Log of Colorado River.
- International Boundary and Water Commission Hydrograph Reports.
- U.S. Geological Survey Provisional Records.
- Imperial Irrigation District Provisional Records.
- United States Findings of Fact, *Arizona v. California*.
- Special Masters Report, *Arizona v. California*.
- California Findings of Fact, *Arizona v. California*.

Upper Basin

A major factor in the overall water availability in the Lower Basin is the expected development in the Upper Basin states. Serious differences exist however, in the available estimates of ultimate water development in the Upper Basin both from existing projects and proposed ones.

Table II compares the Colorado River Board and Bureau of Reclamation estimates of eventual uses of *existing and authorized* Upper Basin projects only.

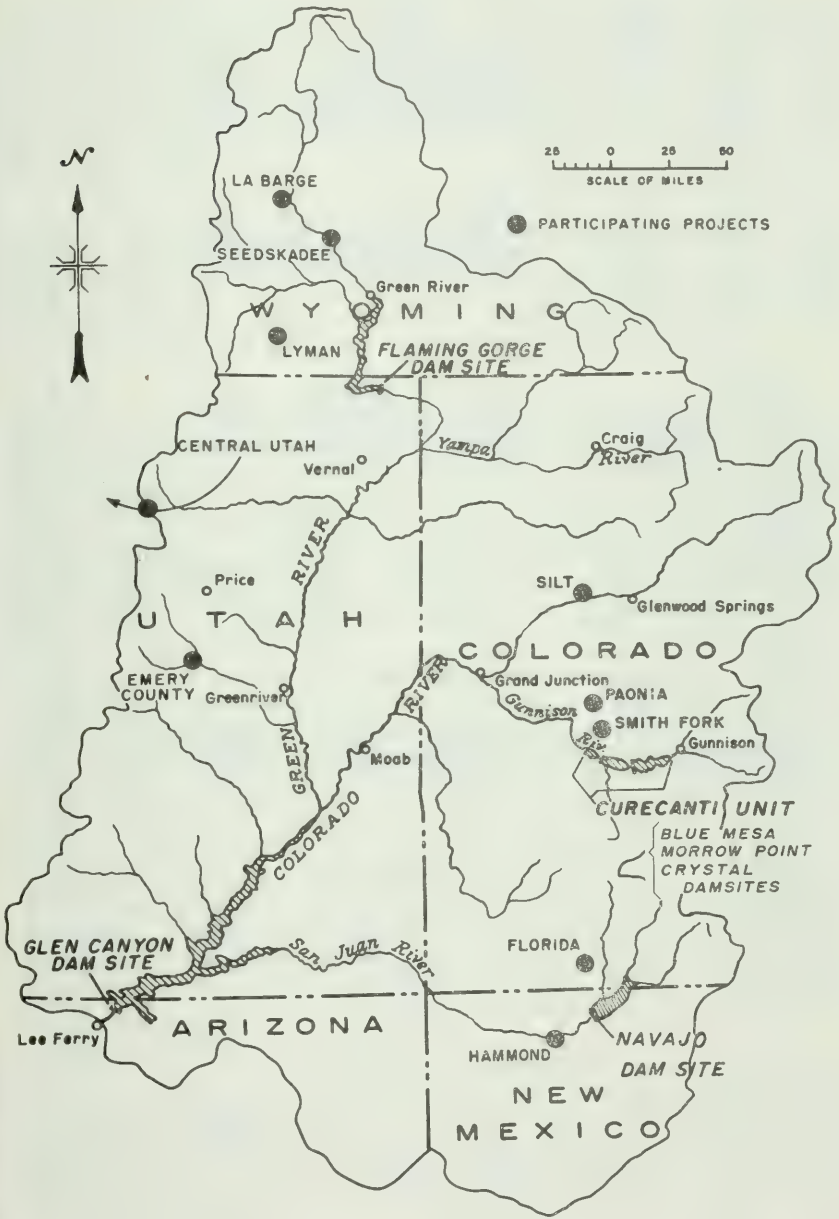
COLORADO RIVER STORAGE PROJECT

The Colorado River Storage Project involves development in Arizona, Colorado, New Mexico, Utah and Wyoming and is the initial stage of comprehensive development of the Upper Colorado River Basin. Its objectives are to provide long-time regulatory storage sufficient to permit the upper division of the basin to meet the obligations of the Colorado River Compact with regard to flow at Lee Ferry and also to utilize the basin's apportionment of the waters of the Colorado. The plans are to include four major dams and storage units—Glen Canyon on the Colorado River in Arizona near the Utah border, Navajo on the San Juan River in New Mexico, near the Colorado border, Flaming Gorge on the Green River in Utah, near the Wyoming border, and Curecanti on the Gunnison River in west central Colorado. Also authorized with the project are a number of participating projects which will receive power revenues from the larger project to help pay for their irrigation construction costs. The arrangement is similar to that proposed for the Pacific Southwest through the development fund.

The various participating projects are as follows:

PAONIA PROJECT

This project is located in west central Colorado and will ultimately serve 2,230 acres of land now under irrigation and 13,070 acres already irrigated lands. The project includes Paonia Dam and reservoir on Deep Creek and canal works.



Colorado River Storage project.

TABLE II
EXISTING UPPER COLORADO RIVER BASIN PROJECTS
 (Comparison of Bureau of Reclamation and Colorado River Board)

Projects	Estimated annual depletions ¹		Estimated depletion schedule	Constructed by	Type of project
	Colorado River Board	U. S. B. R.			
Uses committed in 1949.....	2,550,000	32,548,000	1963		
Colorado River Storage Project—participating projects					
Panama, Colorado.....	10,000		1963	U. S. B. R.	Irrigation
Hammond, New Mexico.....	9,000		1963	U. S. B. R.	Irrigation
Smith Fork, Colorado.....	6,000		1963	U. S. B. R.	Irrigation
Vernal Unit, Central Utah.....	12,000		1965	U. S. B. R.	Irrigation
Florida, Colorado.....	15,000	41,285,000	1967	U. S. B. R.	Irrigation
Emery County, Utah.....	16,000		1965-1972	U. S. B. R.	Irrigation and power
Shoshone, Wyoming.....	14,000		1968	U. S. B. R.	Irrigation
Silt, Colorado.....	6,000		1967-1990	U. S. B. R.	Irrigation and power
Initial Phase of Central Utah.....	178,000		1961-2000	Denver	Municipal
City of Denver.....	150,000		1966-1970	U. S. B. R.	Irrigation
San Juan Chama.....	110,000	360,000	1970-1981	U. S. B. R.	Irrigation
Navajo Indian.....	252,000	75,000	1968-1972	U. S. B. R.	Irrigation and power
Fryingpan-Arkansas.....	75,000				
Other projects					
Collbran Project, Colorado.....	7,000	7,000	1963	U. S. B. R.	Irrigation and power
Private development in Wyoming.....	17,000	30,000	1963	Nonfederal	Irrigation
Homeslake, Colorado.....	74,000	74,000	1966-1985	Nonfederal	Municipal
Extension of Indian projects and Utah Construction Company power.....	264,000	71,000	1963-1974	Federal and Nonfederal	Irrigation and power
Municipal and industrial, Utah.....		6,000			
Miscellaneous.....	1,000				
Total, existing and authorized.....	3,732,000	4,456,000			

¹ Colorado River Board: at time of full development. U. S. B. R. Long time average annual depletions.

² Colorado River Board: at time of full development. U. S. B. R. Full development of all projects not yet attained (H.D.N. 364 (83rd Congress, 2nd Sess.), p. 148).

³ New Mexico.

⁴ Includes U. S. B. R. estimate of 691,000 acre-feet of annual reservoir evaporation from Glen Canyon, Flaming Gorge, Navajo and Curecanti.

HAMMOND PROJECT

The Hammond Project is located in northwestern New Mexico along the San Juan River and will provide irrigation water for approximately 3,900 acres most of which is not now irrigated. The project includes the Hammond Diversion Dam and canal systems, storage releases from the Navajo Reservoir, part of the Colorado River Storage Project, will supplement natural stream flow as a major source to the water for the project.

SMITH FORK PROJECT

The Smith Fork Project is located in west central Colorado. The project will provide supplemental irrigation water supply for 6,920 acres of land and provide a new supply for 1,320 acres of new unirrigated land. The project includes Crawford Dam and reservoir, and a number of canals and related facilities.

CENTRAL UTAH PROJECT

The Central Utah Project will serve central and northeastern Utah. The project will be constructed in two phases. The initial phase will serve approximately 160,000 acres of land with approximately 48,800 acre-feet annually available for municipal and industrial and related purposes. The project includes nine storage dams for the combined storage capacity of 1,600,000 acre-feet, eight diversion dams and a 37-mile aqueduct in the Uinta Basin and seven storage reservoirs with a capacity of 107,400 acre-feet, aqueducts, power plants, and diversion dams in the Bonneville Basin.

FLORIDA PROJECT

The Florida Project will serve the Florida, Mesa and Florida River Valley in southwestern Colorado. The project will provide irrigation water for 12,700 acres of presently developed land and 6,300 acres not presently irrigated. The major features of the project will include Lemon Dam and distribution and drainage facilities.

EMERY COUNTY PROJECT

This project is located in east central Utah. The project involves an irrigable area of about 24,000 acres and is located in the Green River Basin. Approximately 75 percent of the area involved is presently irrigated in part with limited supplies available. The project includes Joes Valley Reservoir on Cottonwood creek and a series of canals, and a diversion dam.

SEEDSKADEE PROJECT

This project is located in the Upper Green River Basin in Wyoming. The project provides irrigation water for approximately 60,000 acres undeveloped land. Features of the project include Fontenored Dam on the Green River, a pumping plant, laterals, drainage system and a series of canals.

SILT PROJECT

This project is located in Garfield County in west central Colorado along Rifle and Elk creeks tributaries of the Colorado River. The project will develop water to serve approximately 1,900 acres of undeveloped land and to provide supplemental water for 5,400 acres of land presently under irrigation. Principal feature of the project is the Rifle Gap Reservoir on Rifle Creek. Project will also include a canal system.

PROPOSED DEVELOPMENT**Lower Basin**

Since existing uses in the Lower Basin utilize most of the water allocated to the basin, there is general agreement as to the extent of *proposed* Lower Basin development, as shown in the following table based on Colorado River Board estimates:

TABLE III
PROPOSED LOWER BASIN MAINSTREAM PROJECTS

<i>Proposed project</i>	<i>Estimated use at full development (acre-feet)</i>	<i>Constructed by</i>	<i>Type of project</i>
California			
None	--	--	--
Arizona			
Central Arizona Project	1,200,000	U.S.B.R.	Irrig. M. and I. Power
Fort Mohave and Cocopah Indian Reservation	50,000		--
Nevada			
Southern Nevada } Mojave Valley }	180,000 *	U.S.B.R. U.S.B.R.	M. and I. Irrigation
Total	1,430,000		

* Includes federal and nonfederal development at Boulder City-Las Vegas-Henderson.

Upper Basin

As can be seen from Table II on page 28 the estimates of the U.S.B.R. and the Colorado River Board are at variance with respect to existing and authorized projects. A similar difference occurs in the consideration of estimated diversions from proposed Upper Basin projects.

The Colorado River Board's estimate is as follows:

TABLE IV
PROPOSED UPPER BASIN DEVELOPMENT
(COLORADO RIVER BOARD ESTIMATE)

Project	Estimated diversion at full development (acre-feet)	Estimated depletion schedule	Constructed by	Type of project
Savery-Pot Hook.....	38,000	1972	U.S.B.R.	Irrigation
Bostwick Park.....	3,000	1970	U.S.B.R.	Irrigation
Fruitland Mesa.....	28,000	1971	U.S.B.R.	Irrigation
Animas La Plata.....	129,000	1972-1978	U.S.B.R.	Irrigation
Oil shale development.....	210,000	1970-1995		Industrial and municipal
Four Corners industrial.....	112,000	1980-2000		Industrial and municipal
Priority projects ¹				
Sublette.....	108,000			
Battlement Mesa.....	10,700			
Bluestone.....	19,900			
Dallas Creek.....	18,000			
Delores.....	69,370			
Eagle Divide.....	12,000			
East River.....	2,000			
Fruit Growers extension.....	5,540			
Grand Mesa.....	20,000	1970-1995	U.S.B.R.	Irrigation
Juniper.....	225,800			
Ohio Creek.....	7,000			
Parshall.....	28,600			
Rabbit Ear.....	16,400			
San Miguel.....	60,100			
Tomichi Creek.....	13,000			
Troublesome.....	13,000			
West Divide.....	88,100			
Yellow Jacket.....	53,840			
Basalt.....	23,000	1970	U.S.B.R.	Irrigation
Total.....	1,314,350			

¹ These projects were named in Sec. 2, P.L. 485, 84th Cong. (Authorizing C.R.S.P.) and are recommended for early investigation. Construction partly dependent upon excess power revenues from Upper Colorado River Basin Fund after subsidizing authorized participating projects. Based upon U.S.B.R. repayment schedule and allowable development period, some of these projects could be started immediately. The aggregate of the depletions is assumed to begin in 1970 and increase on straight line basis to full development in 1995. All are potential U.S.B.R. projects.

The following table summarizes the estimates of the Bureau of Reclamation as to long time annual depletions by projects currently proposed.

TABLE V
PROPOSED UPPER BASIN DEVELOPMENT
(BUREAU OF RECLAMATION ESTIMATE)

Project	Estimated use
Animas-La Plata, Colorado-New Mexico	129,000
Bostwick Park, Colorado	3,000
Fruitland Mesa, Colorado	28,000
Savery-Pot Hook, Colorado-Wyoming	38,000
Total	198,000

The Department of the Interior representatives indicated to the committee that the differences between the Colorado River Board and

the Department of the Interior in projecting the future rate of Upper Colorado River Basin depletions reflect, almost entirely, different judgments as to:

1. The scope and timing of construction of Federal Reclamation projects in the Upper Basin.
2. The magnitude and timing of future industrial demands for water such as represented by the oil shale industry.
3. The magnitude and timing of future municipal and domestic water demands.

Such differences in estimated development raise uncertainties in various areas as to anticipated future supplies. Until the estimates of the state and federal agencies are more nearly agreed we cannot be certain as to when critical shortages will occur. As is described below, estimated Upper Basin development particularly, is a major factor in determining supplies available to the *Lower Basin*.

These differences between the projections of Upper Basin development by the two agencies are summarized in the following tabulation:

Year	Colorado River Board of Calif. * (1,000 A.F.)	Department of Interior * (1,000 A.F.)	Difference (1,000 A.F.)
1975	4,300	4,000	300
1990	5,400	4,900	500
2000	5,700	5,430	270

* Total for reservoir losses and other depletions.

The Department of the Interior's projection, in general, envisages an increase over historic trends in the rate of Upper Basin depletions until the year 1975. Such an increase obviously will result from the construction and operation of federal projects authorized in recent years, principally the Colorado River Storage Project and participating projects, the Fryingpan-Arkansas Project, and the San Juan-Chama and Navajo Indian Irrigation Projects. After 1975 the department expects the 1960-1975 rate of increased depletion to reduce until the year 2000, after which it will further tend to level off as the Upper Basin approaches full use of its share of Colorado River Basin water.

The impact of this expected development, coupled with natural flows expected in the river for use in both the upper and lower basins is discussed in the sections below.

COLORADO RIVER WATER SUPPLY

The Colorado is characterized by uneven and unpredictable flows. Available flow data indicates that the flow has varied from 4,396,400 acre-feet in 1934 to 22,003,000 acre-feet in 1907. The river's early history was marked by "violent floods causing great damage."⁹ In addition to erratic flow, prior to construction of Hoover and Glen Canyon Dams, the river carried large quantities of silt, estimated during the suit, *Arizona v. California*, as being "proportionately 17 times that of the Mississippi River."¹⁰

⁹ Report of Special Master, *op. cit.*, at 18.

¹⁰ *Ibid.*, at 20.

Although the Colorado is usually pictured as a colossus among rivers (including its popular and impressive features such as the Grand Canyon) it is a smaller river than most believe. For example, the Sacramento River, which has but 10 percent of the drainage area of the Colorado River, produces from 40 to 50 percent more water each year than the Colorado. The Colorado drains an arid part of the West, and, in the Lower Basin, serves an arid area.

The table below shows the historic flow of the Colorado River at Lee Ferry. It can be seen that recent years were comparatively dry ones.

TABLE VI
HISTORIC FLOW OF THE COLORADO RIVER AT LEE FERRY
(Stream flow in acre-feet)

Water year	Stream flow	Water year	Stream flow
1896.....	9,760,000	1930.....	13,070,100
1897.....	17,500,000	1931.....	6,387,500
1898.....	13,300,000	1932.....	15,286,300
1899.....	15,250,000	1933.....	9,745,400
1900.....	12,600,000	1934.....	4,396,400
1901.....	12,900,000	1935.....	9,912,100
1902.....	8,740,000	1936.....	11,970,300
1903.....	13,950,000	1937.....	11,896,900
1904.....	14,700,000	1938.....	15,440,000
1905.....	15,000,000	1939.....	9,393,700
1906.....	17,964,000	1940.....	7,081,600
1907.....	22,003,000	1941.....	16,052,000
1908.....	11,763,000	1942.....	17,029,400
1909.....	21,706,000	1943.....	11,263,000
1910.....	12,969,000	1944.....	13,221,400
1911.....	14,622,000	1945.....	11,545,400
1912.....	18,880,000	1946.....	8,744,700
1913.....	12,994,000	1947.....	13,514,400
1914.....	19,334,800	1948.....	13,687,200
1915.....	12,500,400	1949.....	14,359,000
1916.....	17,324,800	1950.....	11,057,200
1917.....	21,893,100	1951.....	9,830,700
1918.....	13,649,600	1952.....	17,980,000
1919.....	10,858,400	1953.....	8,805,000
1920.....	19,738,700	1954.....	6,116,000
1921.....	20,714,800	1955.....	7,307,000
1922.....	16,302,400	1956.....	8,754,000
1923.....	16,261,300	1957.....	17,347,000
1924.....	12,481,100	1958.....	14,260,000
1925.....	11,341,100	1959.....	6,756,000
1926.....	14,008,500	1960.....	9,192,000
1927.....	16,586,900	1961.....	6,674,000
1928.....	15,323,300	1962.....	14,828,000
1929.....	19,223,400	1963.....	6,291,000
		1964.....	6,824,000

Sources: 1896-1957 Report of Special Master, *op cit*, p. 117.
1958-1964 Colorado River Board.

The estimated inflow to Lake Mead which would have occurred during the wet and dry periods of record is shown in the table below:

	Estimated average annual flow (in millions of acre-feet)			
	1896-1908	1909-29	1930-62	1909-62
Colorado River at Lee Ferry	14.3	16.1	11.3	13.2
Net gains Glen Canyon to Hoover Dam --	--	1.1	0.8	0.9
Inflow to Lake Mead	--	17.2	12.1	14.1

Source: Pacific Southwest Water Plan.

It can be seen the amounts vary greatly from the dry periods to the wet periods and the 1909-62 average is substantially less than the average from 1909-29, which was the flow used for consideration of the Boulder Canyon Project Act.

Of course, the selection of water periods can effectively determine whether or not a surplus is indicated for a given area. Care must be exercised in dealing with Colorado River flow statistics so as to not mislead.

The total main stream supply on the basis of the entire period 1896-1962 as estimated by the *Bureau of Reclamation* is summarized as follows:

	<i>Million A.F.</i>
Virgin flow at Lee Ferry	14.9
Historic net gain Glen Canyon to Hoover Dam .....	.9
Undepleted flow Bill Williams River .....	.1
Present depletions Glen Canyon to Hoover Dam .....	.2
Total long-time average virgin water supply	16.1

The differences in the above supply figures and those of the Colorado River Board are shown on the chart on the following page prepared by the Colorado River Board of California.¹¹

The bureau figures are based upon the 1896-1962 runoff period while the Colorado River Board figures are based on the period of 1922-1962.

According to the Department of the Interior in addition to the differences as to runoff there are three other reasons for the differences between the estimates of the two agencies. Each, to a large extent results from judgment factors:

1. The CRB chart estimates a faster rate of depletion by the Upper Basin states than does the bureau.
2. The CRB chart reflects a higher estimate of future channel and control losses below Parker Dam than does the bureau.
3. The CRB chart reflects a lower estimate of useable water supply due primarily to different assumption as to reservoir operations.

The breakdown of these three separate reasons, each of which reflects the availability of additional water for use at and below Hoover Dam of the bureau estimates for the period 1975-2000, is as follows:

<i>Item</i>	<i>Difference (1000 A.F.)</i>		
	<i>1975</i>	<i>1990</i>	<i>2000</i>
Upper Basin depletion	400	500	270
Channel, control, and evaporation losses	335	365	365
Useable water supply	500	390	445
Total	1,235	1,255	1,080

¹¹ A detailed explanation of the criteria utilized in the board's estimates can be found in the appendix to the hearing transcript, August 13, 1964.

TABLE VII
COLORADO RIVER MAINSTREAM WATER SUPPLY AVAILABLE TO THE LOWER BASIN
 Comparison of U.S.D.I. (Secretary Uddall) † and C.R.B. Estimates
 Unit: million acre-feet/year

Item	1975		1985		1990		2000		2030	
	U.S.D.I.	C.R.B.	U.S.D.I.	C.R.B.	U.S.D.I.	C.R.B.	U.S.D.I.	C.R.B.	U.S.D.I.	C.R.B.
Estimated upper basin depletions.....	4,000	4,400	4,550	5,200	4,900	5,400	5,430	5,700	5,800	5,800
Release at Glen Canyon Dam.....	19,840	29,600	19,300	28,800	19,100	28,600	18,600	28,300	18,250	28,200
Net gain—Glen Canyon to Hoover Dam.....	+0.610	+0.700	+0.600	+0.600	+0.590	+0.600	+0.570	+0.600	+0.540	+0.600
Lake Mead evaporation.....	0.900	-0.800	-0.865	-0.800	-0.850	-0.800	-0.830	-0.800	-0.830	-0.800
Lake Mead storage drawdown.....	+0.210	40	+0.315	40	+0.350	30	+0.375	40	+0.375	30
Available for release at Hoover Dam.....	9,760	9,500	9,350	8,600	9,190	8,400	8,715	8,100	8,335	8,000
Inflow, Bill Williams River.....	+0.055	*	+0.055	*	+0.055	*	+0.055	*	+0.055	*
Net losses—Hoover Dam to Mexico under present river conditions, including excess arrivals to Mexico.....	-1,270	-1,200	-1,270	-1,200	-1,270	-1,200	-1,270	-1,200	-1,270	-1,200
Delivery to Mexico.....	-1,500	-1,500	-1,500	-1,500	-1,500	-1,500	-1,500	-1,500	-1,500	-1,500
Available for beneficial consumptive use at and below Hoover Dam under present river conditions. Savings and additions—future salvage.....	7,045	6,800	6,635	5,900	6,475	5,700	6,000	5,400	5,650	5,300
	+0.680	+0.200	+0.680	+0.200	+0.680	+0.200	+0.680	+0.200	+0.680	+0.200
Available for beneficial consumptive use at and below Hoover Dam with salvage programs in operation.....	7,725	47,000	7,315	46,100	7,155	45,900	6,680	45,600	6,330	45,500

* Included in "Net losses—Hoover Dam to Mexico . . ." entry.

† Senate Subcommittee Hearings on Central Arizona Project and Discussion of Pacific Southwest Water Plan, 88th Congress, p. 468 and Table 16A in January 1964 report on Pacific Southwest Water Plan.

¹ Based on Colorado storage project reservoir drawdown and 1930-62 runoff period.

² Based on 14.0 million acre-feet dependable annual yield at Lee Ferry. Figures shown are 14.0 minus figures in line 1.

³ No drawdown shown because a closed cycle is assumed, i.e. same storage at beginning and end of selected period.

⁴ As indicated in note 2, the C.R.B. figures are based on 14.0 dependable yield. The 1922-64 avg. annual virgin flow is 13.7-13.8 which means the 14.0 figure is on the optimistic side and to have these amounts for Lower Basin use means that 0.2 or 0.3 more salvage would be needed over the amount shown in line 2.

8/13/64

As is indicated in other sections of this report, the Colorado River Board and others are particularly critical of what they consider over-estimated amounts of potential water salvage. This difference is shown in the board's estimates in this report and was called to the committee's attention at a hearing by the chief engineer of the Colorado River Board:

The composition of the U.S.D.I. figure for salvage is 170,000 acre-feet per annum savings from Senator Wash Regulator Reservoir, 220,000 from groundwater recovery, 100,000 from phreatophyte eradication and control, and 190,000 from channelization. Deducting these quantities from the amount of the present losses would leave only 160,000 acre-feet a year to take care of the remaining net river losses in the over 200 river miles from Davis Dam to Mexico. In only the 49 miles from Davis Dam to Topock the net losses have averaged 186,000 acre-feet a year since 1953 when extensive channelization work in that reach was completed. Furthermore, it is difficult to see how Senator Wash, although a worthwhile project, can save 170,000 acre-feet a year. In each of several months of the past 3 years excess arrivals in Mexico were less than 5,000 acre-feet, without Senator Wash. Much of the excess arrival during the past 3 years has been caused by salinity and sediment problems and winter flow factors which Senator Wash will not solve. Mexico has already protested the ground water recovery program. Fish and game and recreational interests are pressing for more, not less, recreational and wildlife area along the Colorado River. A channelized river with large denuded areas will surely be resisted by outdoor enthusiasts. Whereas the C.R.B. favors all feasible water salvage programs, it believes that realism should be made part of the hydrology studies. Large savings such as assumed by the U.S.D.I. might be realized, but should not be assumed until the programs have been accomplished.¹²

Figures 1 and 2 which follow are graphic illustrations of the difference in water supply anticipated by the state and federal agencies. To as great an extent as possible the two charts illustrate comparable considerations.

These figures are illustrative of the past quagmire of contradictory hydrological data upon which far-reaching water developments are expected to be predicated.

It can be seen from the foregoing material that a large amount of water evaporates each year from reservoirs on the Colorado. According to the Bureau of Reclamation gross evaporation rates from reservoirs along the mainstream varied from 60 to over 80 inches annually. Net evaporation from Lake Mead during the five-year period ending in 1962 was estimated to average approximately 845,000 acre-feet a year while reservoir evaporation losses below Hoover Dam including Lake Mojave and Lake Havasu are estimated to average 370,000 acre-feet annually. Also, it is estimated by the Colorado River Board that 700,000 acre-feet a year and by the Bureau of Reclamation that 680,000 acre-

¹² Statement of Dallas Cole, hearing, August 14, 1964, at 2.

COLORADO RIVER MAINSTREAM
POTENTIAL EFFECTS OF COURT OPINION
ARIZONA V CALIFORNIA
WITH APPLICATION OF PRIORITY IN LOWER BASIN

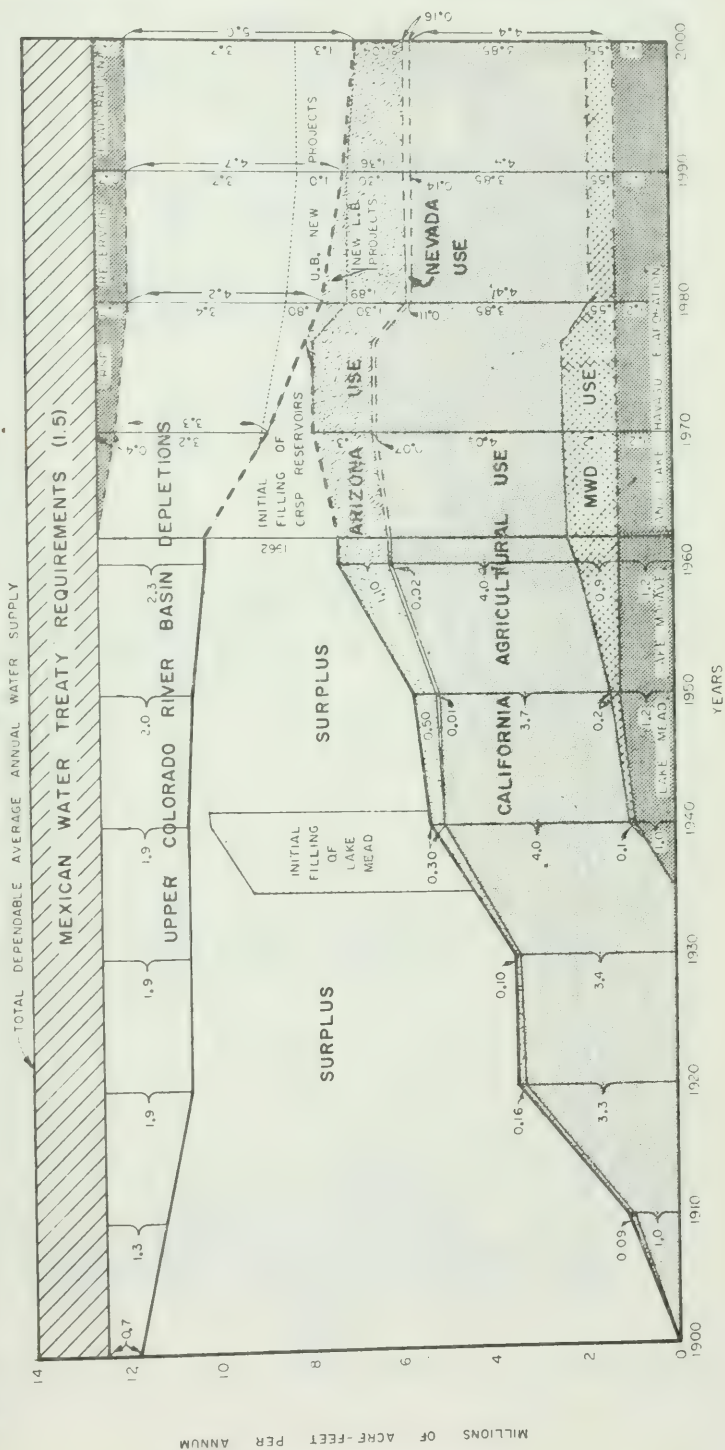
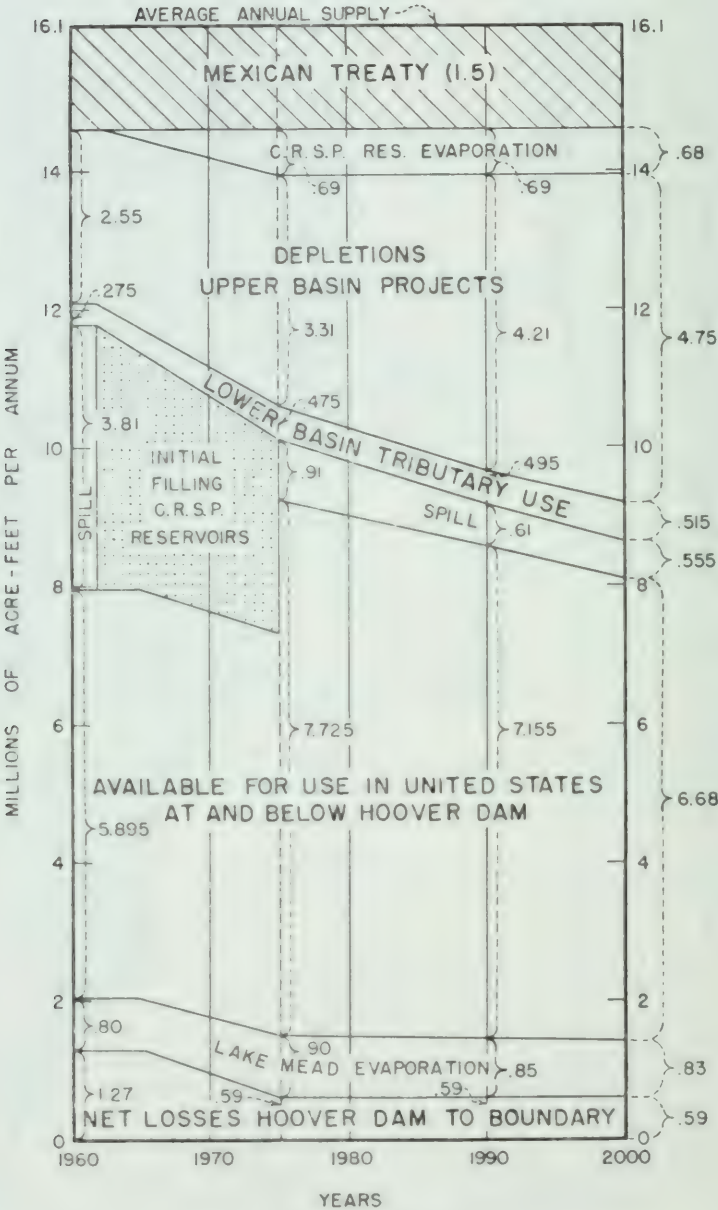


FIGURE 2

COLORADO RIVER SYSTEM
WATER SUPPLY AND WATER DEMAND
1960 - 2000



feet a year will be lost from evaporation on Colorado River Storage Project reservoirs in the Upper Basin. Evaporation control research, however, is now being conducted by several entities.

In addition to reservoir losses there is the matter of channel losses along the Colorado River below Hoover Dam. A number of agencies have made studies to determine the amount of water lost in this manner. There are several indeterminable factors including unauthorized diversions, channel and open ground evaporation, unaccounted consumptive uses, etc., so that estimated losses are not considered as accurate as the reservoir evaporation figures. The Bureau of Reclamation, in the Pacific Southwest Water Plan, shows 670,000 acre-feet annually in channel losses for the period 1957-61. Estimated annual regulatory losses of about 230,000 acre-feet were used as representative of "optimum operational control with present facilities and scheduling methods." Thus, it can be seen that reservoir evaporation losses and channel losses below Hoover Dam total approximately 1,270,000 acre-feet annually. If significant advances, particularly in reservoir evaporation control, are made in the coming years it should result in increasing the supply in the Colorado. In any consideration of water requirements and water supply the matter of evaporation and channel losses must be considered an important factor. It can be seen from Figure 1 that the amount lost through evaporation and channel losses in the Lower Basin alone is equal to that required by the Central Arizona Project.

The conflicting estimates of water supply include complex factors such as reservoir release, scheduling, etc.

Not only is there this disparity in estimates but Arizona Governor Paul Fannin registered a strong objection to the bureau's estimates of Colorado River Water supply in his state's comments on the original Pacific Southwest Water Plan.

Arizona does not concur in the estimate of water supply contained in the Pacific Southwest Water Plan. Arizona's estimate of the future water supply available in the main stream of the Colorado River is much higher than that presented in the report. I feel that there would be little to be gained by a discussion by me of the technical aspects of figures as to water supply. This problem was debated at great length during the trial phases of the *Arizona v. California, et al.*, litigation. . . ¹³

An adequate inventory and study of the Colorado River has not been made and is sorely needed. For example, the quantity of water available effectively determines the amount of power generation possible on the river. The Lower Basin states cannot plan with any certainty when there are gross variations in water supply figures utilized by the various agencies. In the long run, of course, this committee and all California water agencies are in agreement that the ultimate needs of our state and our neighboring states in the Lower Basin will require that additional water be imported into the Colorado River Basin.

A detailed discussion of the water supply and requirements of the Lower Basin is presented in Chapter IV of this report.

¹³ *Hearings on S. 1658 Before the Subcommittee on Irrigation and Reclamation of the Senate Committee on Interior and Insular Affairs*, 83 Cong. 2d Sess., Part II, at 708-9.

Chapter II

THE LONG SUIT

BACKGROUND

The present case, *Arizona v. California*, is the fifth in a series of suits over the waters of the Colorado River. The specific circumstance which brought about the current case was the decision of Congress not to approve the Central Arizona Project, utilizing Colorado River water, until the water rights question was solved.

In 1948 the Secretary of the Interior submitted a favorable report to the Congress recommending the authorization and construction of the Central Arizona Project. The project would serve the Tucson-Phoenix area with 1.2 million acre-feet of Colorado River water a year. Authorization bills for the project were unsuccessfully sought at the 79th, 80th, 81st and 82nd Congresses although some passed the Senate. In 1951 the House Committee on Interior and Insular Affairs adopted a resolution which resulted in the postponement of consideration of bills relating to the Central Arizona Project until use of water in the Lower Basin was either adjudicated or mutual agreement was reached.

Thus, on August 13, 1952, Arizona initiated this suit. The Arizona complaint was against California and seven of its public agencies (Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, Metropolitan Water District of Southern California, City of Los Angeles, City of San Diego and County of San Diego). The original jurisdiction of the U.S. Supreme Court, as provided in the Constitution, was invoked.

The complaint alleged that pursuant to the Colorado River Compact and the Boulder Canyon Project Act, Arizona was entitled to the bene-

ficial consumptive use of 2.8 million acre-feet of water each year from the Colorado River System, and that California be limited to 4.4 million acre-feet. The United States and Nevada intervened and on motion of California, New Mexico and Utah were added as parties to the case.

A chronology of major events in the case is as follows:

April 13, 1952	Motion to file a complaint filed by Arizona
January 19, 1953	Court granted motion
June 1, 1954	George I. Haight of Chicago appointed Special Master
July 15, 1954	Motion by California to join Colorado, New Mexico, Utah, and Wyoming as parties
July 18, 1955	Special Master Haight's report recommending that California's joinder motion be denied
October 10, 1955	Following Mr. Haight's death, Simon H. Rifkind appointed Special Master
October 20, 1955	California's filed exceptions to Special Master Haight's recommendations on joinder motion
December 12, 1955	Court denied California's motion to join as parties Colorado and Wyoming, and granted the motion to join as parties Utah and New Mexico only to the extent of their capacity as Lower Basin States
June 14, 1956	Trial began in San Francisco
August 28, 1958	Trial concluded
May 5, 1960	Draft report circulated among parties
December 5, 1960	Report of Special Master issued
January 8-11, 1962	Oral arguments before court (16 hours)
November 13-14, 1962	Additional arguments before court (6 hours)
June 3, 1963	Opinion of court rendered
September 16, 1963	California petition for rehearing filed
October 21, 1963	California petition for rehearing denied
March 9, 1964	Decree issued

At the trial, which lasted over two years, 340 witnesses were heard orally or by deposition, thousands of exhibits were received and 25,000 pages of transcript were filed. The Master's Report was a 433-page volume.

MAJOR ISSUES

1. Exclusion of Tributaries

As stated by the Special Master:

Perhaps the most crucial issue in the case arise from these conflicting views, an issue that is summarized by this question: *Is the application of the (Boulder Canyon) Project Act limited to the mainstream of the Colorado River or does it apply to the entire river system in the Lower Basin, that is, to both mainstream and tributaries?* (Emphasis added)¹

In its opinion the court stated:

As we see this case, the question of each State's share of the waters of the Colorado and its tributaries turns on the meaning and the scope of the Boulder Canyon Project Act . . . That meaning and scope can be better understood when it is set against its background—the gravity of the Southwest's water problems; the inability of local groups or individual States to deal with these enormous problems; the continued failure of the States to agree

¹ Master's Report, *op. cit.*, at 4, 5.

on how to conserve and divide the waters; and the ultimate action by Congress at the request of the States creating a great system of dams and public works nationally built, controlled, and operated for the purpose of conserving and distributing the water.²

Arizona claimed 2.8 million acre-feet and one-half of the surplus allocated to the Lower Basin based upon the mainstream supply only. This would permit Arizona to utilize 2.0 acre-feet of tributary flow in addition to its 2.8 million acre-feet mainstream allocation. At the time of the case, existing Arizona projects consumed less than half this amount. The remainder is contemplated to be used largely by the proposed Central Arizona Project.

On the other hand, California claimed that both mainstream and tributaries should be considered in the total available. On this basis (including the Gila River System, the major Arizona tributary), almost all of Arizona's entitlement would be already utilized.

The court's opinion includes a detailed examination of the legislative history of the Project Act.³ The Special Master similarly examined the question. With only Justice Douglas dissenting, the court held that the Congress intended to include only the mainstream flows when it enacted the Project Act. Thus the tributaries, which can deliver an estimated 2.0 million acre-feet annually, were lost to California in the computation of its allocation.

The court stated, "We have concluded. . . that Congress in passing the Project Act intended to and did create its own comprehensive scheme for the apportionment among California, Arizona and Nevada of the mainstream waters of the Colorado River, leaving each State its tributaries." The court (agreeing with the master) adopted the view that the Colorado River Compact, the law of prior appropriation and the doctrine of equitable apportionment (the doctrine used by the court in the absence of statute in resolving interstate claims according to the equities) *do not* control the issues in the case. Thus, the burden of the court's argument on both apportionment and tributary exclusion rested with congressional intent in enacting the Project Act. Justice Douglas was most critical of the court's opinion on the tributaries question and termed the majority opinion ". . . the baldest attempt by judges in modern times to spin their own philosophy into the fabric of the law, in derogation of the will of the Legislature."⁴

According to Northcutt Ely, California's chief counsel in the case, the decision on tributaries "practically eliminates the long-range availability of excess or surplus, which, on the water supply evidence, would have furnished a dependable supply of about 250,000 acre-feet to California if the tributaries had been included."^{4a}

An examination of the water supply situation, had the court included the tributaries, will show that it was on this key issue that California received its most serious setback from the suit. The following table

² 10 L.Ed. 2d 550, 551.

³ See also Ely & Wilbur, *Hoover Dam Documents*, 80th Congress, 2d Sess., House Document 717.

⁴ 10 L.Ed. 2d 581.

^{4a} Ely, *op. cit.*, at 3.

illustrates the water supply available to California and Arizona and the amount available for new projects in Arizona, under California's contention that the tributaries be included in the computation of the states' entitlements. (For the purposes of illustration throughout this chapter a 6-million-acre-foot long-time Lower Basin supply (a shortage situation) is used).

TABLE VIII
WATER AVAILABLE UNDER SITUATION INCLUDING TRIBUTARIES
(California's Contention)

	<i>Acre-feet per year</i>
ESTIMATED MAINSTREAM SUPPLY (long-time dependable supply) -----	6,000,000
ESTIMATED TRIBUTARY FLOW* -----	2,000,000
Total to allocate -----	8,000,000
<i>California's Share:</i>	
Basic 4,400,000 acre-feet amount -----	4,400,000
One-half of surplus over 7,500,000 -----	250,000
Total available to California -----	4,650,000
TOTAL CALIFORNIA USE (1963)	
Maximum contracted for (consumptive use) -----	5,362,000
Total California deficit -----	(712,000)
<i>Arizona's Share:</i>	
Basic 2,800,000 acre-feet amount -----	2,800,000
One-half of surplus over 7,500,000 -----	250,000
Total available to Arizona -----	3,050,000
TOTAL ARIZONA USE (present projects)	
Mainstream use (diversions less return flows) (Maximum expected to be used by Year 2000 from existing projects, <i>not including Central Arizona Project</i>) -----	1,300,000
Tributary use -----	1,800,000*
Total -----	3,100,000
Total Arizona deficit (without Central Arizona Project constructed)---	(50,000)

* Existing projects in Utah, Nevada and New Mexico require 151,000 acre-feet of tributary flows.

It can be seen that, based upon an estimated annual mainstream supply of 6.0 million acre-feet a year and including tributary waters in the computation, California's existing needs as expressed by present use *could not be fully met* on a long-term basis under conditions of maximum Upper Basin development. Even if California had "won" the lawsuit on this issue, reductions were inevitable. Upper Basin development and declining supplies in the river made it inevitable that California would be denied its full contract entitlement of 5,362,000 acre-feet. Exclusion of tributaries virtually eliminates any future possibility of surplus supplies in the river.

It can be seen also that the needs of the Central Arizona Project, requiring 1.2 million acre-feet annually, *could not be met at all* in this situation. The key here is that the tributaries are in Arizona and not in California and they are almost completely developed at present. In excluding the tributaries the court's opinion noted, "Not only does

the Gila enter the Colorado almost at the Mexican border, but also in dry seasons it virtually evaporates before reaching the Colorado."⁵

Former Attorney General Mosk has commented:

There is no question about it, we lost the tributary issue, and I have not recommended that we ask Congress to reverse that decision. There has been little disposition on the part of other Californians to do so.^{5a}

The court, by refusing to interpret the compact (Decree, *Arizona v. California*, Article XIII(D)) and by concluding tributaries were excluded from the apportionment under the project act, has created uncertainty as to accounting between the upper and lower basins for the Mexican Treaty burden. Resolution of this problem can only be determined by legislation interpreting the compact. There appears to be substantial Upper Basin sentiment in opposition to the court's decision on this issue. Significantly enough, the report of the Senate Committee on Interior and Insular Affairs transmitting S. 1658, the Goldberg Amendment, favorably to the Senate floor included a minority report by three Senators (all members of the committee), Gordon Allott and Peter Dominick from Colorado, and Milward Simpson from Wyoming. These gentlemen pointed out in their minority statement:

The net affect of all apportionments is to place a draft upon the Colorado River of 17.5 million acre-feet annually. This amount of water is simply not available from the Colorado River if the Lower Basin tributaries are excluded. The Lower Basin tributaries produce, on the average, about 3 million acre-feet of water annually. The compact apportions the waters of "Colorado River System" not just the mainstream. Therefore, surpluses as they pertain to the apportionment of the waters of the "Colorado River System" between the basins require an accounting of waters of the whole Colorado River System in the Upper Basin as well as an accounting of waters of the whole Colorado River System in the Lower Basin. . . . If the Lower Basin tributaries are excluded, then the Upper Basin, in almost every year, will have to deliver additional water to satisfy the Mexican Treaty. "We feel compelled to oppose the enactment of this bill [S. 1658] unless an amendment including tributary flows is adopted."⁶

In addition to this minority report Senator Clinton P. Anderson and Senator Edwin L. Mechem, both members of the committee and U.S. Senators from New Mexico attached individual views to the committee report stating:

We are therefore, sympathetic to language that would amend this bill in order to provide for assurance of an accounting of the

⁵ 10 L.Ed. 2d 560, vote 40.

^{5a} Stanley Mosk "California's Water Crisis . . . A Time for Decision," address before Town Hall, Los Angeles, July 7, 1964, at 5.

⁶ U.S. Senate, 88th Congress, 2d Session, *Report 1330*, at 30.

waters in the Colorado River system in accordance with the provisions of the Colorado River Compact.⁷

Furthermore, Senator Frank E. Moss of Utah, also a member of the committee, stated:

I concur in the individual views of Senator Anderson and Senator Mechem of New Mexico. . . . It is well to underline the duty to account for all the waters to all with interest in the river, and I would support positive language to accomplish this. I endeavored to retain the duty of the Secretary of Interior and Commissioner of Reclamation to account for all of the waters of the Colorado River System allotted, in accordance with the Colorado River Compact. . . .⁸

Senator Thomas H. Kuchel of California refused to sign the committee report and thus, a total of seven Senators of the 15-member Senate Committee on Interior and Insular Affairs have taken issue with the court's decision on the exclusion of tributaries issue. California is not alone in being dissatisfied with the court's general result in this regard.

2. Specific Allocation

As was indicated above, the Project Act authorized a tristate compact among the Lower Basin states to apportion the 7.5 million acre-feet allocated to that basin. This compact was never entered into. Therefore, the court, in its opinion, concurred five to three with the master in apportionment of the mainstream supply to the states as follows:

California	4.4 million acre-feet plus one-half of excess over 7.5 million
Arizona	2.8 million acre-feet plus one-half of excess over 7.5 million
Nevada	300,000 acre-feet

The court held that Congress, in passing the Project Act, intended to and did create its own comprehensive scheme for the apportionment and the compact provisions did not control.^{8a}

3. Allocation of Shortages

The allocation of shortages among the states was another major issue of the case. The special master devised a formula for allocation of shortage based upon allocations whereby states would be reduced in proportion to their entitlement as follows:

California	44/75 of water available
Arizona	28/75 of water available
Nevada	3/75 of water available

⁷ *Ibid.*, at 27.

⁸ *Ibid.*, at 28.

^{8a} 10 L.Ed 2d 556.

The effect of the master's recommendation is shown in the following table:

TABLE IX

MASTER'S RECOMMENDATION

(Based upon mainstream use only and assuming a longtime dependable supply of 6.0 million acre-feet a year and maximum Upper Basin development)

	Total acre-feet per year
Estimated mainstream supply (Lower Basin)-----	6,000,000
Total to allocate -----	6,000,000
California's share:	
Since shortage exists, based upon $4\frac{4}{75}$ formula -----	3,500,000
Present California use (consumptive use) -----	5,362,000
Total California reduction -----	(1,862,000)
Arizona's Share:	
Since shortage exists, based upon $28\frac{2}{75}$ formula -----	2,240,000
Present Arizona use (Diversion less return flows) -----	1,300,000
Available for Central Arizona Project -----	940,000

In this case, however, the Central Arizona Project would be reduced and its remaining supply would come at the expense of California. The master's recommendation would have left no water for the Metropolitan Water District in a shortage period of this magnitude.

The court rejected, unanimously, the master's formula, which was the most *damaging* feature of the master's report for California. In rejecting it, the court appears to have reduced the adverse impact which would have resulted if the court had adopted the formula, but the court divided over the choice of a replacement one. A formula which respected priorities in the tradition of the western water law "first in time, first in right" doctrine was supported by Justices Douglas, Harlan and Stewart. They advocated a formula with interstate priorities controlling. This would have protected existing uses in California and Arizona against new projects such as the proposed Central Arizona Project. The future projects would thus bear the risk of shortage. The majority left the apportionment to the secretary and did not accept the master's formula.

The majority held that the Project Act had vested the Secretary of the Interior with the authority to devise a shortage formula which might be based upon either proration, or priority, or other factors. The secretary has never announced such a formula. The court pointed out that the Congress has the authority to restrict or enlarge the secretary's powers in this respect. The responsibility immediately rests with the secretary but, as the court points out, ultimately rests with Congress.

Former Attorney General Stanley Mosk has commented:

"If California loses any part of that 4.4 million acre-feet, it will not be the result of the Supreme Court decision. It will be the result of action hereafter to be taken by the Secretary of the Interior or by Congress. I am sure that neither the secretary nor the Congress will ever take that action if our people understand what is involved."⁹

⁹ Mosk, *op. cit.*, at 5.

This is most important. It is because of the transfer of responsibilities to the secretary and Congress that California interests are sponsoring legislation to establish a shortage formula whereby existing California projects will be protected. In effect, the court left the matter to the Congress and to the secretary.

Much concern has been expressed over the impact of this portion of the court's decision on the role of the secretary in water development. The court's construction of the Boulder Canyon Project Act was strongly opposed by Justice Douglas who commented:

The present decision . . . grants the federal bureaucracy a power and command over water rights in the 17 western states that it never has had, that it always wanted, that it could never persuade Congress to grant, and that this court up to now has consistently refused to recognize. Our rulings heretofore have been consistent with the principles of reclamation law . . . The rights of the United States as storer of waters in western projects has been distinctly understood to be simply that of "a carrier and distributor of water."¹⁰

California's former Attorney General, Stanley Mosk, expressed similar views:

The court will review any allocation the Secretary makes for abuse of this discretion, but there are precious few controls on that discretion, which the secretary might abuse. The secretary's power may be enlarged or it may be contracted by Congress.

The remarkable part of the decision cannot be stated in terms of which state gets how much water. The remarkable part is the vast, unprecedented, uncontrolled, and uncontrollable power conferred on one man, the Secretary of the Interior. In dissent, Mr. Justice Douglas, who is the most knowledgeable member of the court with respect to water rights, summed up the result like this:

"Now one can receive his priority because he is the most worthy Democrat or Republican, as the case may be."

That sentence describes why I am confident that executive fiat as the basis of water rights will ultimately prove as unacceptable to Arizona, to Nevada, and to the rest of the country as it is to California. Law—not the caprice of any executive official, however wise and however fair he may try to be — must be the basis of water rights.¹¹

The following table illustrates the difference in result under California's original contention in the suit (including tributaries), the master's proration formula, and the court's opinion (assuming a 4.4 million acre-foot priority to California) based upon the same shortage conditions assumed in previous charts:

¹⁰ 10 L.Ed. 2d 581.

¹¹ Mosk, *op. cit.*, at 6-7.

TABLE X

**COMPARISON OF CALIFORNIA'S CONTENTION, MASTER'S RECOMMENDATION
AND COURT OPINION (WITH PROTECTION OF EXISTING PROJECTS)
UNDER MAXIMUM UPPER BASIN DEVELOPMENT**

	<i>California's contention</i>	<i>Master's recom- mendations *</i>	<i>Court's opinion †</i>
1. Total water to be allocated	8,000,000	6,000,000	6,000,000
2. Available to California	4,650,000	3,500,000	4,400,000
3. Total California contracts	5,362,000	5,362,000	5,362,000
4. California loss	(712,000)	(1,862,000)	(962,000)‡

* Since maximum available is less than 7.5 million, master's shortage formula would be in effect.

† Assuming 4.4 priority to California.

‡ The General Manager and Chief Engineer of the Metropolitan Water District has referred to this amount as "contract" or "paper" water, as contrasted to the "wet" water loss of 250,000 acre-feet which represents the difference between the total loss under California's contention compared with the loss under the court's opinion. Mr. Skinner discusses this concept in California State Senate Fact Finding Committee on Water Resources, Hearing, *Transcript* Sept. 4, 1964, at 146-148.

In its decision, the court reduced California's certain rights to what the decree calls "present perfected rights," which are defined as rights to the quantity of water actually put to use before congressional authorization of Hoover Dam in 1929 plus the rights of Indian reservations. A determination of the extent of present perfected rights is being made at the present time, however, the estimates have been variously given as anywhere from 3.1 to 3.6 million acre-feet for California. Of course, Arizona's would also be reduced to her "present perfected rights."

Before the Senate Interior and Insular Affairs Committee, in discussing the court's decree, Northcutt Ely emphasized that the decree *protects* these present perfected rights, which are based upon diversions from the Colorado prior to enactment of the Boulder Canyon Project Act and construction of any major diversion works on the river. Thus, in any shortage formula the secretary might adopt the only amounts actually being dealt with are those above the amount of present perfected rights. Practically speaking, this amount above the present perfected rights is water that was made available to users as a direct result of the major storage projects and diversion works on the Colorado. Mr. Ely indicated that

"Article II(B)(3) of the decree thus restricts the scope of the secretary's discretion to the marginal quantity that represents the difference between 7.5 million and the aggregate of present perfected rights, that is to say, the *incremental stored water* which is the 'amount remaining available' above present perfected rights. Present perfected rights, not yet determined, are probably about 3.5 million in California, 600,000 in Arizona, a total of 4.1 million acre-feet of 'present preferred rights.' These were the quantities that were used before Hoover Dam was built. If 7.5 million is available altogether, the incremental stored water made available by construction of Hoover Dam thus represents about 3.4 million. Arizona's apportionment of 2.8 million thus includes about 600,000 acre-feet of present perfected rights plus about 2.2 million of the incremental stored water, or, in the language of the decree, the 'amount remaining available.' Arizona's 2.2 million of this is about

65 percent of the whole 3.4 million. California, receiving 4.4 million altogether, is getting 900,000 acre-feet, or less than 27 percent of the incremental stored water, in addition to her present perfected rights. Nevada's 200,000 is just under 9 percent of the 3.4 million acre-feet of stored water."

The secretary told the committee that he is preparing regulations to promulgate a shortage formula. It is difficult to see how he can announce one which conforms to the decree until present perfected rights have been determined, or one which gives Arizona a greater share of the stored water—that is, the incremental stored water, the "amount remaining available" in the decree language—when the supply diminishes, than the 65 percent of it that she receives when the supply is full. We think that a proper formula must protect existing uses. (Emphasis added.)¹²

Mr. Ely's analysis may be summarized as follows:

SUMMARY OF SOURCE OF ENTITLEMENT

(Assuming supply of 7.5 million acre-feet)

	California	Arizona	Nevada
Present perfected rights (estimated)	3,500,000	600,000	—
Share of incremental supply	900,000	2,200,000	300,000
Total	4,400,000	2,800,000	300,000

Thus, it can be seen that with a full river supply of 7.5 million acre-feet the relationship of incremental supply to present perfected rights is as follows:

	All States
Present perfected rights	4,100,000
Incremental supply	3,400,000
Total	7,500,000

Thus, as a matter of fact, should the supply in the river amount to 7.5 million acre-feet a year, California is receiving $\frac{9}{34}$ ths or 26 percent of the incremental stored water. Arizona, on the other hand, is receiving $\frac{22}{34}$ ths or 65 percent of the incremental water and Nevada is receiving $\frac{3}{34}$ ths or 9 percent of the stored water.

This analysis shows that California, if it receives a supply of 4.4 million acre-feet, gains little over its 1929 present perfected rights and the major share of Arizona's supply is that developed by the major projects on the river constructed since 1929 and paid for in great measure by Californians.

This committee does not believe a shortage formula or proration should be used. However, if proration were to be adopted, a formula based on Mr. Ely's analysis is the most acceptable to this committee. The master's formula is manifestly unfair. Under the shortage formula suggested by Mr. Ely, the supply to California would be based on 26 percent of the incremental supply.

Unless this minimum formula is utilized, California's share would be proportionately less under conditions of shortage than with a full river.

¹² Hearings on S. 1658, Part II, *op. cit.*, at 499, 500.

Thus, it can be seen that the master's proposed formula of proportionate sharing would have been grossly unfair to California because it did *not* take into consideration apportionment of only the *incremental* supply.¹³

For purposes of illustration, the following table (using a river supply of 6.0 million acre-feet a year as in previous tables) illustrates the water supply picture under a formula based on this *essential* minimum requirement.

Situation Under Minimum Acceptable Shortage Formula

	<i>Total acre-feet per year</i>
Mainstream supply	6,000,000
Total to allocate	6,000,000
California's share:	
Present perfected rights	3,500,000
Share of incremental water (9/34)	502,930
Total	4,002,930
Present California use	5,362,000
Total California loss	—(1,359,070)
Arizona's share:	
Present perfected rights	600,000
Share of incremental water (22/34)	1,229,300
Total	1,829,300
Total Arizona use	1,300,000
Surplus available for Central Arizona Project	+ 529,300

This table should be compared with Table IX on page 46 showing results of California's contention, the master's recommendation, and the court's decree with a 4.4 guarantee to California.

Other Issues

A number of other issues were involved in the case. These are being omitted from this report since they do not bear directly upon the major issue with which we are concerned. These other issues included such matters as government claims over the reservation of water for the use of 25 Indian reservations as well as the Arizona-New Mexico Gila controversy.

Summary

It can be seen that the question of the shortage formula basically turns on the basis of the court's decision itself—an interpretation of the Boulder Canyon Project Act. By leaving the matter of allocation of shortages to the Secretary of the Interior, the court in effect rejected all contentions as to the intent of Congress in 1929 and left the matter to the Secretary of the Interior. In determining the shortage formula he is to impose, the Secretary of the Interior would presumably base

¹³ The Master's formula does not give full recognition to present perfected rights. In effect, it penalizes states which have acquired substantial present perfected rights.

his decision in part upon what was really intended as an equitable method by Congress in 1929 when dividing the waters of the river in passing the Boulder Canyon Project Act. It appears that Secretary Udall has agreed with the court and has concluded that the principle of equitable apportionment was not intended by Congress in 1929. As the Secretary told the Senate Committee on Interior and Insular Affairs:

I have, as I say, Senator, the terrible and heavy burden of dealing with a shortage problem, unless Congress decides to get into that field. If there is one cardinal principle that I see—and I have discussed it with everybody in my department—that must apply and that has to apply, it is that these states within the terms of the contract that they signed with one another *have to be on equal footing*.

I do not think Congress in any past project in this whole Colorado River Basin has given one state or one irrigation district the priority position over any other state. I see no equitable or legal or reasonable principle under which you can.¹⁴

As is discussed in Chapter V, this committee recommends the principle of priority of appropriation and a 4.4 million acre-foot priority to California. In any event, if proration were to be used, it must be based on the formula suggested by Mr. Ely which, in turn, is based on the project act.

¹⁴ *Hearings on S. 1658, Part I, op. cit.*, at 354-255 (emphasis added).

Chapter III

WATER SUPPLY AND REQUIREMENTS IN THE PACIFIC SOUTHWEST

Water supply data indicates that sufficient future natural supplies in the river will not be available to operate both the Central Arizona Project and meet California's uses (even when cut to 4.4 million acre-feet a year) without import of new supplies into the basin. It is appropriate at this point, therefore, to examine the matter of total water availability in the Pacific Southwest.

THE PACIFIC SOUTHWEST

The Pacific Southwest generally is defined as the Colorado River Basin downstream from Lee Ferry plus the southern portion of California, south of the Tehachapi Mountains. It includes three major areas which will be discussed below: The Los Angeles metropolitan area, the agricultural areas of southeastern California, and Arizona. The region consists of approximately 190,000 square miles.

According to the Bureau of Reclamation this "... is the most critically water short region of the nation ..." The Pacific Southwest is generally an area of low precipitation and is an area of net moisture deficiency (precipitation less evaporation and run-off).

Areas with an excess of 40 inches a year of rainfall are located almost entirely in western Oregon, Washington and northern California. The

TABLE XI
**HISTORIC AND PROJECTED POPULATION ESTIMATES—UNITED STATES,
 PACIFIC SOUTHWEST, AND SUBAREAS**

(Unit: thousands)

Year	Area						
	Arizona	Southern California	Southern Nevada	South-western New Mexico	South-western Utah	Total Pacific Southwest area	Total United States
1930.....	436	3,000	12	3	9	3,460	123,000
1940.....	499	4,000	20	3	11	4,533	132,000
1950.....	750	6,000	52	4	12	6,818	151,000
1960.....	1,302	9,234	131	6	12	10,685	175,000
1970.....	2,165	12,919	230	6	13	15,333	207,000
1980.....	3,194	16,614	350	7	13	20,178	244,000
1990.....	4,416	19,625	450	8	14	24,513	286,000
2000.....	5,869	22,654	530	9	15	29,077	329,000
2010.....	7,598	25,317	600	9	16	33,540	368,000
2020.....	9,654	27,616	690	10	17	37,987	401,000

Source:

1. Arizona, Nevada, Utah, and New Mexico data are based on projections of governmental agencies, banks, consultants, and other commercial concerns.
2. California—Bulletin 78, Department of Water Resources, State of California.
3. U.S. Senate Select Committee on Water Resource Activities, 86th Congress, Print No. 5.
- U. S. Bureau of Reclamation: *Pacific Southwest Water Plan*, Table 1.

only areas having a "moisture surplus" are in Oregon and Washington. Much of the region, including areas in Arizona and southeastern California, are classed as desert and semidesert.¹

In spite of the lack of water, recent population growth in the area has been among the greatest in the nation. It is expected that the population growth will continue and that the area known as the Pacific Southwest, which had a population of a little over 10,000,000 in 1960, will have a population of more than 24,000,000 in 1990 and almost 38,000,000 in the year 2020 (see Table XI). All economic indices with regard to employment and economic development also indicate that the area is a national leader in the economic growth rate and undoubtedly will continue such development.^{1a} In Chapter I the conflicting estimates of the actual supply in the Colorado were discussed together with the various factors entering into this determination, such as estimated Upper Basin development.

Turning now specifically to the Pacific Southwest and using tables incorporating both Department of Interior and Colorado River Board of California estimates, Table XII shows the estimated Pacific Southwest water supply from the present through the year 2030. It can be seen by comparing lines A7 and B3 that the total supply, as estimated by the Department of Interior, is consistently more than that estimated by the Colorado River Board of California.

Table XIII indicates the Department of Interior estimate of total water requirements in the entire Pacific Southwest and shows graphically the extent to which southern California and Arizona uses are

¹ Dean Peterson, "Geological and Hydrological Considerations Relating to Western Water Supply," Western Interstate Water Conference, Las Vegas, September 16-17, 1964.

^{1a} Chapter I of the *Pacific Southwest Water Plan*, Report of August 1963 as modified January 1964, includes a more detailed description of many of these factors.

expected to increase over the period of the next 65 years. Tables XII and XIII are compared to show the future water supply and water requirement in Table XIV, which shows the total water deficiency in the Pacific Southwest area, using first the Department of Interior estimates and then the Colorado River Board estimates. Consistent with the differences in estimated water supply, larger deficiencies are estimated by the Colorado River Board than by the Department of Interior.

These data are for the entire Pacific Southwest area. At the present time line A5 of Table XIV indicates that there is a 1.43 million acre-foot deficiency in the entire Southwest. This represents mined ground water. As will be discussed below, the overall deficiency is localized in certain parts of the Pacific Southwest while conditions are in balance in others. The overall conditions of deficiency make it abundantly clear that the entire Southwest is deficient and should work together to develop more water even though certain areas are concerned less with critical deficiencies at the present than others.

The three Tables XII-XIV are graphically summarized on Figure 3, which shows the estimates of supply and demand with California limited to 4.4 million acre-feet a year (the assumption utilized throughout this report).

TABLE XII
COMPARISON OF PACIFIC SOUTHWEST WATER SUPPLY DATA, USDI AND CRB
(Unit: million acre-feet)

Item	Development year				
	Present	1975	1990	2000	2030
A. United States Department of Interior					
1. Release at Glen Canyon Dam	8.600	9.840	9.100	8.600	8.220
2. Undepleted net gain, Glen Canyon to Lake Mead, and release from storage—Lake Mead	1.060	1.270	1.410	1.435	1.435
3. Undepleted inflow—Bill Williams River	0.080	0.080	0.080	0.080	0.080
4. Arizona water supply—Gila Basin safe yield	1.700	1.700	1.700	1.700	1.700
5. California water supply					
Los Angeles Aqueduct	0.320	0.480	0.480	0.480	0.480
California Aqueduct		0.500	1.800	1.900	1.900
Safe yield local sources	1.400	1.430	1.450	1.450	1.450
Total	1.720	2.410	3.730	3.830	3.830
6. Colorado River salvage		0.680	0.680	0.680	0.680
7. Total water supply	13.160	15.980	16.700	16.325	15.945
B. Colorado River Board					
1. California Aqueduct enlargement			+0.500	+0.500	+0.500
2. Reduced estimate of Colorado River supply available for consumptive use		-0.725	-1.255	-1.080	-0.830
3. Total water supply (line A7 + B1 + B2)		15.255	15.945	15.745	15.615

Sources:

U.S.D.I. Estimate—Pacific Southwest Water Plan Report of January 1964, Table 16, pp. IV-11 and U.S.B.R. rough estimate of extension for year 2030 C.R.B. Modification—Line B1—Based on recent announcement by Department of Water Resources. (C.R.B. 8-13-64.)

From: Colorado River Board.

TABLE XIII
PACIFIC SOUTHWEST WATER REQUIREMENTS, USDI ESTIMATE

(Unit: million acre-feet)

Item	Development year					
	Present	1975	1990	2000	2020	2030
Depletions—Glen Canyon to Lake Mead ¹	0.260	0.450	0.470	0.490	0.490	0.490
Lake Mead evaporation.....	0.800	0.900	0.850	0.830	0.800	0.800
Southern Nevada uses from Lake Mead.....	0.020	0.100	0.150	0.180	0.280	0.300
Southern California uses.....	6.640	7.780	8.830	9.620	10.630	11.180
Arizona uses.....	3.855	4.475	4.765	5.025	5.585	5.725
Mainstream Indian uses below Hoover Dam.....	0.150	0.360	0.550	0.550	0.550	0.550
Fish and Wildlife uses.....	0.025	0.180	0.340	0.340	0.340	0.340
Net mainstream losses—Hoover Dam to Mexico including excess arrivals into Mexico.....	1.270	1.270	1.270	1.270	1.270	1.270
Mexican Treaty obligation.....	1.500	1.500	1.500	1.500	1.500	1.500
Total water requirement.....	14.520	17.015	18.725	19.805	21.445	22.155

Source: Pacific Southwest Water Plan, Report of January 1964, Table 13, p. IV-2 and U.S.B.R. rough estimate of extension for development years 2020 and 2030.

¹ Includes future reservoir evaporation and Dixie projects and other future tributary projects.

From: Colorado River Board.

TABLE XIV

SUMMARY

Pacific Southwest Water Deficiency, USDI Estimate and CRB Modification

(Unit: million acre-feet)

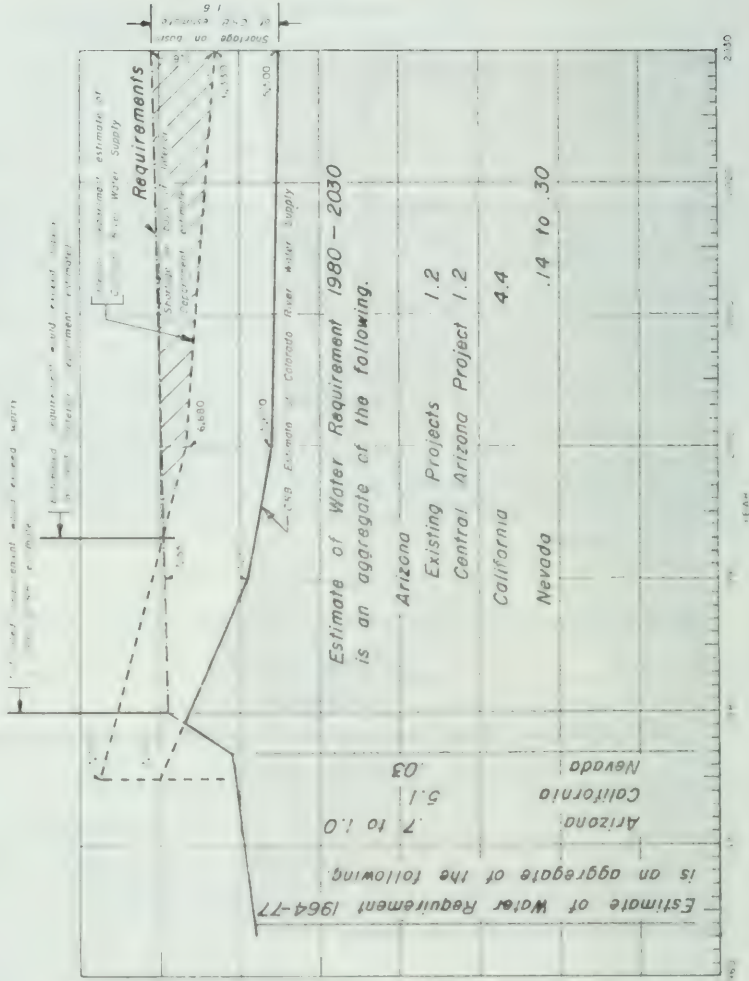
Item	Development year				
	Present	1975	1990	2000	2030
A. United States Department of Interior estimate					
1. Total water requirement.....	14.520	17.015	18.725	19.805	22.155
2. Total water supply.....	13.160	15.980	16.700	16.325	15.945
3. Difference.....	1.360	1.035	2.025	3.480	6.210
4. Estimated unrecovered conveyance losses associated with import required to satisfy deficiency.....	70	50	100	170	310
5. Total water deficiency.....	1.430	1.085	2.125	3.650	6.520
B. Colorado River Board modification					
1. Total water supply.....		15.255	15.945	15.745	15.615
2. Difference (line A1 — B1).....		1.760	2.780	4.060	6.540
3. Estimated unrecovered conveyance losses associated with import required to satisfy deficiency.....		0.090	0.140	0.200	0.330
4. Total water deficiency.....		1.850	2.920	4.260	6.870

Sources: USDI Estimate—Pacific Southwest Water Plan, Report of January 1964, Table 16, p. IV-11 and U.S.B.R. rough estimate of extension for year 2030.

From: Colorado River Board.

FIGURE 3

ESTIMATES OF COLORADO RIVER WATER SUPPLY
AND REQUIREMENTS IN PACIFIC SOUTHWEST
Assuming California's Use is Limited to 4.4 After 1980



SOUTHERN CALIFORNIA COASTAL PLAIN

We shall first consider the water supplies available to the coastal plain of southern California as defined by the service area of the Metropolitan Water District of southern California.

The southern California coastal plain is a semiarid region. During the past few decades the region has been faced with an extremely severe drought which has overtaxed the local water supply available in the area.

More than half the population of the state, approximately 10 million people, however, now live in southern California, almost double the number living there in 1946, and the Metropolitan Water District expects 20 million people in the area by 1990.

The State of California has agreed to increase the maximum annual entitlement of the Metropolitan Water District for water from the state water facilities from 1.5 million acre-feet per year to 2 million acre-feet per year. The State Water Project was designed to meet the needs of southern California through 1990.

It can be seen from Table XV that beginning in 1975 and through 1990 water supply and water demand will be in balance in the Metropolitan Water District service area and, in fact, increasing ground water storage is expected beginning in 1975.

Thus, based upon assumed Colorado River supplies to the Metropolitan Water District of 550,000 acre-feet in 1990 (the portion of a 4.4 million acre-foot priority extending to 1990 which the Metropolitan Water District would receive, the increase in the contract entitlement for the State Water Project, together with the proposed increased capacity of the City of Los Angeles Aqueduct, will meet the needs of coastal southern California through 1990 based on present construction schedules. The critical periods and the periods of water deficiency, as

TABLE XV
ESTIMATED SUPPLIES OF WATER AVAILABLE AND DEMAND IN
MWD COASTAL PLAIN SERVICE AREA

(Unit: thousand acre-feet)

	1965	1970	1975	1980	1985	1990
Non-M.W.D. supply						
Local firm annual yield ¹	1,075	1,068	1,063	1,059	1,057	1,055
Repumped replenishment deliveries ²	229	327	362	395	422	446
Reuse of applied water ³	142	159	173	189	202	212
Waste water reclamation ⁴	15	30	45	60	75	90
Los Angeles City Aqueduct ⁵	320	470	470	470	470	470
Subtotal.....	1,781	2,054	2,113	2,173	2,226	2,273
M.W.D. supply						
Colorado River Aqueduct ⁶	1,180	1,180	1,180	970	760	550
State Water Project ⁷	0	0	550	1,050	1,550	2,000
Sea water conversion.....	0	0	100	100	100	100
Subtotal.....	1,180	1,180	1,830	2,120	2,410	2,650
Total supply.....	2,961	3,234	3,943	4,293	4,636	4,923
Total demand.....	3,009	3,468	3,850	4,210	4,564	4,891
Net increase in ground water storage.....			93	83	72	32
Net decrease in ground water storage.....	48	234				

¹ Diversions from surface streams or pumping from underground basins to the extent that recharge is accomplished from natural sources.

² That portion of the deliveries of imported water for ground water replenishment which is subsequently recaptured by local agencies.

³ Water applied for M&I use and agricultural uses which percolates of its own accord to underground and is subsequently repumped.

⁴ Water treated and spread for percolation into underground and subsequent repumping.

⁵ Includes completion of second barrel of Owens River Aqueduct by 1970.

⁶ Assuming operation of Central Arizona Project in 1976 and based upon water supply estimates of Colorado River Board.

⁷ Including prepared enlargement of yield of State Water Project to 4,230,000 acre-feet.

shown in the chart, are the years immediately leading up to and during the first years of delivery of water from the State Water Project. It should be noted that the estimates in Table XV include the development of a maximum of 90,000 acre-feet from waste water reclamation.

Thus, it can be seen that if the state's entitlement to the Colorado is *not permitted* to drop below 4.4 million acre-feet southern California needs can be met through 1990 from supplies within the state.

The general manager and chief engineer of the Metropolitan Water District has described the water supply situation in southern California.

... there is available from local water resources what the hydrologists call a "safe annual yield" of sufficient water for no more than 5 million people. That's the dependable long-term supply of water provided by nature in the form of surface streams and ground water replenished from rainfall and run-off within the region. To this, we add the supply available to the City of Los Angeles from its Owens River Aqueduct. And on top of that, the major contribution by the Colorado River Aqueduct—one almost equal to the local dependable natural supply.

The supply from the Colorado, despite the many news stories about our loss of water from that source, will continue to be sufficient to carry us through, we believe until the water from northern California starts to flow through the Tehachapis in the early 1970's Another significant factor is that about half of the Colorado River water is now going for replenishment of over-drawn underground supplies and for agriculture. The Metropolitan Water District was organized—and the law under which it operates defines this as its purpose—to supply water for domestic and municipal uses. Therefore, if these needs so require and if the current drought continues, some cutback in the replenishment program and perhaps even in agricultural uses might prove necessary before the state water reaches here.

... a few conspicuous points should be emphasized. As a matter of reassurance, the uncertainties and wide disparity of views in regard to regional plans pose no threat to our immediate or near-future well-being. The State Water Project already authorized and financed under the Burns-Porter Act and other legislation, and now well along in construction, will sustain the Metropolitan Water District and the remainder of southern California until about year 1990. This is so even with the worst conceivable impairment of Metropolitan's supply from the Colorado River during the intervening period. As adjusted under a . . . contract amendment, Metropolitan's maximum annual entitlement to state project water will increase to 2 million acre-feet, 65 percent more than Metropolitan's present contractual allotment of Colorado River water. Altogether, the apportionment to southern California south of the Tehachapi Mountains will aggregate 2.5 million acre-feet among 14 contracting agencies. We must assume that Metropolitan's supply of Colorado River water will be cut to 550,000 acre-feet by year 1990 or 45 percent of its present contract allotment. Nevertheless, the local water resources together with the City of Los Angeles supply from the High Sierras, Metropolitan's

reduced importation from the Colorado River, and state project water, aggregating in all 4.9 million acre-feet in the state project service area south of the Tehachapis, will support a population of approximately 20 million, the expected number of people in this area by year 1990. Nothing said here is intended to imply that the intense current concern in regional concepts is precipitate. It is none too soon to do the advance planning. We should remember that basic studies for the California Water Plan, of which the present State Water Project is the first development, began three decades ago.²

SOUTHEASTERN CALIFORNIA

The primary activity in southeastern California is agriculture and is one of the state's most productive agricultural areas. For example, the Colorado Desert hydrographic area has an estimated 709,000 irrigated acres. Imperial County, with total irrigable lands of 570,000 acres, presently has 550,000 acres under irrigation. The value of all farm products sold in Imperial County increased 64.8 percent between 1954 and 1959, more than double the state average and the total value of crops in the county in 1959 was \$169,324,300.³

Under the Seven Party Agreement for allocation of Colorado River water within California, the first three priorities (comprising 3,850,000 acre-feet) are held by the agricultural areas of southeastern California. Table XVI shows the present estimated net water requirements

TABLE XVI
SOUTHEASTERN CALIFORNIA
(Served by Colorado River)
PRESENT ESTIMATED NET WATER REQUIREMENTS
(In thousand acre-feet)

	Agricultural	Municipal and Industrial	Total
Desert area			
Imperial Irrigation District.....	2,476.0	17.0	2,493.0
Coachella County Water District.....	340.0	6.0	346.0
Desert Indian areas.....	2.6		2.6
Subtotal.....	2,818.6	23.0	2,841.6
Colorado River areas*			
Palo Verde Irrigation District.....	320.0		320.0
Yuma Project—Res. Div. (non Indian).....	20.0		20.0
Yuma Project—Res. Div. (Indian).....	20.0		20.0
Subtotal.....	360.0	0.0	360.0
Total	3,178.6	23.0	3,201.6

* Includes minor M. and I. uses.

Source: Pacific Southwest Water Plan, January 1964, Table 10.

² Robert Skinner, "Southern California's Water—Facts and Issues," statement to Los Angeles Rotary Club, July 31, 1964, at 6, 7, 19, 20.

³ *California Agriculture*, Calif. State Dept. of Finance, State Office of Planning, May 1964, pp. 22, 34, 35 and statistical appendix.

of the desert area and the Colorado River areas of southeastern California. It can be seen that the area's needs are primarily agricultural, although there is a limited amount of municipal and industrial need. It is not expected that significant additional water will be required in this area during the next few decades.

Projections in the revised Pacific Southwest Water Plan are shown in the following table:

TABLE XVII
SOUTHERN CALIFORNIA—PROJECTED WATER REQUIREMENTS
(1,000 acre-feet)

	<i>Present</i>	<i>1975</i>	<i>1990</i>	<i>2000</i>
Colorado River areas	340	440	440	440
Desert areas	3,250 *	3,250	3,360	3,450
Coastal areas	2,270	3,290	4,230	4,930
	5,860	6,980	8,030	8,820

* Includes 233,000 acre-feet not presently served by Colorado River supplies—much of this area to be served through 1990 by the State Water Project.

Mojave Water Agency 50,800 acre-feet maximum state entitlement in 1990

Antelope Valley-East Kern Water Agency 138,400 acre-feet maximum state entitlement in 1990

Source: Pacific Southwest Water Plan, January 1964, *Table 13*.

Coastal areas of the southern California counties of Los Angeles, Orange, Riverside, and San Diego, are included in this table for illustration to show that of the total requirements of 4,820,000 acre-feet in the year 2000 this represents an increase of 2,660,000 acre-feet over present requirements for coastal areas but represents an increase of only 320,000 acre-feet for the Colorado River and desert areas during that same period. In addition, the desert areas shown in the Bureau of Reclamation estimates on this table include areas served by the Mojave Water Agency and the Antelope Valley-East Kern Water Agency, which in the aggregate, have contracts for nearly 200,000 acre-feet of water a year from the State Water Project.

Thus, it can be seen that relatively small increases in water supply are going to be needed to serve the area of southeastern California, assuming no increase in irrigated agriculture.

Table XVIII briefly summarizes the water supply from the Colorado River and shows that at the present with California permitted to take its entire contract entitlement, agricultural users may take up to a maximum of 4,150,000 acre-feet a year. Under conditions with California restricted to 4.4 million acre-feet a year the agricultural areas would be entitled to 3,850,000 acre-feet. The agricultural areas are not using the entire 4,150,000 acre-feet available to them at the present. Representatives of the agricultural agencies served in that area explained that increased quantities of water will be required in future years as the salt content of Colorado River water increases. In fact, they have stated that the entire amount of water salvaged under Pacific Southwest Water Plan proposals could be utilized for that single purpose.

No additional cutback in agricultural water would be suffered in the area until California's diversions from the Colorado River per year dips below 3,850,000 acre-feet per year, an unlikely occurrence.

TABLE XVIII
SOUTHEASTERN CALIFORNIA
PRESENT AND ESTIMATED FUTURE SUPPLY FROM THE COLORADO RIVER
(1,000 acre-feet)

	<i>Present uses</i>	<i>With California limited to 4.4 million acre- feet a year</i>
Imperial Irrigation District	3,850.0	3,850.0
Coachella County Water District *	(Priorities I-III)	(Priorities I-III)
Palo Verde Irrigation District	300.0 †	
Yuma Project	(Priority VII)	
	<hr/> 4,150.0	<hr/> 3,850.0

* District also has state contract for 20,000 acre-feet of water per year.

† Not all being used at present.

In summarizing the water supply and requirements data for southeastern California and of southern California, it can be seen that through 1990 (assuming a 4.4 million acre-foot supply of water for California from the Colorado water supply) requirements are basically in balance. The data in the Pacific Southwest Water Plan indicating the present and expected future deficiencies in water supply for the Pacific Southwest shows the deficiencies in Arizona. Although the entire Pacific Southwest is an area of deficiency, the situation in individual areas varies greatly because of the activity of the local areas in providing sufficient imported water supplies.

ARIZONA

The area of principal water deficiency in the Pacific Southwest at the present is Arizona and specifically the service area of the Central Arizona Project.

In the August 1963 Pacific Southwest Water Plan the Bureau of Reclamation estimated that in the Central Arizona Project service area the present pumpage is exceeding the available recharge by approximately 2.2 million acre-feet per year at the headgate.⁴

In the Supplemental Report on the Central Arizona Project, however, these estimates were revised:

The indicated headgate deficiency of 2,190,000 acre-feet annually, . . . had to be met by ground-water pumping. A portion of this deficiency became return flows on application. What portion of the return flows was and will be utilizable at the present or in the future is unknown. It is basic, through, that most of these waters are "in transit" and must be classified as recharge; however, in some instances it may be years before this supply is available for reuse. Therefore, the net overdraft may range from a quantity substantially lower than 2,190,000 acre-feet or closely approach it. *On the basis of limited data presently available, it is estimated that 30 percent of the applied water became return flow, thereby*

⁴ Pacific Southwest Water Plan, Revised, at III-4, III-6.

decreasing the deficiency, in terms of overdraft, to about 1.5 million acre-feet annually. It is expected that, from further studies now being carried out, adjustments will be necessary in estimates of overdraft.^{4a}

Irrigation efficiency is another factor to be considered with regard to the overdraft. The Budget Bureau of the Executive Office of the President noted that the Bureau of Reclamation estimated irrigation efficiencies in the Central Arizona Project service area of only 50 percent.⁵

It can be seen that although overdraft conditions now exist in Arizona, the water requirements of the Central Arizona Project service area will increase only from 3,080,000 acre-feet at the present to 3,890,000 acre-feet in the year 2000, an increase of 800,000. The requirements of the entire Arizona area will increase from 3,985,000 to 5,485,000 by the year 2000, an increase of approximately 1.5 million acre-feet. It is obvious from this table that the major area of water deficiency in the Pacific Southwest is in Arizona through the year 1990 or 2000 (inasmuch as we have seen that southern California areas are basically in balance until that time assuming a guaranteed supply of 4.4 to California from the Colorado River).

Referring to previous information on the water supply in the Colorado River, it is recognized that if California were to receive a 4.4 million acre-foot priority the entire 1.2 million acre-feet water supply of the Central Arizona Project would not be available through the year 2000. A substantial part of the water supply of the Central Arizona Project, however, would be available even with the 4.4 priority to California.

All of these assumptions however, include a continued annual overdraft in Arizona. The ability of the area in Arizona to continue to sustain this overdraft is a matter beyond the scope of this report. It should be pointed out however, that estimates by the State Department of Water Resources have indicated that the annual overdraft in California's San Joaquin Valley is in excess of 2,000,000 acre-feet a year.

NEW MEXICO AND UTAH

According to the revised Pacific Southwest Water Plan report:

"Present pumpage in that portion of New Mexico tributary to the Colorado River, essentially limited to the Gila River Basin, is estimated to be about 25,000 acre-feet annually. It is indicated that there has been no long-term water level decline, although there may be localized deficiencies. No data are available to estimate the relatively minor quantity of gross pumpage in the part of Utah tributary to the Colorado River."⁶

Chapters III and IV of the Pacific Southwest Water Plan revised report include detailed information on water supply and demand based upon the Bureau of Reclamation's estimates of water supply in the Colorado.

^{4a} U.S. Bureau of Reclamation, *Supplemental Information Report on Central Arizona Project, Arizona*, January 1964, at 21.

⁵ Hearings on S. 1658, Part II, *op. cit.*, at 276.

⁶ *Pacific Southwest Water Plan, Revised January 1964, at 3-6.*

Chapter IV

PROPOSED SOLUTIONS TO PACIFIC SOUTHWEST WATER PROBLEMS

Having discussed water supply and requirements considerations in Chapter III, it is appropriate that we outline briefly the basic features of each of the proposals which were presented to solve Pacific Southwest water problems. A number of considerations which are unusually controversial and important in California common to all of these, such as area of origin protection, a 4.4 million acre-foot priority to California, regional water commissions, etc., are discussed, together with the committee's comments, in Chapter V, "Major Policy Problem Areas." A more general picture of the proposals is presented in this chapter.

1. THE CENTRAL ARIZONA PROJECT (S. 1658, as introduced)

The Central Arizona Project itself is the major initial feature of all of the proposed solutions to Pacific Southwest water problems and will be discussed in detail here and only referred to in future sections.¹

It was first reported on by the Department of the Interior in 1947 and was published as House Document 136, 81st Congress, First Session. It was on the basis of the 1947 report that legislation was first introduced to authorize the project. This legislation was pending at the

¹ The Central Arizona Project was a subject of hearings by the Senate Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs on August 27-28 and October 1-2, 1963 and April 9-11, 13-17 and 20-23, 1964. The hearings also included detailed discussion of the Pacific Southwest Water Plan. Transcript of the hearings has been published. A hearing by the House Committee on Interior and Insular Affairs Committee was held on November 9, 1964.

time of the action of the House Committee on Interior and Insular Affairs in 1951, in postponing further action on the Central Arizona Project until such time as Arizona's right to the use of Lower Colorado River water was adjudicated.

During the years following the 1947 report Arizona experienced a great population growth. In March 1961 the Arizona Legislature made \$100,000 available to the Arizona Interstate Stream Commission to contribute to the Bureau of Reclamation to update the 1947 report. The State of Arizona also contributed \$100,000 for a statewide inventory of water resources under which much of the basic data used in re-examining the 1947 report were assembled. In addition, \$30,000 was contributed by New Mexico to help finance the report.

As a result of this additional funding Region Three of the U.S. Bureau of Reclamation submitted a "Supplemental Report on the Central Arizona Project" to the Commissioner of Reclamation in June 1963.² It is this report that formed the basis for the Central Arizona Project which is included in the various proposals for the Pacific Southwest development.

The basic revenue producing feature of the project is the High Bridge Canyon Dam, reservoir and power plant. The disposition of this revenue is the major difference between the Central Arizona Project as proposed in S. 1658, as introduced, and the Central Arizona Project as proposed in the regional plans. Under the regional proposals the Marble Canyon Dam would be constructed in addition to Bridge Canyon Dam, and the excess in power revenues from the two dams would be deposited in the development fund.

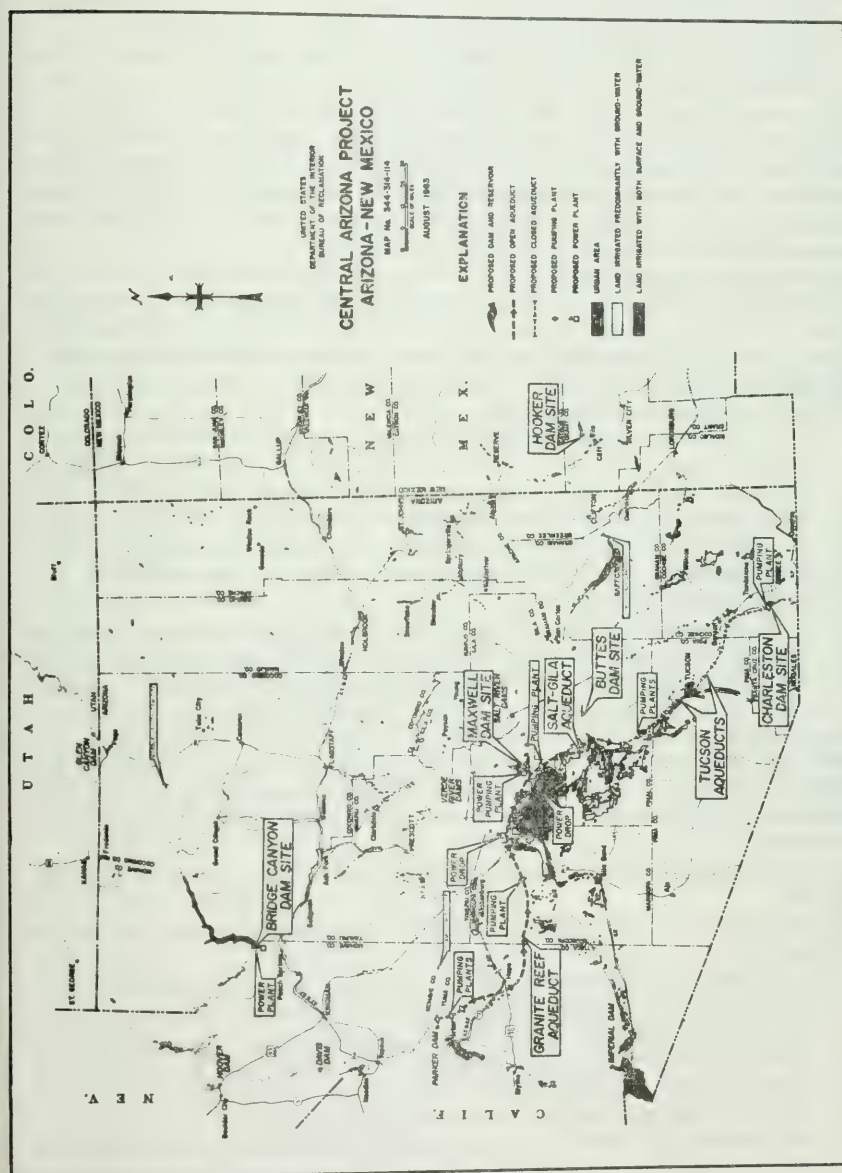
The High Bridge Canyon Dam reservoir and power plant would be located in the lower Granite Gorge of the Colorado River northeast of Kingman, Arizona and at the upper end of Lake Mead, 117 miles upstream from Hoover Dam. It would be a concrete, thin arch dam with a reservoir capacity of 3,710,000 acre-feet. The 1.5 million kilowatt capacity power plant will generate an estimated 5.8 billion kilowatt hours annually.

The backbone canal system of the Central Arizona Project would pump water from Lake Havasu, also the source of the Metropolitan Water District's Colorado River Aqueduct, in a series of three pumping plants having a static lift of 969 feet. The water would be conveyed 219 miles by the Granite Reef Aqueduct from Lake Havasu to Granite Reef Dam and would have a capacity of 1,800 cubic feet per second (cfs). Along this canal at three delivery points, part of the delivered water at the low power drops would generate power. Water required for the Salt River Valley would be delivered at Granite Reef. The remainder would be siphoned under the Salt River and transported south through a Salt-Gila aqueduct which extends from the Salt River to Picacho Reservoir. This aqueduct would have a capacity of 1,275 cubic feet per second.

The final portion of the aqueduct system would be a closed conduit (the remaining portions of the aqueduct are open concrete design) extending from near Picacho Reservoir to the City of Tucson. This aqueduct would deliver 100,000 acre-feet of water annually for municipal

² For a complete description of the project see this report.

and industrial use. The aqueduct, with a capacity of 150 cfs, would be 56 miles long and would include a pumping plant with a static lift of 920 feet.



The total length of the backbone canal system from the Colorado River to Tucson would extend approximately 341 miles, compared with 242 miles for the aqueduct from Lake Havasu to Lake Mathews in Riverside County, operated by the Metropolitan Water District of Southern California.

The existing Salt River project storage system would be integrated with the operation of the Central Arizona Project Canal System.

Additional dams would be required by the project. Maxwell Dam (1,130,000 acre-feet) on the Salt River would be utilized to store water in excess of that needed at Granite Reef. Buttes Dam (366,000 acre-feet) located on the Gila River about 14 miles upstream from Florence, Arizona; Charleston Dam (238,000 acre-feet) on the San Pedro River, southeast of Tucson, and Hooker Dam (98,000 acre-feet) on the main stem of the Gila River in Western New Mexico, would all be required to conserve and regulate local water supply.

It has been pointed out that a great deal of urban development has occurred in Arizona in the last decade, and, particularly since the 1947 report on the Central Arizona Project. Nevertheless, the basic purpose of the Central Arizona Project is to provide agricultural water supplies. As was indicated to the U.S. Senate Committee on Interior and Insular Affairs by Commissioner Dominy:

It is contemplated that approximately two-thirds of the Colorado River water diverted would be supplied for existing irrigation purposes and that about one-third would be supplied for municipal and industrial purposes under project conditions. This is a change in water use from that shown in the 1947 report as, in that report, only about 1 percent of the project water was assigned for municipal and industrial use.

The Central Arizona Project Plan does not provide for bringing in any new lands under cultivation. All additional water would be used to supplement the demand of presently developed areas.³

In the area served by the Central Arizona Project the Bureau of Reclamation estimates a population of 1,125,000. It is estimated that there are about 1,202,000 acres of land developed for irrigation in the area, of which an average of about 880,000 acres per year are now irrigated. This includes 75,000 acres of irrigated land on Indian reservations.

Total estimated cost of the Central Arizona Project will be \$1,101,-331,000.

According to the Department of Interior's supplemental report on the project:

Although construction of the Central Arizona Project would generate many benefits to the States of Arizona and New Mexico, the Lower Colorado River Basin, and the nation as a whole, the principal objective of the project is the stabilization and prevention of retrenchment of the economy of the project area. Even with an imported supply of water, some presently irrigated lands will eventually have to be abandoned because of water shortages, and urban developments resulting from the population increase in the area will encroach on other irrigated lands.⁴

³ Hearings on S. 1658, *op. cit.*, at 44.

⁴ United States Department of Interior, *Supplemental Report Central Arizona Project*, at 56, June 1963.

An offered amendment to the Central Arizona Project bill, the so-called "Mosk Amendment," named after its drafter, California's former Attorney General Stanley Mosk, provided that the water supply for the project was junior to 4.4 million acre-feet of existing California uses in perpetuity. The Mosk Amendment was not accepted by Senators Hayden and Goldwater, sponsors of the legislation.

2. PACIFIC SOUTHWEST WATER PLAN

August 1963

The Pacific Southwest Water Plan was first presented to the Governors of the Colorado River Basin States on August 26, 1963.⁵ Comments on the Pacific Southwest Water Plan were requested from the Governors of the several states pursuant to the Federal Flood Control Act of 1944. During the period provided for this review this committee held a joint hearing with the Senate Factfinding Committee on Water Resources and issued a report, *Pacific Southwest Water Plan* (Assembly Interim Reports, Vol. 26, No. 8 November 8, 1963).

The features of the original plan are enumerated briefly below inasmuch as its general concept is directly related to subsequent developments of regional planning proposals. The basic features of the original plan were as follows:

Initial Phase

1. Construction of Bridge Canyon and Marble Canyon dams and power plants on the Colorado River.
2. Enlargement of the California State Water Project to convey an additional 1.2 million acre-feet of capacity water to southern California.
3. An immediate additional 1.2 million acre-feet enlargement of the state's aqueduct through the Tehachapi Mountains to be utilized to convey water developed in phase II construction of the project.
4. Construction of the Central Arizona Project.
5. Authorization of a large (50 million gallons per day) desalting plant on the seacoast in southern California, and an intensified study under the Anderson-Aspinall Act on the feasibility of additional plants.
6. Construction of the Southern Nevada Water Supply Project, first stage, to provide up to 90,000 acre-feet annually by 1968 for the areas of Boulder City, Henderson and Las Vegas.
7. Construction of the Dixie Project in Southwestern Utah to provide about 60,000 acre-feet annually beginning in 1970.
8. Construction of Hooker Dam Project in New Mexico (a unit of the Central Arizona Project) with completion by 1974.
9. Expansion of Indian Irrigation Project facilities on the Colorado River, Fort Mohave and Chemehuevi Reservations.
10. Water salvage and ground water recovery projects along the mainstream of the Colorado River.

⁵ The full report, *Pacific Southwest Water Plan*, August 1963, includes a sketchy discussion of the features outlined in this section.

11. Initial programs of fish and wildlife and recreation and other related functions.

12. Establishing a development fund.

13. Extensive studies by bureau in cooperation with affected states to determine what projects are feasible for submission for authorization at subsequent dates.

Phase Two

1. Increase in capacity of Central Arizona Project by 1.2 million acre-feet such water to be conveyed to Arizona through the Lake Havasu aqueduct and the enlarged California Water Project (enlarged in Phase I).

2. Northern California Projects sufficient to provide export water and enlargement and extension of the East Side Division of the Central Valley Project.

3. Additional water reclamation in Arizona.

The estimated construction costs of the \$4 billion project are shown in the following table:

TABLE XIX
PACIFIC SOUTHWEST WATER PLAN (AUGUST 1963)
ESTIMATED CONSTRUCTION COST

<i>Project</i>	
Phase I—Immediate Action Program	
Bridge Canyon Dam and powerplant	\$504,797,000
California Aqueduct increment	474,110,000
Central Arizona Project	504,736,000
Desalting plant, California	37,300,000
Dixie Project, Utah	44,868,000
Ground-water recovery	38,800,000
Hooker Dam Project, New Mexico	(28,128,000)*
Indian irrigation, Arizona-California-Nevada	10,000,000
Marble Canyon Dam and powerplant	239,500,000
Recreation, fish and wildlife, and other agency programs	5,000,000
Southern Nevada Water Supply Project, first stage	42,551,000
Tributary projects, Arizona-New Mexico-Utah	10,000,000
Water salvage	9,200,000
Total—phase I	\$1,920,862,000
Phase II—Continuing Project Development	
Canal lining, California	\$105,000,000
Central Arizona Project increment	353,240,000
Indian irrigation, Arizona-California-Nevada	40,000,000
Lake Havasu Aqueduct and supply reservoirs	914,500,000
Recreation, fish and wildlife and other agency programs	5,185,000
South Fork Trinity River Project, California	387,000,000
Southern Nevada Water Supply Project, second and third stages	29,557,000
Terminal storage, California	122,000,000
Tributary projects, Arizona-New Mexico-Utah	40,000,000
Trinity River Project, California	150,000,000
Water reclamation, Arizona	18,000,000
Total—phase II	\$2,164,482,000
Total—phases I and II	\$4,085,344,000

* Included in Central Arizona Project.

Source: Pacific Southwest Water Plan, August 1963, at 19.

Marble Canyon Dam on the Colorado River, which is added to the Central Arizona Project in this plan (as well as the other regional plans), would be a thin arch concrete design dam rising 310 feet above the stream bed with a reservoir of 363,000 acre-feet capacity. It would have a power plant with an installed capacity of 600,000 kilowatts which is estimated to generate 2,310,000,000 kilowatt hours annually.

One of the features of the plan, as presented, was the export of water from northern California to Arizona in the Havasu Aqueduct, which would have paralleled the general route of the existing Colorado River Aqueduct of the Metropolitan Water District of Southern California but would have transported water in the opposite direction. The opposition of Californians to this proposal was unanimous in that it was illogical at best.

As the administrator of the California Resources Agency indicated to this committee, "It prematurely and unnecessarily committed the plan to an exportation to Arizona of water from northern California." The Revised Pacific Southwest Water Plan and the recent enlargement of the State Water Project by the state have indicated that the preliminary figures on which the plan was based overstated the water requirements of southern California and the adverse affect of *Arizona v. California*. While the original Pacific Southwest Water Plan contemplated import of water into southern California in the amount of 1.2 million acre-feet and export from California to Arizona of the like amount, it will be seen that subsequent proposals, including the Revised Pacific Southwest Water Plan, contemplate much smaller importations to southern California. As indicated below, the state's overall 230,000 acre-foot enlargement of the California aqueduct provided a satisfactory additional water supply to meet the expected needs of southern California through 1990.

Two projects included in the plan should be briefly described at this time as they are included in all of the regional proposals.

Although located in western New Mexico, Hooker Dam and reservoir is proposed as a part of the Central Arizona Project. Located on the upper Gila River it is a multipurpose reservoir to provide flood control, river regulation, recreation and fish and wildlife benefits. The capital cost of the dam and reservoir is estimated at about \$28 million.

The Dixie Project would be located on the Virgin and Santa Clara Rivers in southwest Utah.^{5a} It will consist of the multipurpose Virgin City Dam, plus smaller dams and canals. Power will be generated at the dam and at canal drops. The project would provide about 5,000 acre-feet of municipal and industrial water annually. It would also provide supplemental water supplies to 9,400 presently irrigated acres and full supply to about 11,600 acres of new irrigated land. The capital cost of the project is estimated to be \$45 million.

^{5a} A separate Department of the Interior report on this project, 85th Congress, 1st Session (House Document No. 86) gives complete detail on the project.

3. PACIFIC SOUTHWEST WATER PLAN REVISED

(January 1964)

The Revised Pacific Southwest Water Plan was released in January 1964. It represented a substantial modification of the original proposal of August 1963.⁶ The total cost of the program was greatly reduced by the elimination of a number of features including the contemplated transfer of 1.2 million acre-feet of water to Arizona and construction of sea water conversion facilities. The major features of the revised project are as follows:

1. Construction of Marble Canyon and Bridge Canyon Dams.
2. Water salvage and recovery programs.
3. Construction of the Central Arizona Project.
4. Enlargement of the California Aqueduct. (An aqueduct to convey water to the Imperial Irrigation District and the Coachella Valley County Water District, from Cedar Springs Dam and Reservoir, together with additional Trinity River Basin storage or other storage, and enlargement of the East Side Division of the Central Valley Project to convey this amount of water to southern California, is contemplated.)
5. Construction of Southern Nevada Water Supply Project.
6. Construction of Moapa Valley Pumping Project.
7. Construction of Hooker Dam and Reservoir.
8. Construction of Dixie Project, Utah.
9. Construction of Indian irrigation projects.
10. Construction of recreation and fish and wildlife features.
11. Establishing a development fund.

Water Salvage

One of the major changes in the plan, as compared with the original proposal, was a reduction in the water salvage and recovery programs. The Department of the Interior expressed the view in the Pacific Southwest Water Plan that a great deal of the waste water recovery program should be done locally.

Local organizations in California and Arizona have already undertaken a portion of the task required to salvage waste water return flows, and plans are in process for most extensive local development of this water resource. This is a field in which local and state agencies properly should contribute to the overall solution of water-deficiency problems in the Pacific Southwest. Thus, insofar as the initial plan is concerned renovation of waste water is a segment of the regional plan for which local and state agencies can accept a major responsibility.⁷

The remaining water salvage projects included in the revised plan are primarily the Senator Wash Project (now under construction), river channelization measures, phreatophyte control and ground water recovery. The contemplated lining of canals along existing irrigation projects has presumably been left to local agencies. However, officials

⁶ The full report, *Pacific Southwest Water Plan*, January 1964, includes a discussion of the features outlined in this section.

⁷ *Pacific Southwest Water Plan*, January 1964, *op. cit.*, at 13.

of the Imperial Irrigation District stated to this committee that the so-called "local projects" in California which transport Colorado River water for agricultural use in the Imperial and Coachella Valleys, are owned and operated by the federal government (the All-American and Coachella branch canal system). Since the facilities are federally owned, these officials claimed that major physical improvements such as lining (which may involve complete reconstruction of portions of the aqueduct) is properly a federal expense. The bureau indicated it would accept this responsibility but not as part of a regional plan:

The Bureau of Reclamation would cooperate fully with the state in the planning, design, construction, and solution of the problems of financing of a canal lining program. The bureau is presently investigating the feasibility of lining 87 miles of the unlined portion of the Coachella Canal to reduce seepage losses by an estimated 150,000 acre-feet annually. A feasibility report is scheduled for fiscal year 1966. Studies will also be initiated on the feasibility of lining the All-American Canal itself. These studies will result in conclusions and recommendations, together with cost estimates for procedures, types of lining, estimated reduction in seepage losses, etc.⁸

In addition, there is disagreement between the bureau and the agricultural agencies involved over disposition of the water salvaged. According to the bureau:

Before the federal government should participate in a canal lining program, however, the problem of the disposition of the conserved water must be resolved. If water conserved by canal lining were to be devoted to irrigation of new lands in the Imperial and Coachella Valleys, it would not be consistent with a primary objective of the Pacific Southwest Water Plan; i.e., to meet present water deficiencies and growing demands, but only to sustain, through the plan facilities, the existing level of irrigation development. If the conserved water were to be used not for irrigation of new lands but for meeting other water demands in California this would require, as a prelude, extensive negotiation and modification of existing agreements and contracts.

Proposals on such matters must originate in California. Because of the magnitude and importance of this untapped, inexpensive source of new water supply, it is urged that California take the initiative in seeking decisions, including proposals for contract modification, that will permit canal lining to be undertaken as part of the Pacific Southwest Water Plan or through some other program. The federal government should, of course, participate to the extent that its contractual responsibilities for Colorado River water are concerned. As soon as these matters are resolved and a feasibility report can be prepared, lining of these canals should be proposed for authorization.⁹

Officials of the Coachella County Water District, however, contended:

... If the canals were lined, it is obvious that some water could be saved for beneficial use which now is wasted through

⁸ Hearing Transcript, August 19, 1964 at 20.

⁹ *Pacific Southwest Water Plan, January 1964, op. cit., at 32.*

evaporation, transpiration and seepage. If the stated amount of water could be salvaged, it would, of course, have the effect of reducing the amount of imported supplemental water which must be brought into the Lower Basin of the Colorado River System, if the economy of the affected area is to be preserved or expanded.

. . . any water which might be salvaged, resulting from the lining of the canals in Imperial and Coachella Valleys, should first be available and employed to the end that these agencies of the State of California may continue in the future to firmly receive the supply of water to which the area is entitled, either by way of present perfected rights or contract rights, including the Priority Agreement of 1931. When such obligation has been met if there remains any excess or surplus water resulting as salvaged water, then and in such event, such excess or surplus, if any, should be available for beneficial use in the area to support and vouchsafe the expanding and developing economy of the region.¹⁰

Both representatives of the Colorado River Board and the agricultural agencies also testified that the amounts estimated to be salvaged, in their opinion, were overestimated.

The amounts to be salvaged under the original and revised Pacific Southwest Water Plans are compared in the following table:

TABLE XX
PACIFIC SOUTHWEST WATER PLAN
Potential Salvage

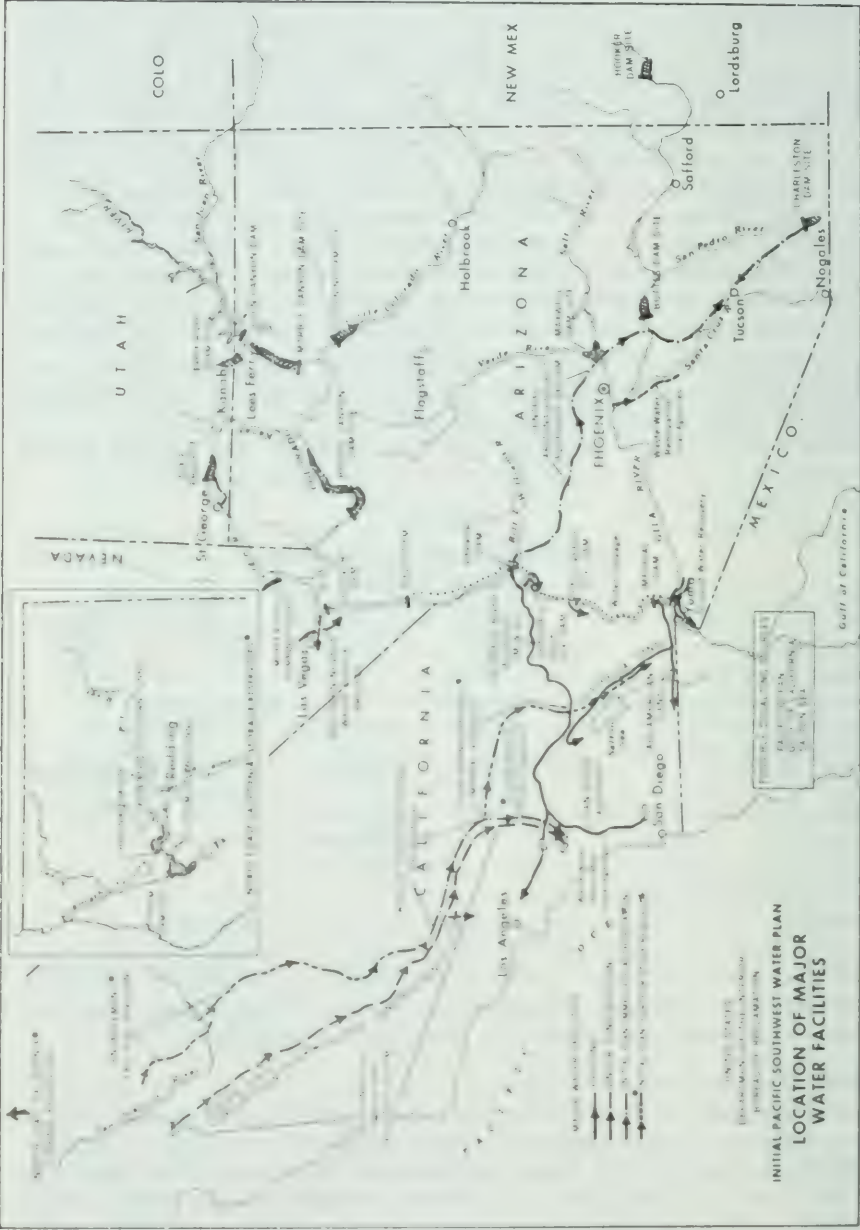
Program	Acre-feet annually		Estimated cost	
	Original Plan	Revised Plan	Original Plan	Revised Plan
Lining of All-American and Coachella Branch Canals --	500,000	--	\$105,000,000	
Ground water recovery -----	220,000	220,000	38,800,000	
Phreatophyte eradication and control -----	100,000	100,000	9,200,000	\$42,000,000
River channelization -----	190,000	360,000 (incl. Senator Wash)		
Reclamation of municipal and industrial waste in Arizona -----	200,000	--	18,000,000	--
Total -----	1,210,000	680,000	\$171,000,000	\$42,000,000

For details of salvage proposals, see a series of reconnaissance reports prepared by the U.S. Bureau of Reclamation, Region 3.

Aqueducts to Southern California

The proposal to build the Cedar Springs-Hayfield-Imperial Aqueduct and the Cedar Springs-Perris Aqueduct to transport northern California waters to the Imperial Irrigation District and the Coachella Valley County Water District is designed to replace water which would be lost to these agricultural agencies by a reduction of California's water supply from the Colorado to 4.4 million acre-feet a year.

¹⁰ Hearing Transcript, July 23, 1964, at 123, 124.



Pacific Southwest Water Plan, Revised, January 1964

The subsidy involved in such a program is unprecedented. Under the plan it will cost approximately \$75 an acre-foot to transport this water from northern California to southern California. It would be sold to the Metropolitan Water District for \$20 an acre-foot, the delivered cost of existing Colorado River supplies, and to the Coachella County Water District and the Imperial Irrigation District (agricultural agencies), for \$2.25 an acre-foot. This appears to be the most extensive irrigation subsidy ever proposed by the Bureau of Reclamation.

The basis of this aqueduct system proposal is to replace for the two districts the 300,000 acre-foot reduction they suffer under their Priority No. VII to Colorado River water. However, only one-half of the 300,000 acre-feet is presently being used by the agricultural agencies. If the water salvage proposals to line the All-American and Coachella Canals, which were not included in this plan, had been included, an anticipated 500,000 acre-feet of water would have been developed to make up the districts' loss. Thus, failure to include the water salvage program has, in effect, resulted in this unusual subsidy and the replacement of this amount from northern California.

The estimated water charges under the Revised Plan are as follows:

	<i>Water rates per acre-foot</i>
California	
Irrigation exchange	\$2.25
M and I exchange	20.00
Surplus	75.00
Central Arizona	
Irrigation	10.00
M and I	45.00
Dixie	
Irrigation	7.00
M and I	22.00
Southern Nevada	
M and I	28.00

In April 1964, Secretary of the Interior Udall submitted to the Subcommittee on Irrigation and Reclamation of the Senate Interior and Insular Affairs Committee a draft of legislation to authorize the Pacific Southwest Water Plan, Revised. However, the Bureau of the Budget, in a letter to Senator Jackson, Chairman of the Committee, advised that the bureau was unable at that time to recommend enactment of either S. 1658, the original Central Arizona Project bill, or the Pacific Southwest Water Plan.

... The Pacific Southwest Water Plan, as noted earlier, presents a number of major issues which are still under discussion with the Department of the Interior and other agencies concerned.

Central Arizona has experienced one of the most rapid population growth rates in the nation. This situation, combined with a continuing overdraft in ground water supplies, has resulted in an increasingly critical water supply problem. Moreover, the Central Arizona Project, which would alleviate this situation has been delayed more than a decade pending the outcome, as noted earlier, of litigation before the Supreme Court. The importance of the

Central Arizona Project to the people of Arizona is, therefore evident.

However, while the project as presently planned meets current tests of economic feasibility under the reclamation program, it raises a number of serious questions similar to those under consideration in connection with the Pacific Southwest Water Plan.

For example, the Department of the Interior's report states that present irrigation, efficiencies of only 50 percent prevail in the project area. Clearly, water imported from the Colorado River must be used more efficiently. Lining of conveyance and distribution facilities on project lands would, of course, be a necessity. Also, further attention should be directed toward management of forested lands in the area and to the conservation of water through control and eradication of phreatophytes. In summary, it is essential that steps be taken to develop an effective program for the use of ground and surface water that will assure an adequate and lasting solution to the critical water shortage in central Arizona.

For these reasons, the Bureau of the Budget is unable at this time to recommend authorization of S. 1658 or of the Pacific Southwest Water Plan.

However, we believe that the work done to date on the regional plan constitutes a challenging response to the serious water problems of the region. The tentative plan will benefit from review and criticism by the Congress and the people of the region, and from the continuing review which is going forward within the administration.¹¹

In addition, Secretary Udall told the Senate committee:

... I would be less than candid with the committee, however, if I were to attempt to gloss over the fact that the consensus in favor of a regional approach has not yet jelled into regional agreement upon all major aspects of a particular regional plan. Differences of opinion remain as to the particular uses to which the fund should be devoted, as to sources of import water which should be considered at this time, as to the matter of priorities in the event of shortage, and as to the details of some of the projects. Within the executive branch of the government, also, there remain divergent views as to the scope and content of a regional plan.

Given the magnitude of the water problems facing the Southwest, that there remain at this stage uncertainties and difficulties is disappointing but not surprising.¹²

According to the Department of Water Resources' Chief Adviser on Colorado River matters:

While the Department of the Interior draft bill was presented to the subcommittee for consideration and was printed as a committee print it has not been officially sponsored. The Udall proposal has, I believe, run its course and given way to alternative proposals.¹³

¹¹ Letter to Senator Henry M. Jackson from Phillip S. Hughes, Assistant Director for Legislative Reference, Executive Office of the President, Bureau of the Budget, dated April 9, 1964.

¹² Hearings on S. 1658, *op. cit.* at 318.

¹³ California Water Commission, transcript of hearing, August 7, 1964, at 15.

In later portions of this report, the language of *the draft bill* is referred to when reference is made to features of the Revised Pacific Southwest Water Plan.

TABLE XXI
INITIAL PACIFIC SOUTHWEST WATER PLAN
(January 1964)

Project	Estimated Construction Cost *	
	Immediate Authorization	
Mainstream Reservoir Division		
Bridge Canyon project		\$511,000,000
Marble Canyon project		239,000,000
Water salvage and ground-water recovery programs		42,000,000
Renovation of waste-water program		— ^a
Desalting programs		— ^b
Arizona		
Central Arizona project		527,000,000 ^c
California		
California Aqueduct enlargement		240,000,000
Nevada		
Southern Nevada water supply project		72,000,000 ^d
Moapa Valley pumping project		12,000,000
New Mexico		
Hooker dam and reservoir		(28,000,000) ^e
Utah		
Dixie project		45,000,000
Indian irrigation projects		10,000,000
Recreation and fish and wildlife programs		6,000,000
Subtotal		\$1,704,000,000
Features Requiring More Detailed Study		
Cedar Springs-Perris aqueduct		\$205,000,000
East Side Division enlargement and extension		250,000,000
Trinity River Basin storage or alternatives		617,000,000
Cedar Springs-Hayfield-Imperial aqueduct		350,000,000
Subtotal		\$1,422,000,000
TOTAL		\$3,126,000,000

* All cost estimates rounded.

^a Local agency undertakings.

^b Work under other federal, state, and local programs.

^c Includes \$20,000,000 for distribution facilities for Bureau of Indian Affairs projects.

^d Enlarged capacities for Southern Nevada Water Supply Project under consideration with state and local agencies may increase construction costs from \$72,000,000 to \$81,000,000.

^e Included in Central Arizona Project.

4. THE SOUTHWEST PACIFIC PROJECT ACT (S. 2760)

On April 22, 1964, Senator Thomas H. Kuchel of California introduced S. 2760. The bill was drafted by Northcutt Ely, California's Chief Counsel on the Colorado River litigation, at the direction of the six agency committee composed of the six Southern California agencies (Metropolitan Water District of Southern California, Palo Verde Irrigation District, City of Los Angeles, San Diego County Water Authority, Coachella Valley Water District and Imperial Irrigation District) which presently are utilizing Colorado River water in California.

According to Mr. Ely, S. 2760 is modeled on Secretary Udall's Pacific Southwest Water Plan Revised, and it includes the following features of the Udall Plan substantially unchanged:

1. Creation of a basin account, into which appropriations for construction would be made by the Treasury, and into which would later feed the power revenues from Bridge and Marble Canyon Dams, and from Hoover, Davis, and Parker Dams after they have paid for themselves. These revenues would assist in the repayment of the construction costs of the projects authorized by the act, and of future projects to import water into the Colorado River Basin.

2. Construction of Bridge Canyon and Marble Canyon Dams, powerplants, and transmission lines.

3. Construction of the central Arizona aqueduct.

4. Construction of the Dixie Project, Utah.

5. Construction of the southern Nevada and Moapa (Nevada) projects.

6. Construction of salvage works on the main stream.

7. Creation of a regional commission, composed, as proposed in the Pacific Southwest Water Plan, of representatives of the federal government and Lower Basin states, to which would be added representatives of the Upper Basin states and of each state in any basin from which water would be imported.

As Mr. Ely indicated:

In most of these [provisions] we follow Secretary Udall's Pacific Southwest Water Plan. We differ from his plan primarily in our protection of existing uses and restricting expansion of non-Indian irrigation on Indian reservations. The bill also proposes that the secretary carry out an investigation of all sources from which water might be imported, not merely northern California rivers.¹⁴

... [The bill] is in strict accord with the decree of the United States Supreme Court, [and] directs the Secretary of the Interior, in the administration of Article 2b 3, of the court's decree [the article which deals with shortages], to subordinate the water rights of the new Central Arizona Project to decreed rights and other senior existing water rights in Arizona and Nevada, now served under water contract to the United States by diversion works heretofore constructed and to 4.4 million acre-feet of such rights in California.¹⁵

This is basically the 4.4-million-acre-foot priority to California which was the Mosk Amendment to the original Hayden-Goldwater bill, the Central Arizona Project Act, and was drafted by California's former Attorney General Stanley Mosk.

The Pacific Southwest Project Act lists as its objectives:

The purpose of this Act is to initiate the execution of a regional plan to meet in full the deficiencies in water supply present and anticipated in both the upper and lower basins of the Colorado River, to authorize the construction of certain projects within the

¹⁴ Northcutt Ely, Statement to Senate and Assembly Water Committees, August 13, 1964, at 5.

¹⁵ *Ibid.*, at 7.

lower basin to transport water to areas of deficiency, and to authorize a coordinated development of the power resources of the lower basin in order to furnish power for pumping water into and in conveyance works and for sale as a means of financial assistance to the project herein authorized and to those which the Congress may hereafter authorize for the importation of water into the Colorado River basin. (Sec. 101).

Mr. Ely has described some of the other major changes from the Udall bill:

1. *Sources of supplemental water.*—The “feasibility study” which the plan authorizes for a project to import 1.2 million acre-feet from northern California rivers is broadened to include other possible sources, the goal is redefined as the elimination of deficiencies in both Upper and Lower Basins, so that requirements in the Lower Basin can be fully met without curtailment of the Upper Basin’s prospects of using 7.5 million acre-feet annually, and the secretary is directed to submit his report within 3 years. No source is preselected. (If Congress does designate a specific source, such as northern California rivers, it must necessarily do so on a contingent basis, to become inoperative if the 3-year survey shows that other sources are more feasible.)

2. *Importation directly into the Colorado.*—Water imported, whether from northern California rivers or elsewhere, would be delivered directly into the Colorado River, not, as the Udall Plan proposes, at Hayfield on the Metropolitan aqueduct and in Imperial Valley via an aqueduct down the interior of California. Recent studies indicate that even if northern California sources are selected, water may be delivered to southern California projects more cheaply via an aqueduct to the Colorado River than through the inland mountains. . . .¹⁶

One of the key features of the project is the “Transmountain Division” which would consist of projects as authorized by Congress in the future to “import water into the Colorado River Basin.” Thus, while recognizing that the water supplies of the Colorado River Basin are inadequate, S. 2760 does suggest that replacement water supplies be brought into the Colorado River Basin from outside the basin. To accomplish this objective the proposal contemplates the investigation and report by the Secretary of the Interior within three years after the effective date of the act described above to produce (1) his estimate of the long-range water supply available for consumptive use in the Upper and Lower Basins of the Colorado River; (2) water requirement of the Upper and Lower Basins at present, and as estimated for the years 1975–2000–2040 and under ultimate anticipated conditions; (3) the present and anticipated deficiencies of water supply for the quantities of water which, imported into the Colorado Basin, would eliminate these deficiencies; (4) the quantities of water which imported into the Colorado River Basin would make possible the use of 7.5 million acre-feet a year in the Upper Basin and eliminate present and anticipated deficiencies in the Lower Basin, and alternative sources from which water

¹⁶ Hearings on S. 1658, Part II, *op. cit.*, at 306–307.

might be imported into the Colorado River Basin. The secretary's report would also include recommendations for the construction of such projects.

The estimated cost of the Pacific Southwest Project is shown in the following table:

TABLE XXII
ESTIMATED COST
PACIFIC SOUTHWEST PROJECT ACT
(S. 2760)

Central Arizona Project *	\$527,000,000
Bridge and Marble Canyon Dam	750,000,000
Dixie Project	45,000,000
Southern Nevada Water Supply Project	81,000,000
Three-year investigation by Secretary of Interior	5,000,000
Moapa Valley Pumping Project	12,000,000
Water salvage	
Channelization	35,000,000
Senator Wash	8,700,000
Fish and wildlife and recreation	6,000,000
Indian projects	10,000,000
Total	\$1,479,700,000

* Includes Hooker Dam.

One of the major differences between Pacific Southwest Water Project Act and the Revised Pacific Southwest Water Plan is the fact that the revised plan called for immediate authorization of import facilities to provide replacement water for the Colorado River. In addition, the revised plan called for these imports from northern California. On the other hand, S. 2760 called for an intensive federally-financed study of *all alternative sources* including northern California and other areas of the Colorado River Basin, with later authorization of replacement supplies.

When S. 2760 was before the Senate Committee on Interior and Insular Affairs, a favorable recommendation on the bill was defeated 1-15. This action took place on the same day that S. 1658, as amended, was favorably reported to the floor of the Senate.

5. LOWER COLORADO RIVER BASIN ACT (S. 1658, as amended)

The Lower Colorado River Basin Project Act was proposed as an amendment to the original Hayden-Goldwater bill, S. 1658. The amendment was introduced on July 21, 1964 by Senator Moss of Utah on behalf of its principal proponent, Senator Hayden of Arizona. The amendment, which completely replaced the original Hayden-Goldwater Bill, was introduced following completion of hearings on the original Central Arizona Project Act. It was developed over several months of negotiations between Senator Hayden's office and certain representatives of California. It has been referred to variously as the "Hayden-Brown Compromise," "the Moss Amendment," and, as used in this report, the "Abbott Goldberg Amendment." As introduced, the amendment attempted a compromise between the proponents of S. 2760 and the proponents of the original Central Arizona Project Bill on one

basic point: a priority to California of 4.4 million acre-feet annually from the Colorado.

The project is basically similar to the other proposals for a Pacific Southwest water development (although far less comprehensive), inasmuch as the Central Arizona Project is its key and its first element to be constructed. Major features of the project are as follows:

1. Construction of Marble and Bridge Canyon Dams.
2. Construction of the Central Arizona Project.
3. Authorization for the Secretary of the Interior to prepare estimates of long-range water supply available for the Lower Basin, current water requirements in the basin, and the rate of growth requirements to the year 2030. Authorization from the secretary to investigate alternative sources in the *State of California* and various methods of meeting the current and anticipated water requirements in the Lower Colorado River Basin. Recommendations supported by feasibility reports for project construction would be submitted within five years.
4. Creation of a regional commission composed of representatives of the federal agencies concerned and of all affected states.
5. Establishing a development fund.
6. Construction of Hooker Dam and Reservoir.
7. Construction of the Southern Nevada Water Supply Project.
8. Provision of a 25-year priority to California of 4.4 million acre-feet annually from the Colorado River.

This plan has not been well received in California. The principal objection has been to the limited protection to California embodied in the 25-year priority provision. This matter of protection to the state is discussed in greater detail in the following chapter.

As introduced, the amendment provided for a study by the secretary and an investigation of alternative sources in the State of California or elsewhere "to meet the current and anticipated water requirements of the Lower Colorado River Basin."¹⁷ The words "or elsewhere," were stricken from the bill in the Senate Interior and Insular Affairs Committee and were not in the bill as reported to the Senate floor. Prior to deletion of these two words by the committee, the bill was supported by the state administration in California. Thereafter, the state administration opposed the bill, as follows:

Last Friday (July 31) the Senate Committee on Interior and Insular Affairs took the second step by reporting out an amended version of the Moss Compromise. Unfortunately, this was not a step satisfactory to California. Senator Jackson, chairman of the committee, was successful in amending the bill to authorize investigations of alternative sources of supply for the Pacific Southwest in the State of California only, rather than in California and elsewhere. Governor Brown immediately withdrew his support of the bill because of this change and promised to vigorously oppose the Jackson Amendment in future congressional actions.¹⁸

The language requiring that the replacement sources of water be found in California exclusively, has brought the state through a full

¹⁷ Sec. 103 (a) (2).

¹⁸ California Water Commission, hearing transcript August 7, 1964, at 22.

circle and returned us to the proposal in the original Pacific Southwest Water Plan. That plan would have conveyed to Arizona 1.2 million acre-feet of water from northern California per year. The state administration, in its Official Comments on that original plan, had vigorously opposed export of water to Arizona. S. 1658, as finally amended, however, established northern California as the sole source of such supplies. Were S. 1658 to be enacted as presently amended, the physical works involved would be substantially similar to the original Pacific Southwest Water Plan—a conveyance from northern California to Arizona on the Colorado River. An alternative, an exchange of water, would, however, provide the same overall result. Thus, S. 1658, as presently written, would “leap-frog” northern California to Arizona in virtually the same manner as proposed in the original plan.

It should be emphasized that the phrase “California or elsewhere,” was not satisfactory either because it still placed the primary emphasis on receiving replacement supplies in California. It represented a two-state regional plan—rather than a broad western approach. The estimated cost of the projects in the bill is shown in the following table:

TABLE XXIII
COST OF LOWER COLORADO RIVER BASIN PROJECT
(Goldberg Amendment)

Mainstream Reservoir Unit:	
Bridge Canyon Project, including dam, reservoir, powerplant, transmission facilities and appurtenant works	\$ 499,366,000
Marble Canyon Project, including dam, reservoir, powerplant, transmission facilities and appurtenant works	227,895,000
Cocconino Silt-detention Reservoir	11,960,000
Paria Silt-detention Reservoir	10,759,000
Subtotal, Mainstream Reservoir Unit	749,980,000
Central Arizona Unit	\$ 506,829,000
Water quality investigations	2,000,000*
Works to be authorized as units of project	(**)
Outdoor recreation, conservation of scenery, and natural historic and archeological objects and fish and wildlife	81,003,000
Total	\$1,346,227,000

* Estimated.

** No cost until authorized.

6. SNAKE-COLORADO PROJECT

In October 1963, shortly after the release of the original Pacific Southwest Water Plan, the Department of Water and Power of the City of Los Angeles proposed the Snake-Colorado Project, a plan to transport surplus Snake River water to the Pacific Southwest.¹⁹

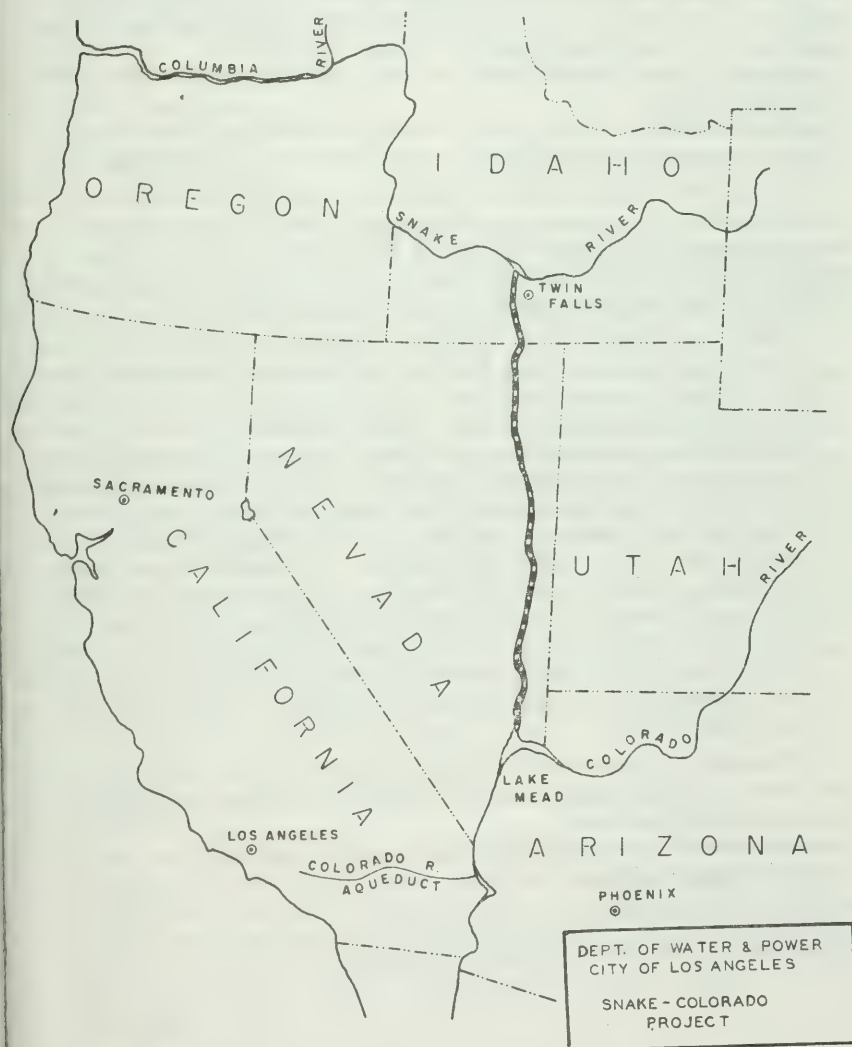
The main feature of the project is a diversion of 2.4 million acre-feet from the Snake River in Idaho to Lake Mead behind Hoover Dam on the Colorado through the Snake River-Lake Mead Aqueduct. It relies on a report of the Bureau of Reclamation and the U.S. Corps of Engineers which indicates a substantial future surplus of water in the Snake River.²⁰

¹⁹ For details on the project, see “Snake-Colorado Project, A Report of the Department of Water and Power, City of Los Angeles, October 1963, 22 pp. (Process).

²⁰ Joint report prepared by the U.S. Department of the Interior, Bureau of Reclamation and the U.S. Corps of Engineers, Upper Snake River Basin, 1961 (two volumes).

The project would divert water from the Snake River at an elevation of 3,000 feet, lift it approximately 3,200 feet, by seven pump lifts, and convey it across the high plateau of eastern Nevada. In southern Nevada the water would drop through power recovery plants into Lake Mead, where it would merge with that of the Colorado River; there it could continue downstream, where it would be diverted and develop power at existing power projects.

The project also contemplates utilizing the pumps from the Snake River to convey water for local irrigation projects in the vicinity of Twin Falls, Idaho. The objective of the project as stated by the depart-



ment would be to provide a supplemental water supply to the Lower Colorado River Basin "at a minimum cost, while making maximum use of existing water supply facilities and minimizing the interference with existing and proposed water development projects."²¹ The department recognized in presenting the plan that it is "only preliminary and will require additional study and investigation to refine and perfect the multitude of details involved in a project of this magnitude."²²

The project report emphasizes several benefits would accrue from this project as follows:

1. The average cost of transporting the first 1.2 million acre-feet of imported water would be approximately \$32 per acre-foot compared with a cost of \$44 per acre-foot for northern California water as contemplated by the original Pacific Southwest Water Plan.

2. Capital expenditures would be \$823 million less for the Snake-Colorado Project.

3. The additional high-quality Snake River supply would reduce salinity problems and provide power generation on the Colorado River.

Although the Department of Water and Power estimates that there is substantial surplus water in the Snake River, these estimates have been challenged by representatives of Idaho. Senator Len Jordan, for example, immediately suggested that the best source for replacement waters for the Pacific Southwest is the Columbia River:

Now my friends in the Northwest may rise to challenge my impertinence in suggesting a look at the Columbia River. So I hasten to say that I am not authorized to speak for anyone but myself on this matter. Some may say that I can be reckless with the Columbia in order to draw attention away from the Snake River which supports most of the economy of my state, and I do admit a prejudice, but one that can be supported by facts. No useful purpose could be served by creating a critical water shortage in one state to satisfy the partial needs of another . . . Should it ever become necessary, I shall go to whatever detail is necessary to convince this committee that Idaho's ultimate requirements will leave no water to export to other basins from the Snake River in Idaho. I hope that it will not be necessary because we should not confine our planning to the short-range approach of "robbing Peter to pay Paul."²³

The reaction to the proposed Snake-Colorado Project emphasizes the need for immediate comprehensive studies of the water supplies of all areas of the Pacific West.

An estimate of the costs of the Snake-Colorado Project are indicated on the following table:

²¹ Snake-Colorado Project Report, *op. cit.*, at 2.

²² *Loc. cit.*

²³ Hearings on S. 1658, Part II, *op. cit.*, at 478 and 479.

TABLE XXIV

CONSTRUCTION COST SUMMARY
SNAKE-COLORADO PROJECT

Initial construction (1.2 million acre-feet per year)

	\$ Million
Thousand Springs Reservoir	25.0
Pumping plants and penstocks	95.1
Regulating reservoirs	10.0
Aqueduct	574.7
Power development facilities	240.9
Subtotal	\$945.7
<i>Expansion (to full capacity, 2.4 million acre-feet per year)</i>	
Pumping plant and penstock additions	82.0
Aqueduct siphon additions	58.8
Power development facility additions	206.0
Subtotal	\$346.8
Total construction cost	\$1,292.5
Interest during construction	104.9
GRAND TOTAL	\$1,397.4

7. YELLOWSTONE-SNAKE-GREEN PROJECT

In March 1964 Thomas M. Stetson, a consulting engineer from Los Angeles, who was an expert witness for California in the suit, *Arizona v. California*, issued an analysis of the Revised Pacific Southwest Water Plan which was proposed under contract with the six-agency committee composed of users of Colorado River water in California. Mr. Stetson suggested diverting up to 2.0 million acre-feet annually to supplement Colorado River supplies²⁴ from the Yellowstone River near Corwin Springs, Montana. The proposal would involve pumping water from the Yellowstone River 1,600 feet through conduits and tunnels into Hebgen Lake on the upper reaches of the Snake River. Water would then be diverted downstream on the Snake River where it would be pumped 1,700 feet to be discharged into Beaver Creek, a tributary to the Green River. From that point the water would flow naturally into the Colorado River through Flaming Gorge and Glen Canyon Dams in the Upper Basin and through existing projects on the Lower Basin. Mr. Stetson suggested a combination of the 2.0 million acre-foot yield Yellowstone-Snake-Green Project with the 2.4 million acre-foot Snake-Colorado Project of the Los Angeles Department of Water and Power to make a total of 4.4 million acre-feet of imported supplies available to the Colorado River, and added that

“ . . . If in the future the water supplies of the Snake and Yellowstone Rivers should diminish to the extent that additional water were needed in those river basins, rivers further to the north, including some of those in western Canada, could be developed to replace the water exported. The Basin Development Fund, by that time, would have ample funds to finance the development of such replacement water.”²⁵

²⁴ For details of the proposal see Review of Pacific Southwest Water Plan, March 18, 1964, Thomas M. Stetson, Civil and Consulting Engineers, Los Angeles.

²⁵ *Ibid.*, at 34.

Mr. Stetson estimated that development of 1.0 million acre-feet of water from the Yellowstone-Snake-Green Complex would cost \$249.6 million and would cost (depending upon power generated) between \$15.70 and \$27.10 per acre-foot. Estimates for development of 2.0 million acre-feet of water by this same plan would result in capital costs of \$416.8 million and an average cost per acre-foot of water varying from \$14.20 per acre-foot to \$25.00 per acre-foot.

For a combination of the Snake-Colorado and Yellowstone-Snake-Green Project, Mr. Stetson estimated total capital costs of \$1,647,-000,000 for a total yield of 3.4 million acre-feet per year and \$1,814,-200,000 for development of 4.4 million acre-feet per year.

8. NORTH AMERICAN WATER AND POWER ALLIANCE (Parsons Plan)

In April 1964, The Ralph M. Parsons Company of Los Angeles, an engineering and construction firm, issued a preliminary report on a continental water supply program called the North American Water and Power Alliance.²⁶ This program, which would involve three countries and most of the North American Continent, would develop an estimated 141.7 million acre-feet per year of irrigation water and 37.0 million acre-feet a year of municipal and industrial water. See page 87.

Information on the plan and the elements which comprise it are included in "Western Water Development, A Summary of Water Resources, Projects, Plans and Studies Relating to the Western and Midwestern United States," compiled by the Special Subcommittee on Western Water Development of the Committee on Public Works, United States Senate, 80th Congress, Second Session, committee print, October 1964. This report is primarily concerned with the NAWAPA Proposal.

The objective of this plan is to collect the surplus water of the Rocky Mountain Region and redistribute it to the water-poor areas of Canada, the Midwestern and western United States and northern Mexico. The major feature would be a 500-mile-long storage reservoir in Canada, at an elevation of 3,000 feet, in what is known as the Rocky Mountain Trench. It is estimated that the project would develop power worth \$4 billion annually, and the sale of this power would be the primary method of financing the project. As indicated in Table XXV the project would be basically one to provide irrigation water. The project would provide a navigable waterway from Vancouver on the Pacific to Duluth on Lake Superior. This canal would also deliver irrigation water to the northern plains from Alberta to South Dakota, and increase the flow through the Great Lakes-St. Lawrence System to alleviate water pollution in that area.

According to The Parsons Company the program would assure adequate water supply to the continent for the next 100 years. The magnitude of the project is exemplified by the fact that according to the Senate Subcommittee on Western Water Development, all the water resources projects now authorized or contemplated in the Western United States by federal and nonfederal agencies would total 3,151 in-

²⁶ For details of the plan see NAWAPA, *Preliminary Report* of 15 April, 1964. The Ralph M. Parsons Company.

TABLE XXV
NORTH AMERICAN WATER PLAN (ARBITRARY ALLOCATIONS OF WATER FOR
STUDY PURPOSES)

	Water (annual acre-feet in millions)		Increased land values	
	Irrigation	Industrial and municipal	Acres (× 1,000)	\$ (millions)
Canada				
Yukon Territory.....	---	---	---	---
British Columbia.....	---	---	---	---
Alberta.....	12.5	---	5,000	4,000
Saskatchewan.....	12.5	---	5,000	4,000
Manitoba.....	---	---	---	---
Ontario.....	---	---	---	---
Quebec.....	---	---	---	---
New Brunswick.....	---	---	---	---
United States				
Alaska.....	---	---	---	---
Washington.....	---	---	---	---
Idaho.....	2.3	---	926	741
Montana.....	4.6	---	2,146	1,717
Oregon.....	5.4	---	1,859	1,487
Utah.....	6.9	---	2,758	2,207
Nevada.....	4.6	---	1,858	1,486
California.....	13.9	---	5,598	4,478
Arizona.....	6.9	---	2,758	2,206
New Mexico.....	7.5	---	3,021	2,417
Texas.....	11.7	---	4,668	3,734
Colorado.....	9.3	---	3,718	2,974
Nebraska.....	5.8	---	2,324	1,859
Kansas.....	7.0	---	2,785	2,228
Oklahoma.....	5.8	---	2,324	1,859
North Dakota.....	5.4	---	2,146	1,717
South Dakota.....	5.4	---	2,146	1,717
Minnesota.....	---	---	---	---
Wisconsin.....	---	6.4	---	---
Michigan.....	---	6.4	---	---
Illinois.....	---	6.4	---	---
Indiana.....	---	6.4	---	---
Ohio.....	---	6.4	---	---
New York.....	---	2.5	---	---
Pennsylvania.....	---	2.5	---	---
Mexico				
Baja California.....	2.3	---	930	744
Sonora.....	12.3	---	4,880	3,094
Chihuahua.....	5.0	---	2,012	1,610
Subtotal				
Canada.....	25.0	---	10,000	8,000
United States.....	97.1	37.0	41,035	32,827
Mexico.....	19.6	---	7,822	5,448
Grand total.....	147.1	37.0	58,857	46,275

dividual projects, with a total cost of approximately \$60 billion and would provide 2,770,636,208 acre-feet of stored water. In comparison NAWAPA would encompass 369 projects, cost \$80 billion, and provide 4,338,509,000 acre-feet of stored water. Thus the NAWAPA System provides nearly twice the water storage for use in the United States as

But the pressure to move from attempting to solve water problems on a project basis, piecemeal, regional, without regard to the uniqueness of water resources, i.e., its mobility, has reached the point where bold initiative is demanded.²⁷

Surely, the Parsons Plan provides a basis for bold initiative. The Senate committee concluded that:

It now remains to determine if the size of the dams and reservoir areas as depicted by NAWAPA are physically possible to engineer and capable of supplying the degree of water called for. A comparison of the hydrological standards used by The Parsons Co. to determine water availability . . . indicates that the water is there

The concept contemplates using existing engineering methods and standard reservoirs, canals, and lifts. However, certain dam sizes and impoundments raise questions of physical feasibility. Also questions are raised relative to pumping capability. *But it does not appear that any question raised can be answered in any way short of a thorough engineering study.*²⁸

It would seem that a project of this type can only be considered a long-range program; even a preliminary engineering study should involve cooperation between the three nations involved: Canada, United States, and Mexico. The engineering study of the project would therefore seem to be a formidable one.

9. S. 3104 (KUCHEL-SALINGER)

On August 11, 1964, California Senators Thomas Kuchel and Pierre Salinger introduced S. 3104 in the United States Senate. This bill has two major features:

I. It requires the investigation of water requirements of the Colorado River Basin—an investigation of potential sources of supply.

Specifically, the Secretary of the Interior is directed to investigate:

1. The quantities of water which must be added to the main stream of the Colorado in order to assure a dependable supply of 7.5 million acre-feet a year for consumptive use in the main stream.

2. The additional quantities of water which must be added to the main stream of the Colorado in order to assure a dependable supply adequate to sustain the economies in Arizona, Nevada and California which are dependent or will become dependent in the future on the main stream as a major source of their water supply.

This would include the water requirements of the proposed Central Arizona Project, the undelayed development of water for use in the Upper Basin.

The secretary is required to provide cost estimates, preliminary plans, financing methods, and recommendations for legislation authorizing projects to furnish the water. The legislation requires that the sources investigated include, but not be limited to:

. . . salvage operations on the main stream; canal lining and other conservation measures; ground water recovery; desaliniza-

²⁷ *Senate Report, op. cit.*, at 1.

²⁸ *Ibid.*, at 6, 2 (emphasis added).

tion of sea water and brackish waters; weather modification; and importation of water from other watersheds. Plans for importation of water from other watersheds shall in all cases include adequate and equitable provisions for the ultimate requirements of the states and areas of origin of those waters.²⁹

The bill requires a report and recommendation not later than three years after the enactment of the act.

This is basically the investigation requirement of S. 2760, and it is, as drafted, broad enough to include rivers and waters of northern California and other states and watersheds, including the Pacific northwest, as potential sources of supply.

II. The second major objective of the legislation is to provide a permanent priority to California of 4.4 million acre-feet from the Colorado River, as follows:

... all rights to the consumptive use of water to be diverted by or for the central Arizona aqueduct from the main stream of the Colorado River shall be junior to all of the following senior existing rights to waters of the main stream, including all present perfected rights: Rights of water users served under contracts with the United States by diversion works heretofore constructed, and decreed rights of Federal reservations, in Arizona and Nevada; and such rights in California to the aggregate annual consumptive use of 4.4 million acre-feet of water of the main stream of the Colorado River.³⁰

Thus, in fact, S. 3104 does not propose a regional plan, but rather it represents what the authors consider the true essential requirements to California for a regional plan:

1. A study of important sources in the entire West, and
2. A 4.4 million acre-foot priority to California.

These two proposals together with other aspects of the regional plans are discussed and commented on by the committee in Chapter IV of this report.

The following chart summarizes the major features of each of the regional plans discussed thus far which have been formally presented to Congress or have been discussed by congressional committees. Thus the chart includes: The original Central Arizona Project (S. 1658); the Pacific Southwest Water Plan of August 1963; the Revised Plan of January 1964; the Pacific Southwest Project Act (S. 2760), the Lower Colorado River Basin Act (Goldberg Amendment S. 1658 as amended), and S. 3104.

²⁹ See S. 3104, Section 1. (c).

³⁰ *Ibid.*, Sec. 2 (a).

TABLE XXVI

Summary

COMPARISON OF PACIFIC SOUTHWEST WATER PROPOSALS *

Feature	S. 1658 (Hayden-Goldwater) "Central Arizona Project Act"	Abbott Goldberg Amendment to S. 1658 "Lower Colorado River Basin Project Act"	August 1963 Pacific Southwest Water Plan Report (Udall)	Pacific Southwest Water Plan— Revised (Udall) draft bill	S. 2760 Kuchel— 11 House coauthors "Pacific Southwest Project Act"	S. 3104 Kuchel-Salinger— 23 House coauthors
Construction of Central Arizona Project.....	Yes	Yes	Yes	Yes	Yes	No
Construction of Dixie Project Utah.....	No	No	Yes	Yes	Yes	No
Construction of Southern Nevada Water Supply Project	No	Yes	Yes	Yes	Yes	No
Construction of both Marble and Bridge Canyon Dams....	No, only Bridge Canyon	Yes	Yes	Yes	Yes	No
Establish Development Fund...	No	Yes	Yes	Yes	Yes	No
Enlarge California Aqueduct...	No	No	Yes	Yes	No	No
Guarantee California 4.4 million acre-feet a year.....	No	Only for 25 years	No	No	Yes	Yes
Export Northern California water.....	No	Yes	Yes	Yes	No	No
Water salvage construction....	No	No	Yes	Yes, no canal lining	Yes	No
Establish program to import water into Colorado basin... (from Snake, etc.)	No	Yes, from Calif. only	Yes, from Calif.	No	Yes	No
Establish Regional Commission	No	Yes	No	Yes	Yes	No
Authorize study of future projects.....	No	Yes	Yes	Yes	Yes	Yes, 3 years
Fish & Wildlife projects.....	No	No	Yes	Yes	Yes	No
Total cost of basic project....	\$997 million	\$1.3 billion	\$1.9 billion	\$1.7 billion	\$1.4 billion	\$10 million

* Including only those presented to Congress or under discussion by congressional committees.

Chapter V

RECOMMENDATIONS ON MAJOR POLICY PROBLEM AREAS

In this chapter, the committee will discuss major policy decisions confronting California involved in proposals for Pacific Southwest development and state the committee's views which it believes are appropriate for adoption by California on these various proposals.

1. A 4.4 MILLION ACRE-FOOT PRIORITY TO CALIFORNIA

Shortly after the U.S. Supreme Court handed down its opinion in *Arizona v. California*, B. Abbott Goldberg, Chief Deputy Director of the State Department of Water Resources succinctly summarized the position in which California found itself as a result of the decision:

The fact is that the court has done nothing which Congress cannot undo. While it has denied rights to California, it has not automatically made water available to Arizona. Instead, it has given great latitude to the Secretary of the Interior initially and to the Congress eventually to determine the course of development of the Southwest. The court has required nothing of the Congress, and Congress can allow the present situation to continue. Thus, what the court has done is *to transfer to the political forum what is essentially a political problem.*¹

As was indicated in the discussion of proposals to meet Pacific Southwest water needs, S. 2760 and S. 3104, and the proposed Mosk Amend-

¹ B. Abbott Goldberg, "Some Observations on *Arizona v. California*," speech to State Chamber of Commerce, Sacramento, July 1, 1963, p. 3 (emphasis added).

their entitlements. This is a "guarantee" in the usual sense of the word which amounts to a "warranty" or formal assurance.

A "guarantee," on the other hand, as used in the Pacific Southwest Water Plan and the Goldberg Amendment to S. 1658, is merely the establishment of a development fund under which the sponsors expect sufficient funds to be available to construct projects to import sufficient water into the Colorado River Basin to keep the river supply to the lower basin at 7.5 million acre-feet a year. This would be a guarantee only if funds were available and projects constructed. In any event, it would *not* provide a priority to California since under the proposals of S. 1658 and the Pacific Southwest Water Plan, if for any reason the import projects did not keep the supply at 7.5 million acre-feet, shortages would not be borne by Arizona before California. This "guarantee" is not a water right and depends on political action.

Thus, although a priority includes a "guarantee" in the usual sense of the word, a "guarantee" as used in S. 1658 and the Pacific Southwest Water Plan does not include a priority at all and is not even a "guarantee" in the usual sense of the word.

PACIFIC SOUTHWEST WATER PLAN

The objective of the Pacific Southwest Water Plan with regard to a 4.4 guarantee was expressed in the modified January 1964 report as follows:

1. Guarantee, as a matter of federal policy through the construction of necessary works, the equivalent of 7.5 million acre-feet of water per year in the Colorado River, either directly or through exchange, to satisfy the consumptive use of:

2.8 million acre-feet per annum in Arizona; 4.4 million acre-feet per annum in California; 0.3 million acre-feet per annum in Nevada; at cost to users no greater than would otherwise have been incurred had there been sufficient water in the river to satisfy the aforesaid amounts.²

In testimony before the U.S. Senate Interior and Insular Affairs Committee, Secretary Udall described the reasoning behind this provision:

There are several reasons and justifications for this guarantee. Extremely large financial obligations have been assumed by both irrigation and municipal and industrial users on the belief that they would have for use within the lower basin not less than 7.5 million acre-feet of Colorado River water. This belief was fostered in large measure by the United States acting pursuant to acts of Congress. Studies initiated under the Kinkaid Act, which provided the hydrologic data upon which the agreements were reached under the Colorado River Compact of 1922, indicated a supply of water substantially in excess of that which we now estimate is the firm supply available. It is questionable whether many of the financial obligations assumed in the past by water users within the lower basin would have been undertaken had not a firm water supply of 7.5 million acre-feet per year been assumed. In addition, most of

² Pacific Southwest Water Plan Revised, *op. cit.*, at 1 (emphasis added).

these obligations were undertaken prior to the time the United States agreed to deliver 1.5 million acre-feet or more of water per year to Mexico. In view thereof, it seems reasonable that the Congress provide a mechanism to maintain a firm supply of water to projects which have been constructed or were anticipated at the time the Colorado River Compact was signed. *This would not institute the United States as an insurer or "grantor" of a water supply in the legal sense of those terms, however.*³

Since the United States would not be an "insurer" or "guarantor" of a water supply in the legal sense of those terms, any guarantee to California of 4.4 million acre-feet a year under the Pacific Southwest Water Plan concept would depend on congressional authorization and construction of necessary facilities to maintain sufficient supplies in the river. It is not actually a "guarantee" in the usual sense of the word. It is a *promise* which may or may not be kept by Congress. Neither the Secretary of the Interior nor, in fact, today's Congress can commit a future Congress to appropriate funds to construct given projects.

The Revised Pacific Southwest Water Plan guarantee is described as a "physical and economic guarantee," which would be "made effective by early authorization and construction of projects importing additional supplies to the region from northwestern California."⁴ This guarantee, if effective, represents then simply an export program from northern California, a suggestion which was opposed vigorously in the State Comments on the original Pacific Southwest Water Plan.

PACIFIC SOUTHWEST PROJECT ACT (S. 2760)

This proposed legislation makes users in Arizona junior to users in California and requires that shortages be borne by these users in Arizona before any shortages are borne by users in California, who would have a "senior right." In proposing a guarantee by a water right priority, in which California's use of 4.4 million acre-feet a year would not be dependent upon construction of import projects and transportation of water into the river, Northcutt Ely gave the rationale behind the approach:

The various "regional plans" propose investigation of sources outside the natural basin of the Colorado River from which water might be imported to meet the deficiency so occasioned, but none of them authorize construction of the necessary importation projects. The question is whether, if importations are delayed until after the onset of the shortages occasioned by construction of the new consumptive-use projects, the existing uses shall be projected against these shortages, or whether they shall be obliged to share them.⁵

At the heart of the approach taken by Senator Kuchel in his legislation is the doctrine of prior appropriation, under which water rights

³ Hearings on S. 1658, *op. cit.*, at 313 (emphasis added).

⁴ Wesley E. Steiner, "Status Report on Regional Planning," presented to California Water Commission, October 7, 1964, at 10.

⁵ Northcutt Ely, *Principles of Priority of Appropriation*, August 1964, at 1.

are based on the concept of "first in time, first in right". The basis for the appropriative rights doctrine was described by Mr. Ely:

Three principles provide the cornerstones of the appropriative rights doctrine: (a) beneficial use is the basis, the measure, and the limit of the right; (b) the earlier beneficial user is protected against a later user by the principle of first in time, prior in right; and (c) one who has properly initiated an appropriative right and who diligently pursues the construction of works to enable him to use the water is entitled to a water right upon completion of his works with a priority dated back to his first initiation of the right for the full magnitude of the project he has built (the relation-back principle).

Thus the first fundamental is that a water right depends on beneficial use and is lost by nonuse. Where water is scarce, beneficial use must always be the basic criterion for a water right.

The second fundamental is the doctrine of priority: One who first initiates a project to put water to beneficial use and proceeds thereafter with due diligence has priority over later users. If there is a water shortage, that shortage is not shared equally by all persons with water rights on the same stream. Users cut back their use in inverse order of the priorities established by dates of initiation of the respective rights. The priority principle, rather than parity, has remained the basic element of western water law because it is the only principle, as experience has proved, which meets the needs of the West. There are several reasons for this.

In bringing land and water together, the investment of time and money—often great quantities of both—is required. The third fundamental, the relation-back principle, operating concomitantly with the priority principle, constitutes the only legal machinery yet devised which provides sufficient security to encourage, indeed to permit, the necessary investment. Under this doctrine the investor is protected against some risks, and other risks are calculable. He is relieved, under the priority doctrine and the relation-back principle, from yielding his place on the stream to a user who begins his use during the time the earlier appropriator has his project diligently under construction.⁶ He is protected from cut-backs in his supply by the acts of other men. Furthermore, he is insulated to some extent from shortages due to natural diminution of supply. At the time he wishes to undertake construction of a project the risks of supply under the prior appropriation doctrine are calculable. Dependable supply in a stream can be determined within reasonable limits of accuracy. The investor can thus ascertain in advance, within those limits, by determining the dependable supply and existing appropriative rights on the stream, how much of the dependable supply is unappropriated and will be available to his project. If parity is substituted for priority, no investor can evaluate the risks to which his project will be subject. Every user's water supply is always vulnerable to displacement or

⁶ E.g., the first surveys for the Colorado River Aqueduct of the Metropolitan Water District of Southern California were made in 1923, but the project at all times diligently pursued, was not completed until 1960. (Footnote by Mr. Ely.)

diminution by later users, the number of whom and the quantity of whose are unknown and unknowable.⁷

The priority doctrine discourages building projects in excess of the reasonably dependable supply. Overbuilding creates disaster. When risks are calculable, projects for which the risks clearly exceed the possible return are usually not built. But if the risks are undefined and undefinable, marginal projects are built. By the parity principle, both the prudent and the profligate share in disaster, which destroys the usefulness of the resource for all.⁸

It was explained to this committee by Mr. Ely that 17 western states recognize and apply priority of appropriation as either an exclusive basis for determining water rights or in combination with riparian rights, as in the law in California. Mr. Ely also noted that Congress has recognized and adopted by 37 statutes dating back as far as 1866 the principles of the law of appropriation and that the decisions of the United States Supreme Court have reaffirmed the rationale and purpose of the doctrine.⁹

In addition, the Arizona Legislature, in both 1961 and 1962, enacted laws¹⁰ to protect existing Arizona projects against the Central Arizona Project, applying precisely the doctrine within Arizona which S. 2760 applies between California and Arizona.

With regard to a permanent 4.4 priority, the General Manager and Chief Engineer of the Metropolitan Water District appropriately emphasized that with California limited to 4.4 million acre-feet, "... Metropolitan's uses will have been diminished by 662,000 acre-feet of its 1,212,000 acre-foot contract allotment, leaving 550,000 acre-feet for its use."¹¹ Thus, even with a 4.4 priority, California is still suffering a serious reduction in its water supply from the Colorado. A leading southern California water leader told the committee:

It is a bizarre and untenable situation that permits a state to follow one principle among its own water users as do Arizona and California and yet insist on another rule as between those very same states that apply that rule. Yet this is the position expressed by those who would prefer existing projects over new ones within their own state and then turn their back on it as between states... The Mosk Amendment [to S. 1658 as introduced and basically the same as S. 2760] seeks to implement the Supreme Court decision in *Arizona v. California*, not to reverse it. The high court invited the interested parties to seek a legislative answer to a judicial dilemma. In pursuing the principle of priority of existing projects over projects to be built California is merely responding to the mandate of the court... The principle of priority permits the sponsors of each successive project before it is built, to calculate the risk of water shortage and to take that risk if the sponsor wishes to take

⁷ See *Yeo v. Tweedy*, 34 N.M. 611, 620, 286 Pac. 970, 974 (1929): "The exercise of those rights which have been in abeyance will frequently destroy or impair existing improvements, and may so reduce the rights of all that none are longer of practical value, and that the whole district is reduced to a condition of non-productiveness. The preventive for such unfortunate and uneconomic results is found in the recognition of the superior rights of prior appropriators." (Footnote by Mr. Ely.)

⁸ Ely, *Principles of Priority of Appropriation*, op. cit., at 3-5.

⁹ See Northcutt Ely, *Principles of Priority of Appropriation*, op. cit., at 5-7.

¹⁰ Ariz. Laws 1961, Ch. 39; Ariz. Laws 1962, Ch. 109.

¹¹ Hearing, *Transcript*, August 14, 1964, at 11, 12.

it. Any other principle, as for example the principle of proration, simply subjects all projects, existing and proposed, to the risk of shortage. The latter principle doesn't make much sense.¹²

Northcutt Ely summarized the practical effect of immediate authorization of the Central Arizona Project with a permanent 4.4 million acre-foot guarantee to California:

... On the secretary's figures, Arizona's situation, if California's 4.0 million is permanently protected, will be this: Arizona will have a permanent supply for all her existing projects, expanded from their present uses of less than 600,000 acre-feet . . . to their hoped-for maximum, which is about 1.1 million or 1.2 million acre-feet. In addition, she will have a full supply of 1.2 million acre-feet for the Central Arizona Project until the end of this same 25-year period that she offers to California in S. 1658. If imported water arrives before then, Arizona will continue to have a permanently full aqueduct. If importations are delayed, the Central Arizona aqueduct's supply will gradually shrink. It will still run half-full, well past the end of this century, even if importations are delayed that long and even if California is protected to the extent of 4.4 million. . . . But a half-full aqueduct is the best that California's Metropolitan Water District can hope for, even if California's 4.4 million is protected permanently.

This curtailment [of the MWD supply] will occur several decades before the flow in Arizona's aqueduct is similarly reduced, . . .¹³

California's former Attorney General Mosk, in discussing the question of the 4.4 priority, stated that there are those who argue that because of the possibility of shortage:

We have a moral obligation to compromise.

I am not an engineer and I shall leave it to the Lord to decide how much it will rain hereafter. Obviously, there is risk of shortage or none of us would have reason to be concerned. However, I will tell you that if the choice must be made between existing projects and future projects, both justice and fairness favor the existing projects. We can assert this in good conscience not only as Californians served by existing projects, but as citizens of the United States defending a principle vitally important to our nation. We should not compromise with our future.¹⁴

Preference of existing projects over new projects assures equal and continuing concern by both Arizona and California to solve the joint problem of shortage by an early importation of water from areas of surplus or by provision of alternative sources of water supply and therefore is not a tactic of obstruction.

LOWER COLORADO RIVER BASIN ACT (S. 1658 AS AMENDED)

The Goldberg Amendment to S. 1658 also provides for a limited 4.4 priority to California. The principal difference between the priority in the Goldberg Amendment, however, is that it lasts only for a period

¹² *Ibid.*, at 51.

¹³ Hearing, *Transcript*, August 13, at 176, 177.

¹⁴ Mosk, Town Hall statement, *op. cit.*, at 11, 12.

of 25 years from the effective date of the act compared with a priority in S. 2760 in perpetuity.

In its report to the Senate recommending approval of S. 1658, as amended, the Goldberg Amendment, the Senate Committee on Interior and Insular Affairs stated, with regard to its inclusion of the 25-year priority of 4.4 million acre-feet to California:

*It is only by reason of the grace and comity of Arizona that the committee approves this proviso, and its approval thereof is upon the condition and with the understanding that Arizona's rights under the decree in Arizona v. California are not affected, abridged, or impaired, and that California has no right after the period of 25 years to the renewal or extension of her use of any waters of the Colorado River awarded to Arizona.*¹⁵

Wesley Steiner, who assisted Mr. Goldberg in drafting the amendment to S. 1658, described the 25-year priority:

California would receive the benefit of a term insurance policy, assuring legal protection for 4.4 million acre-feet of existing uses for a period of 25 years or until the works required to maintain a basic supply of 7.5 million acre-feet have been completed, whichever occurs first. This period of protection would allow ample time for the planning and construction of the works required to supplement the flow of the Colorado. Once these works were in operation, California would have *what now appears to be reasonable assurances* of receiving, forever, 4.4 million acre-feet annually at Colorado River prices. These works would provide our permanent protection for the 4.4, and priorities to Colorado River flow would become meaningless.¹⁶

Northcutt Ely, however, pointed out that:

After 25 years, if S. 1658 (as amended) becomes law, water could be taken from existing projects in California to supply the Central Arizona Project. This point in time, 25 years, coincides almost exactly with the secretary's estimate of the time when Upper Basin depletions will have risen to the point where they reduce the river's flow below the quantity required to supply the Central Arizona Project's new demand plus those of the old projects that require protection. Thus, the effect of the 25-year restriction in the Goldberg bill is *much like language in a life insurance policy which says that the policy terminates on the death of the insured. There is no justification for it.*¹⁷

Thus, based on water supply projections, the 25-year priority proposed by S. 1658 is no guarantee at all to California. The following Table XXVII, prepared by the State Department of Water Resources and utilizing water supply data of the U.S. Bureau of Reclamation, (a

¹⁵ Report 1330 on S. 1658, *op. cit.*, at 21 (emphasis added).

¹⁶ Steiner, *op. cit.*, at 13 (emphasis added).

¹⁷ Hearing, *Transcript*, August 13, 1964, at 162 (emphasis added).

shown in Chapter I) shows what water would be available to California and the Central Arizona Project both with and without a permanent 4.4 million acre-feet priority to California.¹⁸

TABLE XXVII

WATER SUPPLY FOR CENTRAL ARIZONA UNIT AND CALIFORNIA

(Source of data: Pacific Southwest Water Plan—January 1964)

Millions of acre-feet

I. WATER SUPPLY AVAILABLE TO LOWER BASIN STATES:

	Year			
	1990	2000	2020	2030
Supply (Table 16A & U.S.B.R. Extension)	7.155	6.680	6.380	6.300
Salvage included but not yet authorized .....	.320	.320	.320	.320
Available mainstream supply	6.835	6.360	6.060	5.980

II. MAINSTREAM REQUIREMENTS: (Table 13 & U.S.B.R. Extensions, Calif. Limited to 4.4)

Arizona, exclusive of Central Arizona ^a	1.27	1.27	1.27	1.27
Nevada ^a	.17	.20	.30	.30
California	4.40	4.40	4.40	4.40
Total mainstream requirements	5.84	5.87	5.97	5.97

III. SUPPLY AVAILABLE TO CENTRAL ARIZONA UNIT:

(A) With permanent priority of 4.4 for California:

I - II	1.00	0.49	0.09	0.01
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(B) 25-year priority of 4.4 followed by proration

using special master's formula:

Arizona's share ^b	2.55	2.37	2.26	2.23
Arizona uses in II	1.27	1.27	1.27	1.27

Available to central Arizona unit	1.28	1.10	0.99	0.96
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IV. SUPPLY AVAILABLE TO CALIFORNIA:

With 25-year priority of 4.4 followed

with proration using master's formula ^c	4.00	3.73	3.55	3.50
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^a Inclusive of increased Indian and Mainstream fish and wildlife uses.^b 28/75 or 37.33 percent of water supply in I.^c 44/75 or 58.66 percent of water supply in I.

A 25-year priority, based on congressional passage of legislation in 1965, would mean that the priority would expire in 1990. The table shows that during almost the entire period of the 25-year priority then, there would be sufficient water to supply both the Central Arizona Project and California's needs. The 25-year priority to California, included in S. 1658 as amended, based on Bureau of Reclamation water supply data, is illusory and would have little practical effect.

The record of the hearings of this committee showed *no support* in California for S. 1658, other than that expressed by the Resources Agency.

¹⁸ Throughout this report the master's proration formula has been used to illustrate possible conditions under a principle of proration. It must be emphasized that the present secretary has not formally announced a formula and it is impossible to predict now what formula a secretary will adopt decades from now.

It has also been suggested that the various proposed 4.4 priorities are not absolute ones in that Arizona is free to make use of its Colorado River entitlement through development of local projects in that state. It seems apparent, however, that only a small portion of the Arizona entitlement would be so developed. The Central Arizona Project is a \$1-billion undertaking and two-thirds of the water served will be agricultural supplies involving substantial subsidies. Nevertheless, Arizona should be free to construct such a project if it wants to accept the risks and financial burdens involved, placing it on equal footing with California agencies in event of shortage.

The Administrator of the Resources Agency told the U.S. Senate Committee on Interior and Insular Affairs in April 1964 that:

The inescapable fact is that Congress must choose among three fundamental alternatives: (1) stop further development in the Lower Basin and allow a regression of existing developments in Arizona; or (2) allow further development in Arizona at the expense of existing developments in California; or (3) adopt a regional plan of development which will introduce adequate water supply into the Lower Basin.¹⁹

This committee does not believe that the choices are this narrow and suggests at least two additional alternatives:

1. Authorization of the Central Arizona Project now, together with a protection of existing rights in California up to 4.4 million acre-feet a year. Under this alternative, the Central Arizona Project, in the event import supplies did not materialize, would have a nearly full supply of water for at least 25 years through 1990, the same situation which California is offered in S. 1658. With such protection to California first, as either a permanent priority or one to last until import supplies are actually in the river, the states in the West can then join in these studies leading to major import projects to supplement the water supply of the Colorado River.

2. Postponement of the Central Arizona Project until the major study of western water resources, including a study of alternative sources of supply for Colorado River users, is completed in from three to five years. Authorization of the Central Arizona Project would then follow after determining that the project has a full water supply without depriving California of any part of its 4.4 million acre-foot supply.

The Central Arizona Project is sized not to the specific needs of Arizona, but to the 2.8 million acre-feet a year to which Arizona is entitled under *Arizona v. California* with a full 7.5 million acre-foot supply in the river.

In view of the water supply situation, a smaller or staged Central Arizona Project should be considered. There is no reason why a project

¹⁹ Hearings on S. 1658, Part II, *op. cit.*, at 402.

different from that formulated by the Bureau of Reclamation could not be constructed.

Both California and Arizona have an interest in working together to secure supplemental supplies for the Colorado. As long as both states' claimed rights exceed the expected long-time water supply, neither Arizona nor California can expect adequate water supplies for their people. Both states must exert leadership in this regard.

SUMMARY

The question of providing a 4.4 million acre-foot guarantee to California reduces itself to several basic elements.

First, the matter of *legal precedence*. There is substantial legal precedence for application of the principle of priority of appropriation to the Colorado River. The states of the West have long utilized this principle within their boundaries and for many years the principle has been recognized with regard to interstate water development. It is legally sound and equitable.

Second, the matter of *inadequate water supplies*. The entire question of priorities on the Colorado would, of course, be moot if the Colorado River had a sufficient water supply to meet the needs of California and Arizona, after meeting the needs of the Upper Basin states as set forth in the Colorado River Compact. It is urgent that additional supplies be obtained before shortages develop. However, at present the water supplies will not be sufficient to satisfy both states' full entitlement and both Arizona and California will need substantially more water than their basic entitlement in the years after 1990. Failure to obtain a 4.4 priority to California is to place our reliance on the uncertainties of long-range promises while sacrificing existing water supplies. Alternative sources of supply are unstudied, and the "guarantees" of the development fund concept do not afford sufficient assurance to California. The interests of California can best be served by reliance upon a legal guarantee. Consent to construction of the Central Arizona Project without a 4.4-million-acre-foot priority to California automatically undermines California's prior standing on the river by adding a later project on equal basis with a known inadequate water supply. California should not consent to construction of the Central Arizona Project knowing that the project will take water from existing California users below 4.4 million acre-feet a year.

Third, the matter of *prudent project formulation*. We do not believe that any major water development project, such as the Central Arizona Project, should be undertaken unless it has assurance of adequate water supplies. The burden to be borne by Arizona, the people of the nation and California's water users through this development fund is too great to develop a project without an adequate water supply. The prior assurance of adequate water supplies is the sound procedure for water development.

In supporting protection for existing California projects the committee is fully cognizant of the fact that California presently does not have a "legal right" to 4.4 million acre-feet unless there is at least 7.5 million acre-feet available to the Lower Basin.

We are fully aware of the fact that if Congress does not recognize the equity of such protection and take positive action in this regard California will not have such protection. In supporting a permanent 4.4 priority this committee is advocating a position which has never been accepted by this Legislature as a "lost cause" or fighting a battle that has already been "lost."

The committee recognizes the obvious desire of those in Arizona to develop the Central Arizona Project, after what has been a long delay during the Colorado River litigation. We are convinced, however, that prudent water planning, based upon sound principles of law and equity, must be the objective of Californians. This is particularly true when such water development is regional in scope and great economies depend on existing supplies. We believe that the adoption of a long-term 4.4-million-acre-foot priority for California projects best satisfies this objective, because Colorado River development in Arizona can be no more secure than in California.

2. THE DEVELOPMENT FUND

An important feature of all bills drafted to authorize construction of projects included in the Pacific Southwest Water Plan is a development fund. In each bill the fund is established by Congress (a) to receive the money appropriated by Congress for disbursement to construct the projects authorized and (b) to receive all project operating revenues for repayment of construction costs and interest of each feature to the extent required by authorizing legislation. In essence the development fund is intended to provide means for spreading the project revenues to assure repayment of all reimbursable costs. The emphasis in the fund is on repayment and the fund is, for all practical purposes, a repayment fund. For comparative purposes the language covering the development fund is set out in the table on the following pages.

Comparison of Legislation

The draft legislation for the revised Pacific Southwest Water Plan provided for the repayment of project costs from the development fund. However, only the costs of the projects specifically authorized in the bill were eligible for repayment from the fund. (See page 71 for the projects included). S. 1658 and S. 2760 introduce a new feature in that the costs of future projects not yet authorized by the bill itself are also eligible for repayment assistance at such time in the future as they are constructed. This provision is, according to the best information available to the committee, new and without precedent in federal law.

The availability of development fund revenues for repayment of future project costs are specifically limited in S. 1658 to those costs incurred to provide a supply of water amounting to 4.4 million acre-feet in California, 2.8 million acre-feet in Arizona and three hundred thousand acre-feet in Nevada, when the supply in the Colorado River falls

PROPOSED PACIFIC SOUTHWEST LEGISLATION—COMPARISON OF FEATURES

Feature: Development Fund

Pacific Southwest Water Plan	S.2760 (Kuchel)	S.1658 (Goldberg Amendment)
<p>Sec. 102. Development Fund. (a) There is hereby established a separate fund in the Treasury of the United States to be known as the Pacific Southwest Development Fund (hereinafter referred to as the "Development Fund") which shall remain available until expended as hereafter provided for carrying out the provisions of section 103 (except subsections (g) and (h)) of this Act.</p> <p>(b) All appropriations made for the purpose of carrying out the aforesaid provisions of section 103 of this Act shall be credited to the Development Fund as advances from the general fund of the Treasury.</p> <p>(c) There shall also be credited to the Development Fund all revenues collected in connection with the operation of facilities under the Initial Plan (except entrance, admission, and other recreation user fees or charges, proceeds received from recreation concessioners, and monies collected in connection with works mentioned in subsection 103(h) of this Act) and all revenues from the Boulder Canyon and Parker-Davis projects which, after completion of repayment requirements, are surplus to the operation, maintenance and replacement requirements of those projects and not needed to reimburse the Upper Colorado River Basin Fund (70 Stat. 106, 107) as provided in the Glen Canyon filing criteria (27 Fed. Reg. 6851) for any expenditures made from that fund to meet deficiencies in generation at Hoover Dam during the filling period of reservoirs of storage units of the Colorado River Storage project.</p> <p>(d) Such revenues shall be available, without further appropriation, for (1) defraying the costs of operation, maintenance, and replacements of, and emergency expenditures for, all features of the Initial Plan, within such separate limitations as may be included in annual appropriation acts; (2) payments as required by subsection (e) of this section; and (3) payments as required by subsection (f) of this section. Revenues credited to the Development Fund shall not be available for construction of features of the Initial Plan authorized by or pursuant to this Act.</p> <p>(e) Revenues in the Development Fund in excess of the amount necessary to meet the requirements of clause (1) of subsection (d) of this section shall be paid annually to the general fund of the Treasury to return:</p> <p>(1) the costs of each feature of the Initial Plan allocated to commercial power or municipal and industrial water supply within a period not exceeding fifty years from the date of completion of each such feature;</p> <p>(2) the costs of features of the Initial Plan allocated to irrigation within a period not exceeding fifty years from the date of completion of each such feature, exclusive of any development periods authorized by this Act; and (3) interest, (including interest during construction) on the unamortized balance of the investment in the commercial power and municipal and industrial water supply features of the Initial Plan at a rate determined by the Secretary of the Treasury in accordance with the provisions of subsection (g) of this section; and interest due shall be a first charge.</p>	<p>Sec. 201. Pacific Southwest Development Fund Established.—There is hereby established a separate fund in the Treasury of the United States to be known as the Pacific Southwest development fund (hereinafter referred to as the "development fund") which shall be available only for carrying out the provisions of this Act.</p> <p>Sec. 202. Authorization For Appropriations.—There is hereby authorized to be appropriated from the general fund to the development fund from time to time a total of not to exceed \$1,478,000,000 to carry out the purposes of this Act, of which the amounts available to carry out the purposes of the respective titles shall be limited to the amounts which those titles severally authorize to be appropriated from the development fund.</p> <p>Sec. 203. Cost Allocations.—(a) Upon completion of each division or separable feature thereof, the Secretary shall report to the Congress the total costs of constructing the same, together with his allocations of such costs among commercial power, irrigation, municipal and industrial water supply (all of which shall be reimbursable in the manner provided in this Act), and flood control, navigation, area redevelopment, recreation, and fish and wildlife (all of which shall be nonreimbursable).</p> <p>(b) The Secretary shall include in costs allocated to power, but to be returned without interest, such portion of the costs properly allocable to irrigation as are in excess of the irrigators' ability to repay, and all of the costs allocated to the transmountain division.</p> <p>(c) The interest rate to be used for purposes of computing interest during construction and interest on the unpaid balance of those portions of the reimbursable costs which are properly allocable to commercial power development and municipal and industrial water supply shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which this Act becomes effective, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due nor callable for redemption for fifteen years from date of issue. If the interest rate so computed is not a multiple of one-eighth of 1 per centum, the rate of interest to be used for these purposes shall be the multiple of one-eighth of 1 per centum next lower than the rate so computed.</p> <p>Sec. 204. Repayment of Reimbursable Cost Allocations.—(a) The costs of each feature allocated to commercial power or municipal and industrial water supply shall be repaid from the development fund to the general fund of the Treasury within a period not exceeding 50 years from the date of completion of each such feature, with interest.</p> <p>(b) The costs of each feature allocated</p>	<p>Sec. 102. (a) There is hereby authorized a separate fund in the Treasury of the United States, to be known as the Lower Colorado River Basin development fund (hereinafter called the "development fund"), which shall remain available until expended, as hereafter provided, for carrying out the purposes of this Act.</p> <p>(b) All appropriations made for the purpose of carrying out the provisions of section 4 of this Act shall be credited to the development fund as advances from the general fund of the Treasury.</p> <p>(c) There shall also be credited to the development fund—</p> <p>(1) all revenues collected in connection with the operation of facilities herein and hereafter authorized in furtherance of the purposes of this Act, except entrance, admission, and other recreation user fees or charges and proceeds received from recreation concessioners, and (2) all revenues from the Boulder Canyon and Parker-Davis projects which, after completion of repayment requirements of the said Boulder Canyon and Parker-Davis projects, are: (A) surplus, as determined by the Secretary, to the operation, maintenance, and replacement requirements of those projects; (B) not needed for the purposes of the Colorado River development fund, established under subsection (d) of section 2 of the Boulder Canyon Project Adjustment Act (54 Stat. 775); and (C) not needed to reimburse the Upper Colorado River Basin fund, established under section 5 of the Act of April 11, 1956 (Colorado River Storage Project Act) (70 Stat. 107), as provided in the Glen Canyon filing criteria (27 Fed. Reg. 6851) for any expenditures made from that fund to meet deficiencies in generation at Hoover Dam during the filling period of reservoirs of storage units of the Colorado River storage project.</p> <p>(d) All revenues collected and credited to the development fund pursuant to this Act shall be available, without further appropriation, for (1) defraying the costs of operation, maintenance, and replacements of, and emergency expenditures for, all facilities of the project, within such separate limitations as may be included in annual appropriation Acts; and (2) payments as required by subsection (e) of this section. Revenues credited to the development fund shall not be available for appropriation for construction of the works comprised within any unit of the project herein and hereafter authorized in furtherance of the purposes of this Act.</p> <p>(e) Revenues in the development fund in excess of the amount necessary to meet the requirements of clause (1) of subsection (d) of this section shall be paid annually to the general fund of the Treasury to return—</p> <p>(1) the costs of each unit of the project or separable feature thereof, herein authorized, which are allo-</p>

PROPOSED PACIFIC SOUTHWEST LEGISLATION—COMPARISON OF FEATURES—Continued

Feature: Development Fund

Pacific Southwest Water Plan	S.2760 (Kuchel)	S.1658 (Goldberg Amendment)
<p>(f) Revenues in the Development Fund in excess of the amount necessary to meet the requirements of clause (1) of subsection (d) of this section and subsection (e) of this section shall be—(1) paid to the appropriate agency (or in the case of a Federal project to the general fund of the Treasury) to carry out the provisions of section 103(d)(2)(iii) of this Act; and (2) paid to the general fund of the Treasury to carry out the provisions of section 103(d)(2)(ii) of this Act. (g) The interest rate applicable to each project and program in the Initial Plan, including the Federal payments under section 103(d)(1) of this Act, shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which the first advance is made for initiating construction of such project or program, or for making the initial payment thereunder, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from the date of issue.</p> <p>(h) Business-type budgets shall be submitted to the Congress annually for all operations financed by the Development Fund.</p>	<p>to irrigation shall be repaid from the development fund to the general fund within a period not exceeding fifty years from the completion of each such feature, exclusive of any development periods authorized by the reclamation law, without interest.</p> <p>(c) The costs allocated to the transmountain division shall be repaid from the development fund to the general fund, without interest, as rapidly as revenues accrue in the transmountain account after the costs referred to in paragraphs (a) and (b) have been repaid, and within such period of time as the Congress may specify in the authorization of construction of the transmountain division works.</p> <p>Sec. 205. Rates and Charges for Services.—(a) The Secretary shall determine charges for the storage and delivery of water for irrigation, within the capacity of the irrigators' ability to pay, in accordance with the Reclamation Project Act of 1939, with proper adjustments for the repayment periods authorized by section 204.</p> <p>(b) The Secretary shall determine rates and charges for electric power and energy, and for the storage and delivery of water for municipal and industrial use, in accordance with the Reclamation Project Act of 1939, with proper adjustments for the repayment periods authorized by section 204. Rates and charges for electric power and energy shall include such increments as are required, in the Secretary's judgment, to recover, without interest, costs allocated under section 203(b) to irrigation to the extent that such costs exceed the irrigators' ability to pay, and further increments, consistent with the fair value of the services, to be accumulated in the transmountain account in accordance with section 207(d) for repayment of the cost of construction of works that the Congress may hereafter authorize to import additional supplies of water into the Colorado River Basin.</p>	<p>cated to irrigation, commercial power, or municipal and industrial water supply, pursuant to this Act, within a period not exceeding fifty years from the date of completion of each such unit or separable feature, exclusive of any development period authorized by law; and</p> <p>(2) interest (including interest during construction) on the unamortized balance of the investment in the commercial power and municipal and industrial water supply features of the project at a rate determined by the Secretary of the Treasury in accordance with the provisions of subsection (f) of this section; and interest due shall be a first charge; and (3) to the extent that revenues are available in the development fund after making the payment required by clause (1) of subsection (d) and subparagraphs (1) and (2) of this subsection, costs incurred for units hereafter authorized to provide (in any years in which insufficient Colorado River main stream water is available for release, as determined by the Secretary, to satisfy consumptive uses in Arizona of two million eight hundred thousand acre-feet, in California of four million four hundred thousand acre-feet, and in Nevada of three hundred thousand acre-feet) water to make up such deficiencies at costs to the users that would have prevailed had main stream Colorado River water been available for consumptive uses in the aforesaid amounts, such costs to be allocated among the purposes for which main stream Colorado River water is made available and to be returned within the period specified in subparagraph (1) of this subsection: Provided, however, That water made available by such units that is not needed to make up the foregoing deficiencies shall be disposed of by the Secretary at rates or for repayment determined in accordance with the provisions of law otherwise applicable to said units.</p> <p>(f) The interest rate applicable to those portions of the reimbursable costs of each unit of the project which are properly allocated to commercial power development and municipal and industrial water supply shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which the first advance is made for initiating construction of such unit, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for fifteen years from the date of issue.</p> <p>(g) Business-type budgets shall be submitted to the Congress annually for all operations financed by the development fund.</p>
	<p>Sec. 206. Contracts.—(a) The Secretary is authorized to enter into contracts for the storage and delivery of water, and repayment of the cost of works allocated to irrigation, and</p>	

PROPOSED PACIFIC SOUTHWEST LEGISLATION—COMPARISON OF FEATURES—Continued

Feature: Development Fund

Pacific Southwest Water Plan	S.2760 (Kuchel)	S.1658 (Goldberg Amendment)
	<p>municipal and industrial water supply, meeting the revenue requirements of section 205, in accordance with the Reclamation Project Act of 1939: <i>Provided</i>, That contracts relating to municipal water supply may be made without regard to the limitations of the last sentence of section 9 (c) of the Reclamation Project Act of 1939 (53 Stat. 1194; U.S.C. 485h(c)): <i>Provided further</i>, That contracts for the storage and delivery of water originating in the Colorado River system and diverted from the main stream of the Colorado River in the lower basin shall conform to section 5 of the Boulder Canyon Project Act.</p> <p>(b) The Secretary is authorized to enter into contracts for the sale of electric power and energy, meeting the revenue requirements of section 205, in accordance with the Reclamation Project Act of 1939 as amended: <i>Provided</i>, That the period thereof, in the Secretary's discretion, may extend to fifty years, and may be accelerated by a right of renewal.</p> <p>Sec. 207. Revenues to be Credited to Development Fund; Disposition. —</p> <p>(a) There shall be paid into the development fund currently (1) all revenues collected in connection with the operation of facilities constructed under the authority of this Act (except entrance, admission, and other recreation user fees or charges and proceeds received from recreation concessionaires) and (2) all revenues from power operations at Hoover Dam and Parker-Davis projects which, after completion of capital repayments required by statute (which shall exclude allocations to flood control), are surplus to the operation, maintenance, and replacement requirements of those projects and not needed to reimburse the Upper Colorado River Basin fund (70 Stat. 105, 107) as provided in the Glen Canyon filling criteria (27 Fed. Reg. 6851) for any expenditures made from that fund to meet deficiencies in generation at Hoover Dam during the filling period of reservoirs of storage units of the Colorado River storage project.</p> <p>(b) Revenues accruing to the development fund shall be available for annual appropriations for the operation, maintenance, and provision for replacement of the projects the construction of which is authorized by this Act.</p> <p>(c) There shall be transferred from the development fund to the general fund of the Treasury, as of the close of each fiscal year, without further appropriation, that year's component of principal and interest, conforming to the pay out schedule last reported by the Secretary to the Congress in conformity with section 208.</p> <p>(d) Any balance remaining in the development fund at the end of a fiscal year, after satisfying the requirements of paragraphs (b) and (c), shall be transferred to the transmountain account in the development fund, to be accumulated and made available only for repayment</p>	

PROPOSED PACIFIC SOUTHWEST LEGISLATION—COMPARISON OF FEATURES—Continued

Feature: Development Fund

Pacific Southwest Water Plan	S.2760 (Kuchel)	S.1653 (Goldberg Amendment)
	<p>of the cost of construction of projects that the Congress may hereafter authorize for the importation of supplemental water supplies into the Colorado River Basin. Balances in the transmountain account shall be invested in United States Government bonds, and the interest thereon shall be deposited in the transmountain account.</p> <p>Sec. 208. Payout Schedules; Reports; Budgets. —(a) The Secretary of the Interior shall furnish to the Congress, not less frequently than once each fiscal year, a report on his operations under this Act, which shall include a payout schedule which shall show, with respect to each division, and cumulatively with respect to all divisions, (1) the capital invested, the amounts repaid, and the unrecovered balance thereof; (2) gross revenues to the development fund, received and anticipated for each year of the repayment period of each division and of each separable unit thereof, from power, from storage and delivery of water for municipal and industrial use, and for irrigation use, and gross revenues from other sources; (3) amounts received from increments to power rates and charges which have been credited to the repayment of capital allocated to irrigation, and credited to the transmountain account; (4) annual costs, historic and anticipated, of operation, maintenance, and replacements; (5) historic and anticipated net revenues; (6) installments paid and to be paid, of interest and of principal, from the development fund to the Treasury; (7) unpaid balances; and (8) sums in the transmountain account available for repayment of the cost of construction of projects to import supplemental water supplies into the Colorado River Basin.</p> <p>(b) Business-type budgets shall be submitted to the Congress annually for all operations financed by the development fund.</p>	

below these quantities and at prices no greater than would have prevailed had Colorado River water been available. The intent is to pay the additional costs of transporting water from new sources to make up any deficiency in the Colorado below the specified amounts.

The draft of legislation to authorize the Pacific Southwest Water Plan also included a provision to permit assistance to areas of origin from the development fund for future projects and for preemption of lower cost project sites.

A somewhat different approach is contained in S. 2760 which includes provision for future congressional authorization of a transmountain division to transport water into the Colorado River Basin and directs the Secretary of the Interior to begin immediate investigations on the division. The purpose of the division is the importation into the Colorado River Basin of sufficient water to eliminate any future deficiencies.

The importation is not limited to the Lower Basin but includes the entire basin.

The newness of the repayment fund proposals caused the committee to inquire of the Department of Interior whether it had prior experience with a fund of this type. In response, data on the Upper Colorado River Basin Fund were supplied by the Department of Interior to the committee.

The Upper Colorado River Basin Fund was established in the legislation (P.L.84-485) for the authorization of the Upper Basin projects. The language in the draft bill to authorize the Pacific Southwest Water Plan closely follows the Upper Basin language. However, a review of the data supplied by the Department of Interior on the operations of the Upper Colorado River Basin Fund shows that the projects involved have only recently been completed or are not yet completed. Therefore, only \$64,000 in revenues had been deposited in the fund by the end of 1963. This is insufficient experience to permit any evaluation of the operation of the fund.

The feature of S. 2760 and S. 1658 which permits costs of guaranteeing a water supply up to 7.5 million acre-feet, requires special comment. In the revised Pacific Southwest Water Plan, the water needed to guarantee California 4.4 million acre-feet was proposed to be transported from northern California to the Imperial Valley and made available to the Imperial Irrigation District. The original plan had proposed direct delivery to the Metropolitan Water District of sufficient water to make up its losses on the Colorado River. This proposal was not warmly received in California because it involved subsidy for a municipal water supply. Therefore, the alternative of transporting the water further to the Imperial Irrigation District was used in the revised plan, presumably because this only involved subsidy to an irrigation water user. However, this delivery to the Imperial Irrigation District would have involved a subsidy approaching \$70 per acre-foot and this would have used up virtually all the repayment capacity of the development fund after the originally authorized projects were repaid.

The above situation illustrates that the sum of money expected to be accumulated in the development fund after the initially authorized projects have been repaid is significant only in terms of the purposes for which the money is to be spent. If the money is to be used to deliver a very expensive water supply to guarantee 7.5 million acre-feet in the Lower Basin, the fund balances may be dissipated without accomplishing all the objectives that might be served. In the case of the revised Pacific Southwest Water Plan, the fund was estimated to be sufficient to cover the high costs of delivering water to the Imperial Valley, but the high rate of subsidy involved meant that a large sum of money would have been expended without accomplishing the maximum benefit for the Pacific Southwest.

Language of the type included in S. 1658 and S. 2760 also introduces another consideration. To the extent that the Central Arizona Project is authorized for construction with an inadequate water supply (see page 100) the draft would have permitted repayment from the fund of those costs required to provide a water supply for the project, from the 2.8 million acre-feet guaranteed Arizona. This would mean that the

fund would assume the burden of providing a part of the water supply for the new Central Arizona Project which is not yet constructed. This is not the same as guaranteeing a supply of water to California up to 4.4 million acre-feet because California loses part of its existing supply for existing projects and, therefore, needs a replacement for water now in use. The net effect is to use the development fund to provide the Central Arizona Project with a supply of water which would otherwise be inadequate during future years based on present estimates of supplies and without certainty how future shortages will be apportioned.

The committee's report on *The Pacific Southwest Water Plan*, Volume 26, Number 8, included the statement that it would be inequitable if the development fund were to be used to provide any subsidy to irrigation water users which is made as a matter of national policy and which should, therefore, be a national responsibility. Since that time, the drafts of bills establishing development funds have become available. A review of these drafts shows that this problem has not occurred because the subsidy elements are excluded from the transfer of repayment money from the fund to the federal treasury and also because the development fund is not being used as a source of future construction capital.

Expected Revenues to the Fund

Another problem involves the probability that the development fund will actually receive the estimated revenues set forth in the report on the Pacific Southwest Water Plan and shown in detail in Table XVIII. This involves a question of whether the power can be sold in the future for the amounts anticipated, that is 6 mills per kwh for peaking power. On this point differences of opinion have occurred.

The following observations can be made:

1. The report of the Fluor Corporation, dated September 1964²⁰ indicates that the value of power in the west has been decreasing substantially during recent years due to the construction of larger scale new generating plants and because of the advent of nuclear energy. A long term energy cost for the State Water Project of less than 3.5 mills per kwh was estimated. This is substantially less than all estimates of several years ago. Since the Colorado River power is peaking power, it will have a greater value than 3.5 mills. The committee has received no data which would permit evaluating whether the 6-mill value is a realistic figure for the next 50 or more years.

2. The Department of Water Resources has observed that if the value of Colorado River power decreases in the future, there will be a corresponding decrease in the value of the power needed to pump water for the Pacific Southwest Water Plan. This statement is borne out by the experience of California on its State Water Project where the decreasing value of power has reacted to the net benefit of water contractors whose water costs consist of a high proportion of pumping energy costs. However, when water contractors do not have a high proportion of energy cost in their water prices, the principle does not apply. Thus, in the State Water Project, the loss of surplus power revenue at Oroville

²⁰ Fluor Corporation, Ltd., *Energy Source Study for the California State Water Project*, September 1964.

TABLE XXVIII

ESTIMATED POWER REVENUES TO DEVELOPMENT FUND

MARBLE-BRIDGE ACCUMULATIVE POWER REVENUES		Unit is \$1,000
1972 through 2047		
Commercial firm power sales (@ 6.00 mills/kwh)		\$2,309,868
Commercial nonfirm power sales (@ 3.00 mills/kwh)		132,900
M&T project pumping power revenues (@ 4.25 mills/kwh)		175,974
Irrigation project pumping power revenues (@ 2.50 mills/kwh)		225,210
Total gross power revenue		\$2,843,952
Payment to CRSP fund for Marble Reservoir encroachment on Glen powerplant tailwater		13,875
Purchase of support energy for commercial power firming		35,872
Accumulative project OM&R costs allocated to power		436,357
Total revenue deductions		\$486,104
TOTAL MARBLE-BRIDGE NET OPERATING REVENUE		\$2,357,848
HOOVER ACCUMULATIVE POWER REVENUES		
1990 through 2047		
Commercial firm power sales (@ 4.00 mills/kwh)		\$917,480
Accumulative project OM&R costs allocated to power		170,114
TOTAL HOOVER NET OPERATING REVENUES		\$747,366
PARKER-DAVIS ACCUMULATIVE POWER REVENUES		
2005 through 2047		
Commercial firm power sales (@ 4.70 mills/kwh)		\$229,830
Accumulative project OM&R costs allocated to power		119,626
TOTAL PARKER-DAVIS NET OPERATING REVENUE		\$110,204
DIXIE ACCUMULATIVE POWER REVENUES		
1971 through 2047		
TOTAL DIXIE NET OPERATING REVENUE		\$20,790
TOTAL NET OPERATING REVENUE FOR ALL PLANTS		
(Refer to Table 24 of PSWP)		\$3,236,208

Source: Department of Water Resources.

from reduced value of power generated there will be directly reflected in higher water costs for those contractors in the Feather River service area. Similarly in the northern part of the State Water Project those contractors who have insufficient pumping cost savings to offset the reduced power revenues will also have higher water costs.

3. The Department of Water Resources pointed out in a letter to the committee that

"Perhaps of greater significance (than the possible future reduction in power values) is the wide disparity in estimates of the future water supply available in the Colorado River for power production. Estimates prepared by the staff of the Colorado River Board of water available during the Pacific Southwest Water Plan payout period for generation at all power plants on the mainstream of the Lower Colorado River average about 15 percent less than those of the Bureau of Reclamation."²¹

²¹ Letter to Chairman Porter from William E. Warne, dated October 14, 1964.

It is obvious that should any water anticipated by the Bureau of Reclamation to be available for generation of power not be available, there will be some reduction in power revenues. Again, the absence of consistent water supply data results in uncertainties.

4. Since the first responsibility of the development fund and the surplus power revenues in it is for the repayment of the initially authorized and constructed features of the Pacific Southwest Water Plan, and since contracts for sale of water from the major projects of the plan have not yet been executed, a change in the repayment obligations of the fund for assistance to irrigation water users can occur. If reduced water charges result in a need for some additional repayment assistance from the fund compared to that originally anticipated, the surplus power revenues available to underwrite the guarantee of 7.5 million acre-feet will be correspondingly reduced. It may also be noted that the costs of constructing the initial projects of the Pacific Southwest Water Plan may increase in the future, but no comparable increase in revenues can be expected. This too, would tend to reduce the surplus in the fund.

5. Because the initial projects of the Pacific Southwest Water Plan must be paid out before surplus funds will be available for underwriting any guarantee of 7.5 million acre-feet, the date when revenues will first be available for this purpose is approximately the year 2000. Only then will there be revenues available for underwriting any guarantee of 7.5 million acre-feet. It is clear from the changes in the value of power in the last few years that any forecast of the value of power 35 years in the future is unreliable and is speculative. Yet it is the value of power beginning 35 years in the future which will essentially determine the amount of surplus revenues in the fund for underwriting the 7.5 million acre-foot guarantee.

From the foregoing discussion it can be concluded that it is not possible to determine now precisely how much money will be surplus in the development fund in future years to guarantee 7.5 million acre-feet of water. Any effort to arrive at a value different from the one selected by the Bureau of Reclamation would be subject to the same shortcomings that confronts the Bureau's figure, that is, it would essentially be a present value rather than a future value.

It would appear, based on recent experience, that the principal factors most likely to influence the value of power sold or the amount of surplus in the fund would be on the downward side. This is borne out by the experience of the Department of Water Resources in a different but similar situation, that of estimating the surplus revenues accumulating under priority 4 of the Burns-Porter Act at the end of the bond repayment period or 75 years. Bulletin No. 132-63, published in April 1963, showed in Table 42 an estimated \$1,063,076,000 in surplus revenues.^{21a} One year later in June 1964, Bulletin 132-64 showed in Table 30, for a slightly shorter period of time, a balance of only \$452,000,000.²² A variation of 100 percent in the balance over a one-year period of time for a project under construction and relatively

^{21a} Department of Water Resources, *Bulletin No. 132-63, The California State Water Project in 1963* (April 1963) at 235.

²² Department of Water Resources, *Bulletin No. 132-64, The California State Water Project in 1963* (June 1964) Table 30.

complete in planning and design, indicates the variation in estimates that can occur.

The committee also has been concerned with the tendency to think of the balance in the development fund as being relatively unlimited and, therefore, capable of supporting any fiscal demands against the Pacific Southwest Plan which might conveniently be charged against it. It should be apparent that this is dangerous and that if any substantial balance is to be accumulated for the purpose of guaranteeing 7.5 million acre-feet or for any other purpose, the fund must be guarded carefully and used discreetly.

Summary

The committee believes that the development fund presents interesting and worthwhile possibilities for fiscal management of the Pacific Southwest Water Plan. It should be looked upon as a very limited fiscal source in view of the large commitments involved if it is to guarantee 7.5 million acre-feet in the Colorado River or assist in providing additional imports of water into the Colorado River Basin. The committee is doubtful that the fund will accumulate all the surplus revenues that are estimated by the Bureau of Reclamation, but this cannot be determined, it can only be speculated. It would, therefore, be wise to avoid expecting too much assistance from the fund and to be cautious about all aspects of its management until much more information is available and particularly on the costs of import water projects.

3. FUTURE SOURCES OF WATER SUPPLIES

Surface Water Supplies

The three major Pacific Southwest regional proposals—the revised Pacific Southwest Water Plan, S. 2760, and the Goldberg Amendment to S. 1658 provide that following initial authorization of the Central Arizona Project certain studies be made to supply additional water for the Colorado River Basin. The revised Udall Plan calls for feasibility reports on all features that were not proposed for immediate construction, including conservation facilities in the north coastal area of California.

The planning for import supplies in the revised Pacific Southwest Water Plan is similar to that of the Goldberg Amendment to S. 1658, which requires that the Secretary of the Interior “investigate alternative sources in the State of California and various methods such as weather modification and desalinization of water as a means of supplying water to meet the current and anticipated water requirements in the Lower Colorado River Basin.”

S. 1658, however, includes the additional requirement that estimates of the long-range water supply and current requirements of the basin be made through the year 2030. The secretary is given five years to prepare feasibility reports on projects in northern California to provide the import supply.

S. 2760 (the Pacific Southwest Project Act), on the other hand, calls for an estimate of the long-range water supply and requirements together with a study of alternative sources from which water might be

PROPOSED PACIFIC SOUTHWEST LEGISLATION—COMPARISON OF FEATURES

Feature: Study of Water Sources

Pacific Southwest Water Plan	S.2760 (Kuchel)	S.1658 (Goldberg Amendment)
<p>Sec. 103 . . . (d)(2) complete feasibility reports as expeditiously as funds are made available therefor on features of the Initial Plan for the conservation and storage of water in the north coastal areas of California, and for related conveyance and other facilities including enlargement of the potential East Side division of the Central Valley project, to make available to the Pacific Southwest up to approximately 1.2 million acre-feet of water per annum to make up deficiencies in main stream Colorado River water as provided in section 101 of this Act and for interim disposition pending its need for that purpose. Said reports shall be submitted promptly to the affected States, and thereafter to the President and the Congress . . .</p> <p>Sec. 104. Priority Planning. In carrying out further investigations of projects to be added to the Initial Plan, the Secretary shall give priority to completion of feasibility reports on tributary projects within the Pacific Southwest where undeveloped local water supplies are available or can be made available by replacement or exchange and on other projects, including Indian projects, in Arizona, California, and Nevada, which can utilize water by diversion from the main stream or which can utilize other water which can be developed either directly or through exchange to meet water deficiencies in the area. Similar priority in planning shall be given to projects in areas of origin of import supplies and, subject to appropriate modifications, relating to disposition of the conserved water, of existing contracts with the United States, to completion of a feasibility report on the lining of the All-American Canal system.</p> <p>Sec. 105. Continuing Study. The Secretary in cooperation with the States and with the Pacific Southwest Regional Water Commission, shall maintain a continuing review of the hydrology of the Colorado River, ground water pumping, and projections of future water supply and demand in the region, and report thereon to the Congress, such reports to be made complementary to the reports on water quality required by section 15 of the Act of June 13, 1962 (P.L. 87-84) and section 6 of the Act of August 16, 1962 (P.L. 87-590).</p>	<p>Sec. 301. Secretary of Interior Authorized to Investigate and Report.—</p> <p>(a) The Secretary of the Interior is authorized and directed to report to the Congress not later than three years after the effective date of this Act—</p> <ol style="list-style-type: none"> (1) his estimate of the long-range water supply available for consumptive use in the Upper and Lower Basins of the Colorado River, respectively; (2) the water requirements in the upper and lower basins, at present and as estimated for the years anno Domini 1975, 2000, 2030, and under ultimate anticipated conditions; (3) the present and anticipated deficiencies in water supply; (4) the quantities of water which, imported into the Colorado River Basin, would eliminate the said deficiencies; (5) the quantities of water which, imported into the Colorado River Basin, would make possible the consumptive use of 7.5 million acre-feet per annum in the upper basin, and eliminate present and anticipated deficiencies in the lower basin; and (6) alternative sources from which water might be imported into the Colorado River Basin in the quantities found required under paragraphs 4 and 5, with preliminary plans of projects which would accomplish such importations, their capital and annual costs per acre-foot of water at stated points of delivery; recommendations for the construction of such projects in stages or phases related in size and time to the projected deficiencies, recommendations as to State participation in construction and operation; recommendations of methods for repayment of the costs of construction, operation, and maintenance of such projects and recommendations, conforming to paragraph (b), for development of the water resources of the river basins from which such water would be imported, adequate to supply the ultimate requirements of the areas of origin of such water, in addition to supplying the quantities proposed to be imported into the Colorado River Basin. <p>(b) The planning of all such importation work shall be subject to the following conditions: (i) diversions shall be subordinate to all existing and anticipated future needs within the watersheds of origin, including the retention of water in the watersheds of origin if estimates of future needs prove insufficient; (ii) financial assistance from the development fund shall be available for the construction of any future projects in the watersheds of origin if such assistance is not otherwise provided; and (iii) additional costs of future projects, caused by the preemption of lower cost water sources which otherwise would benefit the areas of origin, shall be offset by assistance from the development fund to the extent that the costs chargeable to such projects would be no greater</p>	<p>Sec. 103. (a) The Secretary of the Interior is authorized and directed to—</p> <ol style="list-style-type: none"> (1) Prepare estimates of the long-range water supply available for consumptive use in the Lower Colorado River Basin, of current water requirements in said basin, and of the rate of growth of water requirements therein to the year 2030. (2) Investigate alternative sources in the State of California and various methods such as weather modification and desalinization of water as means of supplying water to meet the current and anticipated water requirements in the Lower Colorado River Basin, and prepare preliminary plans to accomplish such purpose. In planning any works to import water into the Lower Colorado River Basin from alternative sources in California, the Secretary shall give due consideration to existing and future needs within the areas of origin of the imported water and the State of California and the means of offsetting the additional costs of future projects within said areas of origin and State of California caused by the preemption of the lower cost water sources that otherwise would have benefited said areas of origin and State of California, including the use of the development fund for this purpose. (3) Investigate projects within the Lower Colorado River Basin, including projects on tributaries of the Colorado River, where undeveloped water supplies are available or can be made available by replacement or exchange. (4) (a) Investigate means of providing for prudent water conservation practices to permit maximum beneficial utilization of available water supplies. (b) The Secretary shall submit annually to the President and the Congress reports covering the investigations required by subsection (a) and, within five years from the effective date of this Act, the Secretary shall recommend to the President and the Congress projects and programs for authorization pursuant to paragraphs (2), (3), and (4) of subsection (a) and shall submit feasibility reports on such projects and programs. Said recommendation and feasibility reports shall include projects designed to provide water of an adequate quality for the Lower Colorado River Basin to assist in meeting that basin's long-range needs and, in any event, sufficient to meet deficiencies between the quantities required to supply water for the annual consumptive use of two million eight hundred thousand acre-feet in Arizona, four million four hundred thousand acre-feet in California, and three hundred thousand acre-feet in Nevada and quantities available in the mainstream of the Colorado River such uses as determined by the Secretary.

PROPOSED PACIFIC SOUTHWEST LEGISLATION—COMPARISON OF FEATURES—Continued

Feature: Study of Water Sources

Pacific Southwest Water Plan	S.2760 (Kuchel)	S.1658 (Goldberg Amendment)
	<p>than if there had been no export to the Colorado River Basin.</p> <p>(c) The Secretary shall consult the Pacific Southwest Regional Water Commission, created by title XI, and shall submit his report to the affected States, in the basins of origin as well as in the Colorado River Basin, for comment in accordance with the procedure required by section 1(b) of the Flood Control Act of 1944, prior to submission to the Congress.</p>	

imported into the Colorado River Basin in quantities required to maintain a river supply of 7.5 million acre-feet per year in the mainstream. The location of the sources called for in S. 2760 *is not limited to California* and, in fact, is unrestricted. Presumably under such legislation the secretary could study water supplies in the Pacific Northwest and in other areas as possible sources of water to be imported into the Colorado Basin. In addition to this study, S. 2760 establishes a trans-mountain division of the regional plan which assumes an import to the Colorado River Basin from other basins. S. 2760 goes further than the other proposals in suggesting that sources of water outside California be considered.

NORTHERN CALIFORNIA

It has been suggested by the Secretary of the Interior that water from the north coastal area of California be utilized to provide export supplemental supplies for the Colorado. It must be emphasized that this committee does not concur in this suggestion. There is no reason for limiting sources to those within the region. Also there is no greater obligation to supply it from a northern California source than there is from any other source. However, only reconnaissance studies have been made of north coastal area development. Proposed dams and reservoirs in that area must be evaluated and compared to other sources prior to the making of a decision to develop these California north coastal sources for any other use in California as contemplated in the California Water Plan, a master plan for the full development of all of California's water resources by all levels of government. The California Water Plan was adopted by the Legislature in 1959.²³ Recently, California's Department of Water Resources completed a seven-year reconnaissance investigation of the north coastal area, and released a preliminary edition of Bulletin No. 136, "*North Coastal Area Investigation*." This bulletin describes all projects for development of water supplies in the north coastal area of California. A summary of the possible major projects is given in the following table:

²³ See State Department of Water Resources, Bulletin #3, The California Water Plan, May 1957. (Water Code, Sec. 10004 et seq.).

TABLE XXIX

**SUMMARY OF POSSIBLE MAJOR PROJECTS IN NORTH COASTAL AREA
AND CONTIGUOUS AREAS OF SACRAMENTO VALLEY**

<i>Project and principal features</i>	<i>Project annual yield (1,000 A.F.)</i>	<i>Estimated capital cost (\$1,000,000)</i>
Paskenta-Newville Project	200	30
Upper Eel River Development (via Clear Lake) †		
Spencer Dam and Reservoir	470	55
Dos Rios Dam and Reservoir	110	25
English Ridge Dam and Reservoir	340	80
Putah Creek power facilities	--	32
Conveyance facilities *	--	106
Total	920	298
Trinity Diversion Project (via Clear Creek)		
Helena Dam and Reservoir	600	84
Conveyance facilities *	--	70
Total	600	154
South Fork Trinity Project		
Eltapom Dam and Reservoir	400	55
Burnt Ranch Dam and Reservoir	80	71
Beartooth Dam and Reservoir	120	14
Clear Creek power facilities	--	164
Conveyance facilities *	--	56
Total	600	360
Mad-Van Duzen Project		
Enlarged Ruth Dam and Reservoir	180	13
Anderson Ford Dam and Reservoir	60	30
Eaton Dam and Reservoir	230	26
Larabee Dam and Reservoir	130	37
Butler Valley Dam and Reservoir	--	13
Conveyance facilities *	--	101
Total	600	220
Greater Berryessa Project		
Enlarged Monticello Dam and Reservoir	1,600	131
Power, pumping, conveyance facilities	--	180
Total	1,600	311
Lower Eel River Development		
Sequoia Dam and Reservoir	600	170
Bell Springs Dam and Reservoir	400	101
Northwestern Pacific Railroad relocation	--	130
Conveyance facilities *	--	186
Total	1,000	587
Klamath River Development		
Humboldt Dam and Reservoir	6,000	652
Ironside Mountain Dam and Reservoir	--	11
Westside Conveyance System	--	130
Rancheria Dam and Reservoir	200	90
Conveyance facilities *	--	637
Total	6,200	1,520
Total	11,520	3,456
Grand Total		

* A major part of conveyance facilities costs is for tunnels.
† Authorized as part of State Water Project, March 9, 1964.

Source: Bulletin #136, p. 55.

POTENTIAL NORTH COASTAL DEVELOPMENT



Source: State Department of Water Resources.

Table XXIX shows the Upper Eel River Development, which provides 920,000 acre-feet a year of project yield at an estimated cost of \$298 million has been authorized by Governor Brown as the first delta replenishment facility to be developed by the state under the Burns-Porter Act. The yield of this project will be required to maintain the safe annual yield of the State Water Project of 4.23 million acre-feet a year. The remaining undeveloped projects are required for the State Water Project.

It can be seen that all projects in the north coastal area would develop more than 11.5 million acre-feet of water a year, but at a cost of \$3.4 billion. Although the projects outlined appear to be feasible at the present time, the largest single project and the one which would produce the greatest new supplies is the Klamath River Development, which is recommended in Bulletin 136 as the last project to be built. This project, which would develop 6.2 million acre-feet a year, would cost more than \$1.5 billion to construct. Not only is it the most costly but it is the most difficult and least accessible of all the projects.

Table XXIX indicates that in many cases large expenditures will be required to produce relatively small quantities of water. For example, although the Lower Eel River Development will produce a million acre-feet of water a year, a single railroad relocation involved in this project is estimated to cost \$130 million.

In Bulletin 136 it is estimated that present applied water requirements of 700,000 acre-feet within the north coastal area will grow to approximately 2.0 million acre-feet annually by the year 2020. Thus, substantial amounts of water now unused in the north coast will be required for the north coastal area itself.

With regard to development of the north coastal area of California, the Regional Director of the Bureau of Reclamation commented:

... I am quite sure that we all can agree right now, as a general principle, that what we want to do is to provide the best possible use of this water. All of us are confronted with working out cooperatively sound overall objectives as we proceed from the general investigation and initial action phases of the past, to the detailed specific project planning and accelerated construction phases which are now virtually upon us in the north coastal area. This challenge confronts all of us—the Bureau of Reclamation, State Department of Water Resources, and the Corps of Engineers, as major action agencies; our sister federal and state agencies with their important specialties; local interests and your regional Eel River Association; and water leaders throughout the State of California. It is squarely up to us, individually and collectively, to define and agree upon those measures, as we proceed, which will ultimately result in our actually achieving what really is the best use of the north coast water.

... the time has come for us all to proceed cooperatively, with full mutual recognition and coordination of objectives.^{23a}

In presenting this brief description of the north coastal area facilities, the committee must emphasize that since these projects involve

^{23a} Robert Pafford *The Total Objective*, statement to Statewide Water Conference, California State Chamber of Commerce, Eureka, July 10, 1964, at P-2, P-3.

large expenditures of money they *must be compared with* other potential water supplies. There is no evidence to show that north coastal area development will necessarily be the most economic and most advantageous method of providing this water throughout other parts of California.

A complete study of all alternative sources throughout the west is mandatory.

PACIFIC NORTHWEST

Although California's north coast streams today have substantial flows, the maximum annual discharge for the period of record is 12,580,000 acre-feet for the Klamath River, the largest north coast stream. This can be compared to the Columbia River, for example, at The Dalles in Oregon where the average annual discharge for period of record of the Columbia is 141.5 million acre-feet. The flow of the same river at Grand Coulee was 78,840,000 acre-feet.²⁴

Although far more water flows in the streams of the Pacific Northwest than California Rivers, there are those in the Pacific Northwest who insist that such flows are not surplus. Very few water exportation studies of the Pacific Northwest streams, and particularly the Columbia, have been made. It is imperative that immediate studies of the river, based upon several possible points of diversion, be made in order that the Columbia and other rivers in the Pacific Northwest can be evaluated.

This committee believes that it is imperative that a thorough analysis of the water supply and demand in the entire 11 western states be given extensive study during the next few years in order that elements of a regional plan can be intelligently determined, and a project may be designed and built when needed. A study at least as comprehensive as that embodied in S. 2760 and S. 3104 is necessary.

The committee is aware that water supplies of both Northern California and the Pacific Northwest may well be unnecessary for regional development if additional water supplies can be made available by other means as discussed below.

Sea Water Conversion

Precisely on the point of Pacific Southwest water development is the September 22, 1964 report of the Secretary of the Interior to the President of the United States on a program for advancing desalting technology. In his report to the President, Secretary Udall stated:

Three distinct water-use areas can be identified in the Pacific Southwest. These are: (1) Southern California—coastal, where water is used primarily for municipal and industrial purposes; (2) Arizona, where water is used for municipal, industrial and agricultural purposes; and (3) Southern California—interior, where most of the available water is used for agriculture.

Our immediate concern in the desalting program is the need for municipal and industrial water. Most of this need arises in or near the coast. Moreover large sea water conversion plants are best

²⁴ Senate Select Committee on Natural Water Resources, Water Resources Activities in the United States, *Committee Print #4*, at 89.

adapted to coastal locations and should be located near major population and industrial centers.

Water-resource planners generally agree that major decisions on future water supply for the coastal areas of Southern California should be made by the mid-1970s. Desalting plants, if the technology is sufficiently developed could provide the most economical source of water for this area.

Much of the existing inland deficiency is being met by "mining" ground water and the interior valleys of Southern California and in Arizona, ground water tables have dropped as much as several hundred feet and the situation is critical.

... desalting plants constructed on the coast could meet all or part of this demand (of the coastal plain for Colorado River water) thereby physically freeing Colorado River water to meet municipal and industrial deficiencies of inland areas in the region if appropriate exchange arrangements were developed.²⁵

In the secretary's report, the Pacific Southwest is singled out as the first economic market for sea water conversion facilities. In order to secure reliable cost data, the Metropolitan Water District of Southern California has contracted with the Department of Interior and the Atomic Energy Commission to study the feasibility of a dual purpose plant of 50 to 150 million gallons a day for possible construction as part of the M.W.D. system by 1970.

In discussing the Metropolitan Water District's contract, the Chief Engineer and General Manager of the District told this committee

... in evaluating the various regional plans for augmenting the water supply in the Pacific Southwest by importing water from even greater distances, it would be desirable to have dependable information regarding the cost of desalting sea water as an alternative supply. Operation during an extended time period of a desalting plant of substantial capacity would afford the most reliable source of cost data for purposes of such comparison. The possible economies to be derived from scale up in the size of desalting units and in the size of reactors cannot be demonstrated conclusively until a prototype plant has been constructed and operated. As the capital cost involved and in long-range regional plans are of immensely greater magnitude than those of the desalting plant we have been discussing, *it would be highly desirable to have concrete evidence of the true cost of large-scale desalinization of sea water before irrevocable commitments are made in the construction of a regional project.*²⁶

The Metropolitan Water District hopes for a cost of \$77 per acre-foot for converted water. This committee reiterates its belief that serious consideration, not mere lip service as in the Pacific Southwest Water Plan, must be given to sea water conversion as a possible alternative source of future supplemental water supply.^{26a}

²⁵ U.S. Secretary of the Interior, *Program for Advancing Desalting Technology*, Report to the President, September 22, 1964, at 9, 10.

²⁶ Statement of R. A. Skinner, November 5, 1964, at 10 (emphasis added).

^{26a} It should be pointed out that the State of California has consistently led all states in conversion research, spending more than all states combined on this effort. See also the report of this committee, *Saline Conversion and Nuclear Energy*, Assembly Interim Reports, Vol. 26, No. 12 (1963-65).

Reclamation of Waste Water and Water Salvage

The question of alternative sources of water also involves a consideration of waste water reclamation. As was discussed in Chapter III several hundred thousand acre-feet a year of waste water is potentially reclaimable in the coastal plain of Los Angeles County and throughout the Pacific Southwest Water Plan great emphasis has been laid on water salvage and conservation practices along the Colorado and along the aqueducts of projects served from the river. Although there is disagreement as to the amount of water which can be reclaimed and salvaged by the proposal in the Pacific Southwest Water Plan. We, nonetheless believe that a contribution to the overall water supply of the basin can be made by water salvage and reclamation proposals.

Evaporation Control

In addition, research on evaporation control should be stepped up. As is shown on water supply tables in this report more than a million acre-feet a year of water will be wasted by evaporation from the Colorado River during the next few decades. If evaporation control research can progress to the point where it is effective the water made available from this source should prove to be a significant benefit to the water supply of the area. Just as the Department of the Interior is recommending what is essentially a "crash" program of sea water conversion research, a "crash" program of evaporation control research would be appropriate at this time.

A Study of Western Water Resources

After Southern California representatives appeared before the Congress and suggested that new supply sources beyond northern California be explored in order to supplement the flows of the Colorado, there began a series of statements by representatives of various potential water sources.

First, Senator Len Jordan of Idaho, responding to the Los Angeles Department of Water and Power's proposal to tap the Snake River in Idaho for such supplies, commented:

The best sources of more water for the Lower Colorado River Basin States is the Columbia River . . .

Please note that even under the year 2010 level of irrigation development based on the natural flow, 1929-1948 average, slightly in excess of 160 million acre-feet flows into the Pacific Ocean. Please note also that under the same conditions of ultimate depletion, more than 110,000 acre-feet will flow past the Dalles Dam, 180 miles upstream from the coast. It is from this point, the Dalles Reservoir at an elevation of 160 feet, that water might be available for export.²⁷

Shortly thereafter Senator Alan Bible of Nevada said that he "agreed wholeheartedly with Senator Jordan's proposal to divert Columbia River water."^{27 28}

Senator Henry M. Jackson of Washington, Chairman of the U.S. Senate Committee on Interior and Insular Affairs, immediately de-

²⁷ Sacramento Bee, April 17, 1964, at B-8.

²⁸ Los Angeles Times, April 21, 1964, at 2.

nounced the plan to utilize Columbia River water. According to press dispatches, Senator Jackson "angrily" served notice that any plan contemplating meeting Southwest Water Problems by diversions from the Pacific Northwest river would be "dead" in his committee. "Jackson wrathfully descended on the Interior Subcommittee to deliver his ultimatum to Senators considering Interior Secretary Stewart L. Udall's . . . Pacific Southwest Water Plan".²⁹ In questioning Northcutt Ely, who was appearing before the committee and who had just suggested that the Columbia River diversion was one possibility of new source of supply, Senator Jackson commented caustically

. . . I want to tell you right now that if you are contemplating that, you are just in for trouble and you might as well face up to it . . . I think you are slightly unwise to come in here and advocate diversion of the Columbia. This has been an old, old gimmick for a long, long time . . .³⁰

When Mr. Ely suggested that S. 2760 did not propose diversions from the Columbia but only proposed a study of *all* possible diversions *including* the Columbia, Senator Jackson replied, "I know, you are authorizing the back door and the ultimate objective is to do that."³¹ Senator Jackson followed his comments with action in proposing the amendment to S. 1658 which was adopted by the Senate Committee requiring that California be the sole source of import supplies to the Colorado.

It is obvious to this committee that from the circumstances involved in the mere suggestion of study of sources outside of California a climate of cooperation among the states of the West has not yet been developed. Yet a climate of cooperation in development of the total water resources of the West is an essential requirement of any interstate regional plan.^{31a}

Sensing the confusion of the present situation, Governor Grant Sawyer of Nevada told a large gathering of water leaders throughout the West that:

Justifiably those living in areas of abundant water supplies look with alarm upon any plan of any outsider to take the waters away from their areas. To my knowledge, none of the plans proposed have been coordinated and planned with all areas affected. The time has come for you as legislators, educators, lawyers, engineers, geologists, and economists in the business of water conservation and use to conduct yourselves as statesmen and sit down around the table and work out the best plans to meet the needs of the entire West, not just you of the Southwest, and not just you of the Northwest.

Governor Sawyer appropriately admonished the assembled group,

You will hear . . . of the needs of the Colorado River Basin, the Northwest, and the critical needs of each of the three southwestern states, namely Arizona, Nevada, and California. Let me implore

²⁹ Sacramento *Union*, Wednesday, April 22, 1964, at 12.

³⁰ Hearings on S. 1658, *Op. Cit.* at 529.

³¹ *Loc. cit.*

^{31a} See also statements of various spokesmen of Pacific Northwest states at Western Interstate Water Conference, Las Vegas.

you to listen carefully to all of these needs because if you don't understand the other man's problems, you certainly will fail in developing plans to meet their needs, and yours.³²

In its report to this committee the University of California Water Resources Center noted:

"Future costs of moving larger volumes of water from Northern to Southern California may . . . be substantially greater than future costs of equal supplies from alternative sources. Major uncertainties with respect to availability and relative costs of alternative supplies cloud the horizon today. Fortunately, California's overall water situation allows time for thorough inquiry and for deferment of some heavy long-term commitments. The period of grace may wisely be used for prompt and broad investigation of the potentials of the integrated western system of water management. Such an inquiry should encompass not only the hydrologic and technical aspects of alternative regional proposals: there must be realistic appraisals of the economic, legal, and political factors relative to the proposals. Special interests should be given to water quality considerations and to the growing importance of water and recreational uses, for fish and wildlife habitat, and as an environmental amenity resource in both urban and rural settings . . .

A basic need for California and other western states today is a thorough and undistorted inquiry into major alternatives for long-range development and use of regional water resources. Such an inquiry would best be conducted as an integral part of an established and continuing process of regional water resources planning . . .

. . . it seems clear . . . that in the absence of such a study the western states will continue to be without an adequate basis for political decision.³³

Along these same lines the Western Governor's Conference in May, 1964 also called for a comprehensive study of the water resources of the western states. Its resolution noted that:

" . . . water supplies may become increasingly short . . . even in those areas where current supplies may appear to be in excess of the needs of local users and consumers . . . there is need for an adequate and unbiased appraisal of present and future water requirements of each region of the West, and for development of a comprehensive plan for equitably meeting such needs . . .

The Governor's Conference resolved that the study should give particular attention to the feasibility of interregional water utilization, alternative methods of meeting the needs of water deficient areas, now and in the future. The conference suggested that the comprehen-

³² Governor Grant Sawyer, "Water and the Future of the West," statement to Western Interstate Water Conference, Las Vegas, September 16, 1964, at 2, 7, 8.

³³ Fred Clarenbach, *Western Regional Planning of Water Resources*, Report of Water Resources Center, University of California, August 1, 1964, at 61, 63 and 64.

sive study be undertaken by the 11 western states jointly through the Council of State Governments and its affiliates.^{33a}

Summary

The committee recommends an immediate and comprehensive study of all possible alternative sources of supplemental water supplies for the Colorado River. Sources in all 11 states, including the Pacific Northwest, should be considered. The objective of this study should be to develop programs to insure a dependable supply of water to Colorado River users until at least 2020.

4. PROTECTION TO AREAS OF ORIGIN AND WATER RIGHTS

This committee, in its previous report on the Pacific Southwest Water Plan, expressed concern over the area of origin protection suggested in the original Pacific Southwest Water Plan. The report suggested the inclusion in authorizing legislation of protection for areas of origin by means similar to the provisions of the New Melones Project authorization of 1962. These provisions subordinated exportations of water from the basin to the existing and anticipated future needs within the basin, as determined by the Secretary of the Interior.

It is clear that regional development in the West will ultimately involve not only areas within states but entire states as areas of origin. Protection will be required equally for California, Idaho, Washington, Oregon, or any other state from which water is exported. Perhaps even areas of origin including more than one state will require special protection.

Nearly all states recognize that comprehensive area of origin protection is an absolute necessity for regional development. As the Administrator of the Resources Agency of California indicated to the U.S. Senate Committee on Interior and Insular Affairs:

The states of the Pacific Northwest, the Missouri Basin, or more distant areas will insist, and rightly so, upon demonstration that proposed exports will not injure their development potential. Reasonably conclusive demonstration will require study of the supplies, ultimate requirements, and the various methods of meeting these ultimate requirements in areas which range from the highly developed to almost virgin wilderness. Western experience in water conservation teaches us that these studies must be comprehensive and critical and will require many years to complete.³⁴

Others have shared this view and the resolution of the Western Governors' Conference in May, 1964 indicated:

Any proposal for transporting water from one region to another ought to include recognition that needs of the supplying region are paramount to those of any consuming region.

and went on to recommend:

Adoption of an underlying philosophy for regional development that will assure areas and states of origin which export waters to areas of deficiency full legal and economic protection of their future development rights.

^{33a} The Western Interstate Water Conference, held at Las Vegas, Nevada, in September 1964, passed a similar resolution.

³⁴ Hearings on S. 1658, Part II, *op. cit.*, at 401.

PROPOSED PACIFIC SOUTHWEST LEGISLATION—COMPARISON OF FEATURES

Feature: Area of Origin Protection

Pacific Southwest Water Plan	S.2760 (Kuchel)	S.1658 (Goldberg Amendment)
Sec. 103 . . . (d)(2) . . . The planning, construction, and operation of all such features shall be subject to the following conditions: (i) diversions shall be subordinate to all existing and anticipated future needs for consumptive uses within the watersheds of origin, including the future retention of additional water in the watersheds of origin if the original estimates of future needs for consumptive uses prove insufficient; (ii) financial assistance of the character provided under the Federal reclamation laws shall be available from the Development Fund for the construction of any future projects in the watersheds of origin if such assistance is not otherwise provided; and (iii) additional costs of future projects, caused by the preemption of lower cost water sources which otherwise would benefit the areas of origin, or the State of California insofar as the water supply therein is diminished, shall be offset by assistance from the Development Fund to the end that the costs chargeable to such projects shall be no greater than they would have been had there been no export under the Initial Plan: <i>Provided</i> , That the financial assistance under (ii) and (iii) above shall not exceed that available under Section 102(f) of this Act.	Sec. 301 . . . (6)(b) The planning of all such importation work shall be subject to the following conditions: (i) diversions shall be subordinate to all existing and anticipated future needs within the watersheds of origin, including the retention of water in the watersheds of origin if estimates of future needs prove insufficient (ii) financial assistance from the development fund shall be available for the construction of any future projects in the watersheds of origin if such assistance is not otherwise provided; and (iii) additional costs of future projects, caused by the preemption of lower cost water sources which otherwise would benefit the areas of origin, shall be offset by assistance from the development fund to the extent that the costs chargeable to such projects would be no greater than if there had been no export to the Colorado River Basin.	Sec. 103 (a)(2) . . . In planning any works to import water into the Lower Colorado River Basin from alternative sources in California, the Secretary shall give due consideration to existing and future needs within the areas of origin of the imported water and the State of California and the means of offsetting the additional costs of future projects within said areas of origin and State of California caused by the preemption of the lower cost water sources that otherwise would have benefited said areas of origin and State of California including the use of the development fund for this purpose.

It seems generally agreed that any proposal for export of water supplies from a basin or state must be predicated upon the establishment beyond question that surplus waters in excess of the ultimate needs of the basin actually exist.

Comparison of Legislation

It can be seen from the language of the proposed legislation that S. 1658 contains a vague and indefinite provision for protection to areas of origin, although the bill was developed as a substitute for the revised Pacific Southwest Water Plan. S. 1658 provides only that the secretary shall give "due consideration" to existing and future uses and various areas of origin problems, including preemption of low cost sites, and provides the development fund may be used for this purpose. This language is weaker than the New Melones provisions of the revised Udall Plan discussed below. The type of protection actually offered by "due consideration" of the secretary must be conjectural.

The language of the revised Udall Plan draft legislation (Section 103(d)2) is basically:

(1) The language of the New Melones authorization, under which diversions for the regional plan are subordinate to existing and anticipated future need within the watersheds of origin, including retention in the future of additional water in the watersheds if the original estimates prove insufficient. This New Melones language alone was rejected in the State's Official Comments on the original Pacific

Southwest Water Plan, as explained by the Administrator of the Resources Agency:

California must reject the New Melones provisions as inadequate. California's goal is twofold: (1) Exports from the areas and states of origin must not deprive either of the legal opportunity to develop in the future whether or not such development can presently be anticipated; and (2) Such opportunity must be genuine and not illusory; i.e. the areas of present surplus must not only have the legal right to develop, but this at no greater cost than they would have borne had no exports therefrom been made. To accomplish these two objectives, language must be drawn in substitution of the suggested "New Melones" clause.³⁵

(2) Additional provisions that financial assistance of the character provided by federal reclamation laws from the development fund will be available for future projects in the watersheds of origin if not otherwise available. This is the key, then, to the revised plan's area of origin provisions. Under the bill, the additional costs of future projects caused by the preemption of lower cost water sources which otherwise would benefit the areas of origin or the State of California will be offset from assistance from the development fund to the end that costs chargeable to such projects shall be no greater than they would have been had there been no export under the plan. This guarantee or protection to the areas of origin is based entirely upon the fiscal soundness of the development fund and the existence of sufficient money in the fund to provide for such works in the areas of origin.

The revised Pacific Southwest Water Plan draft legislation offers a good start toward the objectives of adequate protection to the areas of origin but sufficient information regarding its practicability is not available at this time. Much additional study of the means of implementing such a proposal is needed.

The Pacific Southwest Project Act, (S. 2760) incorporates virtually the identical language of the Revised Pacific Southwest Water Plan. The comments with regard to the Revised Plan are applicable to this legislation as well.

California should be gratified that this federal legislation, including one bill which was drafted by the Department of the Interior, recognizes California's contention that economic assistance is an integral part of protection to areas of origin. Although we do not feel that the language presently proposed is sufficient, it represents a major step forward by the federal government in recognizing the need for more comprehensive protection of areas of origin than earlier federal policy.

California Statutes

California has specific provisions in the Water Code (the county of origin law, Water Code Section 10505 and the Watershed Protection Act, Water Code Sections 11460 et seq.) which are statutory attempts to provide assurances to counties and areas of origin that water supplies for their future development will be available.

³⁵ *Hearing Transcript*, July 23, 1964, at 19, 20.

In developing the Burns-Porter Act, however, the California Legislature found that simply reserving water for future development in areas of origin was not sufficient.³⁶ Thus, in the Burns-Porter Act an additional guarantee to the areas of origin was provided through the "bond offset" provision. Under this provision (Water Code Section 12938), Burns-Porter Act Water Bonds in the amount equal to expenditures from the California Water Fund for the State Water Facilities after November, 1960 are set aside or "offset" to be utilized for the development of local projects and the replenishment of water supplies in the delta as areas of origin develop and utilize water initially flowing to the delta and exported by the project. As areas of origin develop in the future in California and require water which had previously been exported by the project to other parts of the state, the offset funds will provide for local projects and for projects to develop additional supplies for State Water Project users in central and southern California. In this manner the needs of both export users and area of origin users can be met through construction of necessary physical works.

This is an unique area of origin provision made possible through the combination of the availability of water bond proceeds, the availability of California water fund moneys, the existence of a physical delta "pool" from which to convey project waters, and the statutory protection of the Water Code.

The ability to finance future local projects is a very important feature of any area of origin concept. As was indicated to the committee by representatives of the State Chamber of Commerce:

... assuming that there is a surplus, the plan should guarantee that it would not increase the cost of water from projects serving California, both those now existing and those to be developed in the future. No export should be permitted that increases our own water costs . . .³⁷

Governor Edmund G. Brown of California, in a statement to the Western Governor's Conference expressed much the same view:

We should establish as a policy that the areas of origin, and states of origin, of surplus waters should have full legal and economic protection now and in the future. Any regional transfer of water under such a plan should literally be a transfer of *surplus* water. If the area of origin needs the water in years to come, it should have the legal right to use it—and the assurance that it can do so at cost that would have prevailed had the regional program never been established.³⁸

The serious problems which may arise from preemption of the most desirable damsites by early regional development can be illustrated by

³⁶ For an interesting discussion of area of origin laws in California see Porter R. Towner, "Laws Protecting Areas of Origin", statement to Eel River Flood Control and Water Conservation Association, Ukiah, California, October 9, 1964.

³⁷ California State Chamber of Commerce, *Regional Water Planning Policy* statement, at 1.

³⁸ Edmund G. Brown, Western Governor's Conference, San Francisco, May 3, 1964.

the fact that the state, for example, has proposed construction of lower cost north coastal projects first.

It was also explained to this committee by many witnesses that proposals for regional development must offer protection to the Sacramento and San Joaquin Valleys, since northern California streams are expected to be used as sources of water supply for the valley. The Sacramento and San Joaquin Valleys may well also be required to pay more for their next increment of water if present plans for low cost development envision use of sites which may be preempted by regional development.

Thus it can be seen that areas of origin and other areas of potential use in California, such as the Central Valley, are legitimately concerned lest by the time that they are ready to develop local water projects for their areas only the more difficult and costly projects will be available. These areas fear that although legal right to water may be available, these areas may be financially incapable of developing the water adequately.

The committee believes that basic elements of the type of "physical and economic guarantee" to areas of origin provided by the far-reaching provisions of the Burns-Porter Act are desirable and should be adapted to interstate regional water planning. We seriously doubt whether under existing congressional project authorization procedures, however, such guarantees are possible.

The present status of regional planning makes it clear that the economic impact of the guarantees needed for this purpose are incapable of estimation at this time and much more study of this problem is required, including detailed studies of the actual areas involved and the extent of the economic commitment which will be necessary.

Area of origin provisions approximating the degree of protection of the California State Water Project and satisfactorily meeting the problems raised by early preemption of more desirable water projects must be formulated for a regional plan. This committee cannot recommend adoption of a regional plan in the absence of such a procedure.

Water Rights

It has often been said that what is needed are more works, not more water laws. None of the regional programs proposed to date, however, recognize the current confusion existing over the status of state water rights and the need to clarify federal/state water rights relationships and reestablish the validity of state statutes. It will be difficult to construct massive works based upon a faulty legal foundation. Former Attorney General Stanley Mosk has pointed out:

The great engineering works which serve our cities and farms would not have been built in the face of today's legal uncertainties. A first step in securing a new works which we so badly need is to repair the fabric of our essential water laws.³⁹

Senator Thomas Kuchel of California introduced legislation in the 88th Congress, S. 1275, to clarify federal/state water rights relationships.⁴⁰

³⁹ Mosk, Town Hall statement, *op. cit.*, at 2.

⁴⁰ The complete text of this legislation is found in the appendix to this report. It was not adopted by the 88th Congress.

Attorney General Mosk, who participated in the drafting of S. 1275 reported on hearings on the legislation:

... I listened again, and with renewed amazement, to lawyers for the United States Department of Justice declare that there are no rights in a navigable stream which they cannot take, without compensation, and in the name of the United States. I heard them declare, as they declared in the *Fallbrook* case in California, that the United States need not acquire, because it already owns, all the water appurtenant to the national forests from which most of the water in western rivers flows.

... Congress must establish the principles on which the development of the water resources of our nation can proceed. The problems are simple, and they are common to every part of the country.

Expanding water needs require vast projects planned and built at the cost of billions of dollars in money and many years of time. Neither rivers, river basins nor water needs stop at state lines. Regional planning is a necessity to survival.

Regional planning is like any planning for projects to use water. Planning requires certainty of water rights; certainty of water rights must be based on law, not on the good will or the ill will of any federal or state official. The body of law which the western states have developed from experience in the last century must be the basis and the source of both law and principles in regional planning. Great projects cannot be built in reliance upon lawful water rights, only to have doubts cast upon those priorities decades later because other projects have become desirable. The law must be settled, once and for all.⁴¹

This committee concurs in the need for clarification in federal-state water rights relationships.

We are fully cognizant of the fact that state water rights laws should not be used by states to thwart or to impair federal development or regional developments involving the federal government. No state can afford to limit itself to its own parochial interests. Neither should California nor any other state participate in a program which does not involve clarification of federal-state water rights and which would have the effect of destroying the very fabric of water rights of that state. For example, the continued utility of area of origin laws which are applicable to the State Water Project is dependent upon continued recognition of state water rights laws. The Legislature adopted a resolution supporting S. 1275 or similar legislation at the 1964 Regular Budget Session (AJR 2, Porter, 1964 Res. Ch. 5). We reaffirm this action and reiterate that legislation similar to S. 1275 clarifying water rights relationship should be enacted prior to the adoption of any regional plan.

⁴¹ Mosk Town Hall statement, *op. cit.*, at 13, 15. For a witty exposition of the view of the federal government see Abbott Goldberg, "Interposition Wild West Water Style," 17 *Stan.L.Rev.*1 (Nov. 1964). Hearings on S. 1275 were held in 1964 and have been published by the U.S. Senate Committee on Interior and Insular Affairs.

5. REGIONAL ORGANIZATION

This section discusses the problems of establishing a regional organization to plan for transporting water to meet future needs in the west. There has been wide acceptance of the regional commission concept, but only limited consideration of the specific problems of organizing such a commission and determining what its functions should be. The only material on a commission that has come to the committee's attention is contained in the study of the University of California entitled "Western Regional Planning of Water Resources," dated August 1, 1964. This study was prepared for the Legislature in response to Senate Concurrent Resolution No. 22 of the 1964 First Extraordinary Session of the California Legislature and has been used in preparing this section.

The purpose of discussing regional organization in the committee's report is not to recommend any specific regional organization but to inquire into the nature of the organization that would be most appropriate and to focus attention on problem areas. This is done with the conviction that further public discussion of these problem areas will facilitate evaluation of them and will assist all interested persons in determining for themselves the need for, and type of regional organization that can best solve the water problems of the west.

A key feature of the three bills drafted to implement the Pacific Southwest Water Plan and its variations has been a regional commission. Since the commissions contained in these drafts build on prior federal experience, some background is necessary before proceeding to discuss the commission proposals themselves.

Past experience with comprehensive regional planning has been largely limited to the federal government. This is to be expected since the federal government is the only level of our government which has been active in regional water resources development.

The Tennessee Valley Authority was probably the first federal regional agency established to handle water resources development in a watershed. It operates on a basis completely independent from all other federal or local water resources agencies. Its independence and the politically controversial nature of some of its programs are probably the main reasons why Congress has refused to consider this type of organization for other watersheds of the nation such as the Columbia River Basin.

Interagency River Basin Commissions

In recognition of the growing need for coordination of various federal water resources activities by the federal agencies themselves, which has been pointedly criticized in the past by the Hoover Commission and others, the Department of Interior took the leadership in establishing interagency river basin commissions. Two have functioned in the west with some success. One is the Columbia Basin Interagency Commission and the other is the Pacific Southwest Interagency Commission. Both of these commissions are composed of regional representatives of the federal agencies involved in water resources work plus a representative of the states included in the basin. The chairmanship revolves among the representatives on the commission, which limits the leadership and

PROPOSED PACIFIC SOUTHWEST LEGISLATION—COMPARISON OF FEATURES

Feature: Regional Organization

Pacific Southwest Water Plan	S.2760 (Kuchel)	S.1658 (Goldberg Amendment)
<p>Sec. 201. (a) There is hereby established the Pacific Southwest Regional Water Commission (hereinafter referred to as the "commission") composed of members appointed as follows:</p> <p>(1) A chairman appointed by the President who shall also serve as chairman and coordinating officer of the Federal members of the commission and who shall represent the Federal Government in Federal-State relations on the commission: <i>Provided</i>, That in the event the chairman is the head of a Federal department or agency, he may appoint a deputy to act in his stead during his absence.</p> <p>(2) One member representing each of the States of Arizona, California, Nevada, New Mexico, and Utah appointed by the Governor of the State; and</p> <p>(3) One member appointed by and representing each of the Secretaries of Agriculture, the Army, Health, Education and Welfare, Interior, and State, and one member representing each of such other departments and agencies as the President may designate.</p> <p>(b) The compensation of each member shall be fixed by the Senate and shall be paid by the United States Treasury. The compensation of each member shall not exceed the compensation of the Federal Reserve Bank of San Francisco for the year 1944, or the compensation of the postmaster general for the year 1944, whichever is less. The compensation shall not be more than \$3,000 per year and shall not exceed \$12,000 in any year.</p> <p>Sec. 202. (a) The functions of the commission shall be:</p> <p>(1) to advise the President for the conservation and beneficial utilization of the water resources of the Pacific Southwest;</p> <p>(2) to coordinate the Federal agencies in the preparation of a comprehensive plan for the conservation, development, and beneficial utilization of the water resources of the Pacific Southwest;</p> <p>(3) to prepare long-range schedules of priorities for the conservation, planning, and construction of projects; and</p> <p>(4) to advise and coordinate the activities of water and related land resources, including water projects, in the region as are necessary in the preparation of the plan described in subsection (2) of this subsection.</p> <p>(b) State members of the commission shall elect a vice chairman, who shall serve also as chairman and coordinating officer of the State members of the commission and who shall represent the State governments in Federal-State relations on the commission.</p> <p>(c) Vacancies in the commission shall not affect its powers but shall be filled in the same manner in which the original appointments were made: <i>Provided</i>, That the Chairman and vice chairman may</p>	<p>Sec. 1101. Commission Created.—</p> <p>(a) There is hereby created the Pacific Southwest Regional Water Commission (hereinafter referred to as the "Commission") composed of members to be appointed as follows:</p> <p>(1) The Secretary of the Interior, or a deputy appointed by him, who shall serve as Chairman.</p> <p>(2) One member representing each of the seven States of the Colorado River Basin and each State in each river basin from which water would be imported into the Colorado River Basin under any plan for importation reported by the Secretary to Congress under title III, each member to be appointed by the Governor of the State.</p> <p>(3) One member appointed by and representing each of the Secretaries of State, Agriculture, the Army, Health, Education, and Welfare; and the Federal Power Commission. The compensation of each member shall be paid by the entity appointing him.</p> <p>(b) The functions of the Commission shall be:</p> <p>(1) to coordinate the Federal agencies for the conservation and beneficial utilization of the water resources of the Pacific Southwest;</p> <p>(2) to coordinate with State and Federal agencies in the preparation of a comprehensive plan for the conservation, development, and beneficial utilization of the water resources of the Pacific Southwest;</p> <p>(3) to prepare long-range schedules of priorities for the conservation and development of water resources and for investigation, planning, and construction of projects; and</p> <p>(4) to advise and coordinate the activities of water and related land resources, including water projects, in the region as are necessary in the preparation of the plan described in subsection (2) of this subsection.</p> <p>(c) Notwithstanding the provisions of this Act, the Commission may—</p> <p>(1) employ and compensate such personnel as it deems advisable;</p> <p>(2) use the United States mails in the same manner and upon the same conditions as departments and agencies of the United States;</p> <p>(3) acquire, furnish, and equip such office space as is necessary;</p> <p>(4) accept for any of its purposes and functions appropriations, donations, and grants of money, equipment, supplies, materials, facilities, and services; and receive, utilize, and dispose of the same; and</p> <p>(5) incur such necessary expenses and exercise such other powers as</p>	<p>Sec. 100. (a) There is hereby created the Colorado Pacific Regional Water Commission (hereinafter referred to as the "Commission") composed of members to be appointed as follows:</p> <p>(1) A Chairman appointed by the President: <i>Provided</i>, That in the event the Chairman is the head of a Federal department or agency, such Chairman may appoint a deputy to act as Chairman in his stead during his absence: And <i>provided further</i>, That no State, Federal department, or agency which is represented by the Chairman shall be otherwise represented;</p> <p>(2) One member representing each of the States of Arizona, California, Nevada, New Mexico, and Utah, appointed by the Governor of the State, and one member representing each other State which the President may find to be affected, such member to be appointed by the Governor of such State; and</p> <p>(3) One member appointed by and representing each of the Secretaries of the Interior, Agriculture, and Welfare, and State and one member representing each of such other departments and agencies as the President may designate.</p> <p>(b) The compensation of each member shall be paid by the entity appointing him.</p> <p>(c) The functions of the Commission shall be advisory only, and in its advisory capacity the Commission shall—</p> <p>(1) assist in the coordination of further Federal, State, interstate, and local plans for the conservation, development, and beneficial utilization of the water and related land resources of the Lower Colorado River Basin and affected areas;</p> <p>(2) advise and coordinate with the Secretary of the Interior with respect to the necessary plans under section 3 of this Act;</p> <p>(3) recommend long-range schedules of priorities for the collection and analysis of basic data and for investigation, planning, and construction of projects; and</p> <p>(4) recommend to the appropriate Federal and State agencies studies of water resources and related land resources in the region as the Commission believes are necessary in the preparation of the plans described in class (1) of this subsection.</p> <p>(d) In carrying out the provisions of this Act, the Commission may—</p> <p>(1) employ and compensate such personnel as it deems advisable;</p> <p>(2) use the United States mails in the same manner and upon the same conditions as departments and agencies of the United States;</p> <p>(3) acquire, furnish, and equip such office space as is necessary;</p> <p>(4) accept for any of its purposes and functions appropriations, donations, and grants of money, equipment, supplies, materials, facilities, and services; and receive, utilize, and dispose of the same; and</p> <p>(5) incur such necessary expenses</p>

PROPOSED PACIFIC SOUTHWEST LEGISLATION—COMPARISON OF FEATURES—Continued

Feature: Regional Organization

Pacific Southwest Water Plan	S. 2760 (Kuchel)	S. 1658 (Goldberg Amendment)
<p>designate alternates to act for them during temporary absences.</p> <p>(d) In the work of the commission every reasonable endeavor shall be made to arrive at a consensus of all members on all issues; but failing this, full opportunity shall be afforded each member for the presentation and report of individual views: <i>Provided</i>, That any time the commission fails to act by reason of absence of consensus, the position of the chairman, acting in behalf of the Federal members, and the vice chairman, acting upon instructions of the State members, shall be set forth in the record: <i>Provided further</i>, That the chairman, in consultation with the vice chairman, shall have the final authority, if necessary, to fix the times and places for meetings, to set deadlines for the submission of annual and other reports, to establish subcommittees, and to decide such other procedural questions as may be necessary for the commission to perform its functions.</p> <p>Sec. 233. The commission shall—</p> <p>(1) engage in such activities and make such studies and investigations as are necessary and desirable in carrying out the policy set forth in section 101 of this Act and in accomplishing the purposes set forth in section 202(a) of this title;</p> <p>(2) submit to the Governor of each participating State and to the President for transmission to the Congress a report on its work at least once each year. After such transmission, copies of any such report shall be sent to the heads of such Federal, State, interstate, and international agencies as the President or the Governors of the participating States may direct;</p> <p>(3) submit to the President for transmission to the Congress and to the Governors and the legislatures of the participating States a comprehensive, coordinated, joint plan, or any major portion thereof or necessary revisions thereof, for the conservation, augmentation, and beneficial utilization of the water and related land resources of the region. Before the commission submits such a plan or major portion thereof or revision thereof to the President, it shall transmit the proposed plan or revision to the head of each Federal department or agency, and the Governor of each State, from which a member of the commission has been appointed. Each such department and agency head and Governor shall have ninety days from the date of the receipt of the proposed plan, portion or revision to report its views, comments, and recommendations to the commission. The commission may modify the plan, portion or revision after considering the reports so submitted. The views, comments, and recommendations submitted by each Federal department or agency head and Governor shall be transmitted to the President with the plan, portion or revision; and</p> <p>(4) submit to the President at the time of submitting such plan, any recommendations it may have for continuing the functions of the commission and for implementing the plan, including means of keeping the plan up to date.</p>	<p>are consistent with and reasonably required to perform its functions under this section.</p> <p>(d) The Commission shall determine the proportionate share of its expense which shall be borne by the Federal Government and each of the States. The Commission shall prepare a budget annually and transmit it to the Federal departments and the States. Estimates of proposed appropriations from the Federal Government shall be included in the budget estimates submitted by the Secretary of the Interior under the Budgeting and Accounting Act of 1921, as amended, and may include an amount for advance to the Commission against State appropriations for which delay is anticipated by reason of later legislative sessions. All sums appropriated or otherwise received by the Commission shall be credited to the Commission's account in the Treasury of the United States.</p>	<p>and exercise such other powers as are consistent with and reasonably required to perform its functions under this section.</p> <p>(e) The Commission shall determine the proportionate shares of its expenses which shall be borne by the Federal Government and each of the States. The Commission shall prepare a budget annually and transmit it to the Federal departments and the States. Estimates of proposed appropriations from the Federal Government shall be included in the budget estimates submitted by the Secretary of the Interior under the Budgeting and Accounting Act of 1921, as amended, and may include an amount for advance to the Commission against State appropriations for which delay is anticipated by reason of later legislative sessions.</p>

PROPOSED PACIFIC SOUTHWEST LEGISLATION—COMPARISON OF FEATURES—Continued

Feature: Regional Organization

Pacific Southwest Water Plan	S.2760 (Kuchel)	S.1658 (Goldberg Amendment)
<p>Sec. 204. (a) For the purpose of carrying out the provisions of this title, the commission may—</p> <p>(1) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of its proceedings and reports thereon as it may deem advisable;</p> <p>(2) acquire, furnish, and equip such office space as is necessary;</p> <p>(3) use the United States mails in the same manner and upon the same conditions as departments and agencies of the United States;</p> <p>(4) employ and compensate such personnel as it deems advisable, including consultants at rates not to exceed \$100 per diem;</p> <p>(5) arrange for the services of personnel from any State or the United States, or any subdivision or agency thereof, or any intergovernmental agency;</p> <p>(6) make arrangements, including contracts, with any participating government, except the United States, for inclusion in a salary schedule and employee benefit system of such personnel as may be required for or continuing in service, retirement or employment, or otherwise provide for such coverage of its personnel;</p> <p>(7) purchase, hire, operate, and maintain passenger motor vehicles;</p> <p>(8) incur such expenses as are consistent with and reasonably required to perform its duties.</p> <p>(b) The chairman of the commission, or any member of the commission designated by the chairman, is authorized to administer oaths when it is determined by the commission that testimony shall be taken or evidence received.</p> <p>(c) To the extent permitted by law, all appropriate records and papers of the commission shall be made available for public inspection during ordinary office hours.</p> <p>(d) Upon request of the chairman of the commission, or any member or employee of the commission designated by the chairman thereof for the purpose, the head of any Federal department or agency is authorized (1) to furnish to the commission such information as may be necessary for carrying out its functions and as may be available to or procurable by such department or agency, and (2) to detail to temporary duty with the commission on a reimbursable basis such personnel within his administrative jurisdiction as it may need or believe to be useful for carrying out its functions, each such detail to be without loss of seniority, pay, or other employee benefits.</p> <p>(e) The chairman of the commission shall, in accordance with the general policies of the commission, make arrangements for the commission to be represented by a duly authorized representative at any public hearing thereon, and to be represented by a duly authorized representative at any public hearing thereon, and to be represented by a duly authorized representative at any public hearing thereon, and to be represented by a duly authorized representative at any public hearing thereon.</p>		

PROPOSED PACIFIC SOUTHWEST LEGISLATION—COMPARISON OF FEATURES—Continued

Feature: Regional Organization

Pacific Southwest Water Plan	S.2760 (Kuchel)	S.1658 (Goldberg Amendment)
<p>Sec. 205. (a) The commission shall determine the proportionate share of its expense which shall be borne by the Federal Government and each of the States. The commission shall prepare a budget annually and transmit it to the President and the States. Estimates of proposed appropriations from the Federal Government shall be included in the budget estimates submitted by the Secretary of the Interior under the Budgeting and Accounting Act of 1921, as amended, and may include an amount for advance to a commission against State appropriations for which delay is anticipated by reason of later legislative sessions. All sums appropriated to or otherwise received by a commission shall be credited to the commission's account in the Treasury of the United States.</p> <p>(b) The commission may accept for any of its purposes and functions appropriations, donations, and grants of money, equipment, supplies, materials, and services from any State or the United States or any subdivision or agency thereof, or intergovernmental agency, and may receive, utilize, and dispose of the same.</p> <p>(c) The commission shall keep accurate accounts of all receipts and disbursements. The accounts shall be audited at least annually in accordance with generally accepted auditing standards by independent certified or licensed public accountants, certified or licensed by a regulatory authority of a State, and the report of the audit shall be included in and become a part of the annual report of the commission.</p> <p>(d) The accounts of the commission shall be open at all reasonable times for inspection by representatives of the jurisdictions and agencies which make appropriations, donations, or grants to the commission.</p>		

continuity of the work. While the Columbia Basin Interagency Commission has made serious efforts to resolve planning controversies and to secure agreement on broad approaches to water development, its success has been limited. The major contribution of both the Columbia Basin Interagency Commission and the Pacific Southwest Interagency Commission is probably in the work of its subcommittees which have provided a means of communication at the technical level between the various agencies involved in water resources work.

Study Commissions

In other parts of the country, Congress has in recent years authorized the establishment of individual basinwide study commissions to develop comprehensive water resources plans. Membership has consisted of the regional representatives of federal agencies working on water resources development in the area and representatives of state governments. A prime purpose of these study commissions has been to stimulate state and local interest and participation in water resources planning. Even with this stimulation, the major part of the work and the costs have been carried by the federal government. The study commissions have been criticized for being too short lived and subject to the tendency

to produce a plan which is placed on the shelf because the commission's life terminates with completion of the plan.

S. 1111

A further step was taken in the last session of Congress when the administration proposed S. 1111. This bill provided for a stronger system of federal-state basinwide planning commissions. Under S. 1111 coordination of the federal agencies who are members of the commission would be facilitated by having the President appoint the chairman of the commission who has the additional responsibility of coordinating the positions of the various federal agencies. The vice chairman is to be a representative of the states and has the specific responsibility to coordinate the positions of the states. S. 1111 would authorize appropriation of federal funds to support the work of the commissions and provides for cost sharing with the states who are members of the commission. The bill provides for the members of the commission to seek consensus but when this is not possible the chairman and vice chairman are to set forth the positions of the federal and state members in the record. The duties of the commission are the coordination of federal, state and local planning for water and related land resources; to prepare and keep up to date a comprehensive, coordinated plan for federal, state and local development of water and land related resources; to recommend long-range schedules for the collection and analysis of basic data; and to foster and undertake studies of water and land related resources. The bill further provides for grant of federal funds to the states to permit them to participate in the comprehensive planning effort.

Pacific Southwest Water Plan

The Pacific Southwest Regional Water Commission contained in the draft bill of the Department of Interior to authorize the Pacific Southwest Water Plan is adapted directly from the provisions of S. 1111. No effort was made to adapt the commission to the special problems of the region. The draft limits the area of responsibility of the commission to the Lower Colorado River Basin and southern California. The federal members of the commission and the powers of the chairman and vice chairman are similar to S. 1111. The commission would have a broad responsibility to make studies and investigations needed to carry out the Pacific Southwest Water Plan. To do this the commission could hire staff, hold hearings, use the services of personnel of any state of the United States, prepare reports to be submitted to the President, etc.

Although these broad planning and investigation powers are granted the commission, the Secretary of Interior, in other sections of the bill, is directed to construct the initial features of the Pacific Southwest Water Plan, to complete feasibility reports on export projects in the north coastal area of California as well as facilities to convey such water, and to carry out further priority planning of projects to be added to the initial plan without any reference to the regional commission. Only with respect to a continuing review of the hydrology of the Colorado River, groundwater pumping, and projections of future water supply and demand in the region is the secretary directed to cooperate with the commission. Thus, the bill carefully refrains from establishing the commission in a role that would limit the authority of the secretary.

S. 2760 and S. 1658

S. 2760 generally follows the same commission concept contained in the draft bill by the Department of Interior, except that the area covered by the commission is the entire Colorado River Basin and any states from which water may be imported into the Colorado River Basin. S. 1658 includes the Lower Colorado River Basin states plus such additional states the President may find are effected. Other variations occurring between the three drafts can be determined from the table on page 130 which compares the language of the three bills.

Other Approaches to a Regional Commission

The University of California in its report entitled "Western Regional Planning of Water Resources" added another possibility by providing data on the interstate compact approach exemplified by the Delaware River Basin Commission. The Delaware River Basin Commission is a recently organized commission, based on an interstate compact, which has broad authority to gather data, plan, construct and operate projects and even exercise what might be considered as limited regulatory authority over local developments.

To date, only the planning commissions under federal statutes or the interstate compact commissions have shown much capacity for joint federal-state handling of water resources problems. The commissions established by federal statute are federal entities, existing under federal law, and therefore, place the government in the dominant, if not controlling position. The interstate compact organizations give the states more stature, and could provide the states with a role more nearly equal to the federal government. Unfortunately, the compacts require much time and patience to develop, are difficult to negotiate, and have little chance of being accepted by Congress where the federal interest is paramount. The compact also has little chance of being successful unless the work to be accomplished under it is reasonably well determined. Therefore, in the west the compact approach in particular faces formidable hurdles.

The disagreement on the best methods to provide additional water in the arid west means there is no clear project approach on which to construct any type of regional organization or to outline its powers, functions, and membership. This suggests that it is virtually impossible to formulate a concept of a long-term regional organization at this time. In fact, there is need for an interim regional organization to point the way toward long-term development and the type of organization that will be needed for a long-term development.

The proposals for regional organizations to date have resolved certain problems by arbitrarily including or excluding certain areas or leaving the problem to the discretion of the President. S. 2760 illustrates the problem of what states to include in the commission. It states that the commission shall include a member from each state from which water will be imported into the Colorado River Basin under the plan for a transmountain division which the Secretary is directed to prepare during the next three years. But the Secretary is also directed to prepare the plan for the transmountain division in consultation with the commission.

In general, the attitude seems to be developing in California and elsewhere that a prime function of the regional planning commission is to identify possible sources of water supply and to evaluate the costs and practicability of securing water from such sources. After this is done, a specific plan can be prepared for securing water from the best source. If this is to be the approach, it is logical to start with a regional planning commission that is broad in its areal coverage and representation. This would include all states along the Rocky Mountains and to the west. In view of the almost impossible task of developing an interstate compact among these 11 states and in view the early need to begin studies to secure new sources of water, the only approach left is federal legislation to set up a regional planning commission. There are other advantages or reasons in support of such an approach. Among these are:

1. The federal government, through the Department of Interior, the Corps of Engineers and other federal agencies will almost certainly carry the main burden of the studies and investigation, both because these agencies want to do the work and because in many instances they are the only agencies organized and staffed to do the work. It is therefore reasonable for the federal government to assume a major role in the commission.

2. A regional planning commission can be established under federal law with a termination date of about five years after which the commission would report to Congress and the states involved on the best solutions to the problem and even recommend a long-term organization, whether an interstate compact or otherwise, based on the greater knowledge that will then be available. If the commission has not solved the problems before its life terminates, some other approach can then be tried.

3. Because the regional planning commission should start from a broad approach and narrow down the alternatives, it is logical for the initial commission to be broadly represented and to include all states with a possible interest. As the nature of the solution to the problem becomes more apparent, some states may find that they are no longer interested and may wish to be excluded from the long-term regional commission established at the end of five years.

4. An interstate compact is most useful where bonding capacity or construction and operation of projects is involved. If it is eventually determined that only regional planning is needed, an interstate compact may then clearly become unnecessary. If, however, difficult questions of water rights or guarantees to areas of origin arise, the interstate compact may become the only vehicle with adequate legal powers to serve such purposes.

Duties of a Regional Commission

From the above discussion, it appears that a two-step approach to a regional organization may be the most timely and logical as well as perhaps the only practical approach. If this is the case, then what might be the duties of such a commission? Several duties can be suggested at the outset. Among these are:

1. Comprehensive evaluation, on both an economic and technical basis, of the feasibility in the short and long run of saline conversion,

reclamation of waste water, evaporation control, phreatophyte control and similar developments or technological improvements. Not only do these alternatives to imported water need to be evaluated technically and economically but conclusions need to be drawn on the roles they should play in meeting future water needs. The conclusions drawn by the commission should guide any planning for importation of water through surface delivery projects.

2. Establishing, consistent with applicable laws, broad objectives and guides for the investigations to be made. The language establishing the commission should make it clear that to the greatest extent possible the federal government should also follow the planning objectives and guides of the commission. Even when a federal agency cannot follow the objectives and guides, it nevertheless should evaluate them in its work as an alternative. This principle has been followed in the federal-state planning work on the delta peripheral canal and has produced agreement on a plan even though all agencies do not fully support all aspects of the plan. It is doubtful that any agreement would have occurred without this approach and its success in the delta warrants its trial on a broader basis.

3. Requesting and stimulating the appropriate federal agencies, and units of state and local government to undertake or to cooperate in specific planning tasks based on the commission's objectives and guides. Essentially this would result in assignment of important work among the various state, federal and local agencies most directly interested and capable of doing the work on a basis designed to produce an integrated plan. This would assure that all important work is covered without duplication. A request from the regional commission to an agency to do certain work would be based on the consensus of the commission, would be made without powers of enforcing compliance, and would rest on the validity and soundness of the commission's conclusions. The request would, of course, be a major justification for the appropriation of funds to that agency to pay for the work.

4. Encouraging cooperation between various federal, state and local agencies involved in a given task to work jointly on its solution. Such cooperation would build on the successful experience of cooperation between the Department of Water Resources and the federal government in planning and constructing the San Luis Project, in planning the peripheral canal in the Sacramento and San Joaquin Delta and in the planning work now beginning in the north coastal area of California. Examples of successful cooperation exist in other states which might be cited. In general, most units of government and most people are more cooperative and are more persuaded by the results of an investigation if they participate in it. In addition, the results are often more practical and susceptible of implementation when all interests participate. The application of this principle should be given special attention in studies of future import requirements and availability of water for export. The principle will also permit a flexible approach in which those states with established water resources organizations can participate in the planning. This will tend to overcome the difficulties posed by the relatively different levels of development of water resources investigation staffs among the western states.

Commission Advisory Committees

Another problem warrants consideration. It has been suggested that the representative of each state be assisted by an advisory committee. This idea appears to have substantial merit both because of the great importance of work involved to the individual states and because of the difficulties of developing a state position without some form of machinery for such a purpose. It, therefore, seems desirable that the federal legislation establishing any regional commission should clearly state that the individual states can legislate on the selection of their representatives and can establish an advisory committee which could appropriately consist of several legislators, representatives from water using agencies, fish and wildlife interests, and others.

Summary

The committee recommends the use of a federal statute to establish a regional planning commission composed of representatives of all 11 states west of the Rocky Mountains. The commission would be given approximately five years to evaluate all alternative methods of supplying water to the arid west, establishing objectives and guides to plan for a water supply and then requesting the most appropriate federal, state or local agency to undertake each planning task by itself or in cooperation with other interested agencies. The result would be to utilize all available talent to produce a coordinated, comprehensive plan in which all interested parties would have participated without duplication of effort. Where a given agency cannot concur in an objective or guide established by the commission, the agency should still study it as an alternative. At the end of the term of the commission, the commission should recommend the most appropriate long-term organization, whether interstate compact or other means, to carry on the work in the light of the greater knowledge of feasible solutions and means of executing them available at that time.

6. THE ROLE OF THE LEGISLATURE IN REGIONAL DEVELOPMENT

During the past several years the California Legislature has become increasingly aware that when the State of California is faced with participation in such far-reaching proposals as the Pacific Southwest Water Plan, the Legislature of the State of California must play an important role in the formulation of state policy and must approve any authorizations of state participation in a regional planning proposal.

In its letter of transmittal to the Speaker of the Assembly accompanying its report on the original Pacific Southwest Water Plan, this committee stated, "*It is the conclusion of this committee that there should be no state acceptance of the proposed plan or commitment to alter the State Water Facilities without the express approval of this Legislature.*" The state's comments on the first Udall Plan were made pursuant to the Federal Flood Control Act of 1944. Thus, although the original Udall Plan was subjected to the scrutiny of water users, interested parties, and the Legislature, the Goldberg Amendment was negotiated in secret and was not subjected to the discussions or understanding which are essential for the adequate consideration of such a far-reaching proposal.

Senator James A. Cobey, Chairman of the Senate Factfinding Committee on Water Resources, expressed the view at the joint hearing in August 1964 that:

We were disappointed then [fall of 1963]—and we have been disappointed since then—that our own state executive branch has not seen fit to consult more fully with its legislative branch . . . before formulating its recommendations to the federal government in this field.⁴²

Too often the only consultation between the Legislature and the Resources Agency has been at the specific request of legislative committees.

This committee firmly reiterates its previous statement that there should be no state acceptance of any plan for solution of Pacific Southwest water problems *without the express approval of this Legislature*. We regret that the Department of Water Resources ignored this explicit request and secretly committed itself to support the Goldberg Amendment to S. 1658 without such approval or even consultation with the Legislature.

This committee's report on the original Pacific Southwest Water Plan was the first statement by a legislative committee on a proposed federal project in California. It was explained to the committee by the Administrator of the Resources Agency that several hundred such projects have been commented on by the State of California in the last twenty years. Although many of these projects could be considered to be minor ones and involve local areas of the state, many of these projects have been significant water resource developments in California.

Under federal authorizing legislation, the Governors of the several states are requested to provide comments to the Secretary of the Interior or the appropriate federal agency prior to submission of said projects to the Congress. Under existing California statutes there is no requirement that views of the Legislature or other interested persons within the state be solicited in the preparation of the state's Official Comments.

We recommend that legislation be enacted to provide a statutory requirement that all federal projects upon which the Governor of California is requested to comment be submitted to the Legislature so that both houses may comment on these projects when appropriate. We further recommend that such legislation require that any comments by the Legislature on federal projects be submitted to the federal agency involved by the Governor together with the Governor's Official Comments.

Although such proposed legislation will not cover such developments as the secret Goldberg Amendment negotiations, it will provide a full opportunity for legislative hearings on other major water resource projects affecting California. A draft of a committee bill is found in the appendix of this report.

In addition, participation in any regional water organization by the state should be only upon specific authorization of the Legislature and any representatives appointed by the Governor should be subject to confirmation by the State Senate.

⁴² Hearing, *Transcript*, August 13, 1964, at 3.

Chapter VI

SUMMARY OF RECOMMENDATIONS

A number of recommendations regarding state water policy has been presented in this report. The following is a brief summary of the major recommendations made:

A. REGARDING A PROPOSED REGIONAL PLAN OF DEVELOPMENT

1. Any regional plan must permanently protect California's continued use of 4.4 million acre-feet from the Colorado River. A priority limited for 25 years must be rejected as not in the best interests of California. Construction of the Central Arizona Project must be contingent upon such a priority.

2. An immediate and comprehensive study of all possible alternative supplemental sources of water supply for Colorado River users must be undertaken. Sources in all eleven states, including the Pacific Northwest, should be considered. The objective of the study should be to develop programs to insure a dependable supply of water to Colorado River users in both Upper and Lower basins until at least 2030. Detailed studies should be made of various possible import projects.

The study should place the entire Pacific Southwest water situation in perspective, provide the objectives of a sound regional plan and, then, develop a workable plan to meet those objectives.

3. The basic elements of the type of "physical and economic guarantee" to areas of origin provided by the Burns-Porter Act should be adopted to interstate regional water planning. Provisions approximating the degree of area of origin protection found in the State Water Project must be formulated before the committee can recommend adop-

tion of a regional plan. Detailed studies of potential areas of origin, including the extent of the economic commitment which will be necessary to provide such protection, must be undertaken.

4. A comprehensive water supply inventory of the Colorado River must be initiated immediately to provide reliable estimates of the water supply of the river. It is essential that all levels of government and all affected agencies utilize the same water supply data in regional planning.

5. Legislation similar to S. 1275 of the 88th Congress should be enacted to clarify the relationship of the federal government and the state with regard to water rights prior to the adoption of a regional plan.

6. Any regional plan adopted must include maximum salvage programs as part of the immediate construction phase. The federal government should make an appropriate financial commitment to such activity. Federal, state and local officials should work out an effective formula for allocating water salvaged.

7. Research in evaporation control should be accelerated in order to maximize possible water savings from control of reservoir losses from evaporation now amounting to almost 2 million acre-feet a year.

8. Accelerated consideration and study, not mere lip service as in the Pacific Southwest Water Plan, must be given by the federal government to sea water conversion as a possible supplemental source of water supply for the Pacific Southwest.

9. The committee recommends the use of a federal statute to establish a regional planning commission composed of representatives of all eleven states west of the Rocky Mountains. The commission would be given approximately five years to evaluate all alternative methods of supplying water to the arid west, establishing objectives and guides to plan for a water supply and then requesting the most appropriate federal, state or local agency to undertake each planning task by itself or in cooperation with other interested agencies. The result would be to utilize all available talent to produce a coordinated, comprehensive plan in which all interested parties would have participated without duplication of effort. Where a given agency cannot concur in an objective or guide established by the commission, the agency should still study it as an alternative. At the end of the term of the commission, the commission should recommend the most appropriate long-term organization, whether interstate compact or other means, to carry on the work in the light of the greater knowledge of feasible solutions and means of executing them available at that time.

Federal legislation establishing any regional commission should clearly state that the individual states can legislate on the selection of their representatives and can establish an advisory committee with which major policies must be cleared. Such an advisory committee could appropriately consist of several legislators, representatives from water using agencies, fish and wildlife interests, and others.

**B. REGARDING THE ROLE OF THE LEGISLATURE
IN REGIONAL DEVELOPMENT**

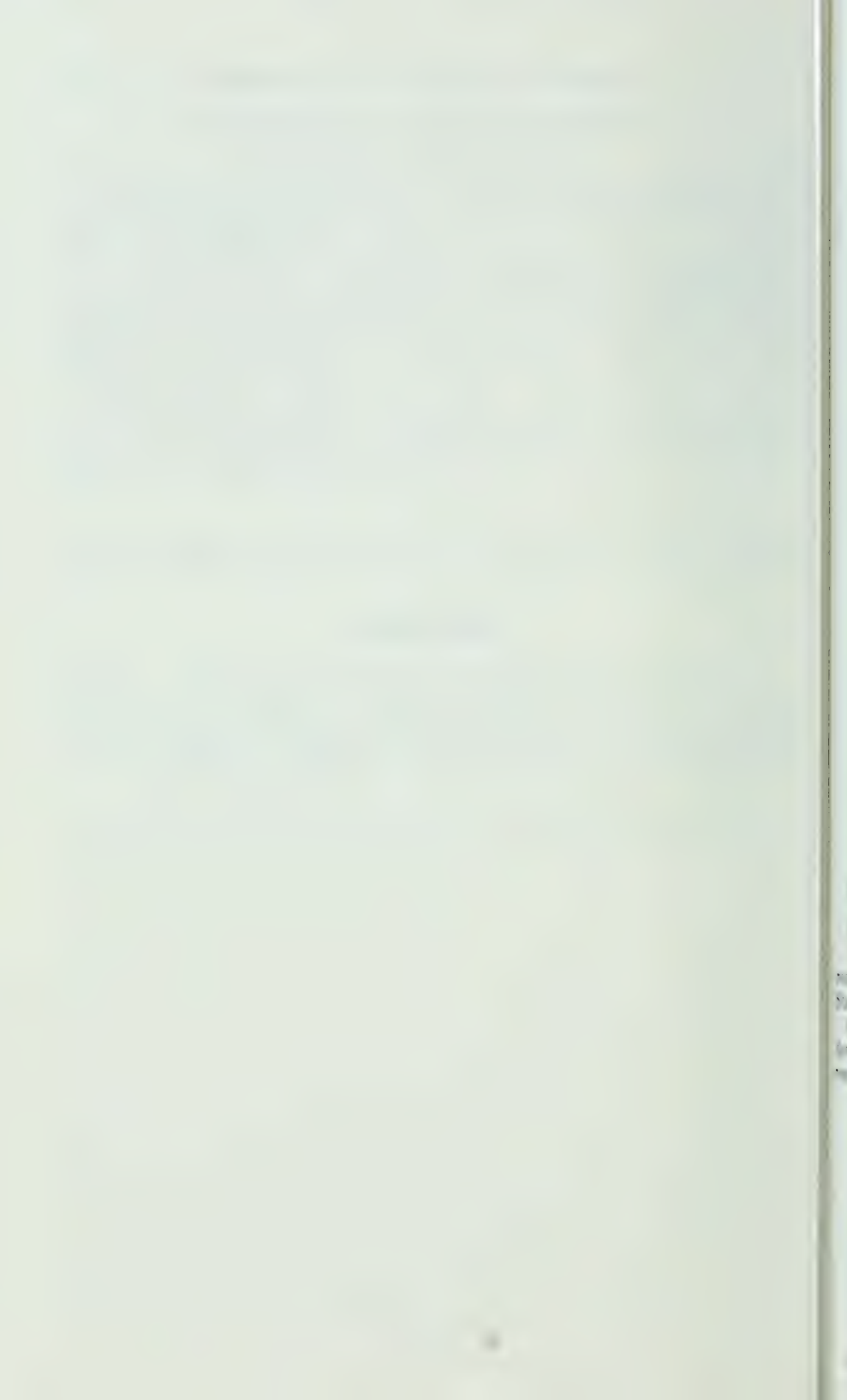
1. There should be no state acceptance of any regional plan for solution of Pacific Southwest Water problems without the express approval of the Legislature.

2. Legislation should be enacted to require that all federal projects upon which the Governor is requested to comment be submitted to the Legislature so that both houses may comment on these projects when appropriate. The legislation should require that any comments of the Legislature be submitted to the federal government together with the Governor's Official Comments.

3. Participation in any regional water organization by the state should be only upon specific authorization of the Legislature and any representatives appointed by the Governor should be subject to confirmation by the State Senate.

APPENDIX

Transcripts of hearings held by the Assembly Interim Committee on Water pursuant to Assembly Concurrent Resolution 1 on October 31, 1963, July 23, 1964 and August 13-14, 1964 were mimeographed and distributed as hearings were held. The appendix to this report contains only material which was not included in the transcripts and has value for reference purposes.



Appendix 1

SUPREME COURT OF THE UNITED STATES

No. 8, ORIGINAL

STATE OF ARIZONA, PLAINTIFF
v.
STATE OF CALIFORNIA, ET AL., DEFENDANTS

DECREE.—MARCH 9, 1964.

It is ORDERED, ADJUDGED AND DECREED that

I. For purposes of this decree:

(A) "Consumptive use" means diversions from the stream less such return flow thereto as is available for consumptive use in the United States or in satisfaction of the Mexican treaty obligation;

(B) "Mainstream" means the mainstream of the Colorado River downstream from Lee Ferry within the United States, including the reservoirs thereon;

(C) Consumptive use from the mainstream within a state shall include all consumptive uses of water of the mainstream, including water drawn from the mainstream by underground pumping, and including but not limited to, consumptive uses made by persons, by agencies of that state, and by the United States for the benefit of Indian reservations and other federal establishments within the state;

(D) "Regulatory structures controlled by the United States" refers to Hoover Dam, Davis Dam, Parker Dam, Headgate Rock Dam, Palo Verde Dam, Imperial Dam, Laguna Dam and all other dams and works on the mainstream now or hereafter controlled or operated by the United States which regulate the flow of water in the mainstream or the diversion of water from the mainstream;

(E) "Water controlled by the United States" refers to the water in Lake Mead, Lake Mohave, Lake Havasu and all other water in the mainstream below Lee Ferry and within the United States;

(F) "Tributaries" means all stream systems the waters of which naturally drain into the mainstream of the Colorado River below Lee Ferry;

(G) "Perfected right" means a water right acquired in accordance with state law, which right has been exercised by the actual diversion of a specific quantity of water that has been applied to a defined area of land or to definite municipal or industrial works, and in addition shall include water rights created by the reservation of mainstream water for the use of federal establishments under federal law whether or not the water has been applied to beneficial use;

(H) "Present perfected rights" means perfected rights, as here defined, existing as of June 25, 1929, the effective date of the Boulder Canyon Project Act;

(I) "Domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power;

(J) "Annual" and "Year," except where the context may otherwise require, refer to calendar years;

(K) Consumptive use of water diverted in one state for consumptive use in another state shall be treated as if diverted in the state for whose benefit it is consumed.

II. The United States, its officers, attorneys, agents and employees be and they are hereby severally enjoined:

(A) From operating regulatory structures controlled by the United States and from releasing water controlled by the United States other than in accordance with the following order of priority:

(1) For river regulation, improvement of navigation, and flood control;

(2) For irrigation and domestic uses, including the satisfaction of present perfected rights; and

(3) For power;

Provided, however, that the United States may release water in satisfaction of its obligations to the United States of Mexico under the treaty dated February 3, 1944, without regard to the priorities specified in this subdivision (A);

(B) From releasing water controlled by the United States for irrigation and domestic use in the States of Arizona, California and Nevada, except as follows:

(1) If sufficient mainstream water is available for release, as determined by the Secretary of the Interior, to satisfy 7,500,000 acre feet of annual consumptive use in the aforesaid three states, then of such 7,500,000 acre feet of consumptive use, there shall be apportioned 2,800,000 acre feet for use in Arizona, 4,400,000 acre feet for use in California, and 300,000 acre feet for use in Nevada;

(2) If sufficient mainstream water is available for release, as determined by the Secretary of the Interior, to satisfy annual consumptive use in the aforesaid states in excess of 7,500,000 acre feet, such excess consumptive use is surplus, and 50% thereof shall be apportioned for use in Arizona and 50% for use in California; provided, however, that if the United States so contracts with Nevada, then 46% of such surplus shall be apportioned for use in Arizona and 4% for use in Nevada;

(3) If insufficient mainstream water is available for release, as determined by the Secretary of the Interior, to satisfy annual consumptive use of 7,500,000 acre feet in the aforesaid three states, then the Secretary of the Interior, after providing for satisfaction of present perfected rights in the order of their priority dates without regard to state lines and after consultation with the parties to major delivery contracts and such representatives as the respective states may designate, may apportion the amount remaining available for consumptive use in such manner as is consistent with the Boulder Canyon Project Act as interpreted by the opinion of this Court herein, and with other applicable federal statutes, but in no event shall more than 4,400,000 acre feet be apportioned for use in California including all present perfected rights;

(4) Any mainstream water consumptively used within a state shall be charged to its apportionment, regardless of the purpose for which it was released;

(5) Notwithstanding the provisions of Paragraphs (1) through (4) of this subdivision (B), mainstream water shall be released or delivered to water users (including but not limited to, public and municipal corporations and other public agencies) in Arizona, California, and Nevada only pursuant to valid contracts therefor made with such users by the Secretary of the Interior, pursuant to Section 5 of the Boulder Canyon Project Act or any other applicable federal statute;

(6) If, in any one year, water apportioned for consumptive use in a state will not be consumed in that state, whether for the reason that delivery contracts for the full amount of the state's apportionment are not in effect or that users cannot apply all of such water to beneficial uses, or for any other reason, nothing in this decree shall be construed as prohibiting the Secretary of the Interior from releasing such apportioned but unused water during such year for consumptive use in the other states. No rights to the recurrent use of such water shall accrue by reason of the use thereof;

(C) From applying the provisions of Article 7 (d) of the Arizona water delivery contract dated February 9, 1944, and the provisions of Article 5 (a) of the Nevada water delivery contract dated March 30, 1942, as amended by the contract dated January 3, 1944, to reduce the

apportionment or delivery of mainstream water to users within the States of Arizona and Nevada by reason of any uses in such states from the tributaries flowing therein;

(D) From releasing water controlled by the United States for use in the States of Arizona, California, and Nevada for the benefit of any federal establishment named in this subdivision (D) except in accordance with the allocations made herein; provided, however, that such release may be made notwithstanding the provisions of Paragraph (5) of subdivision (B) of this Article; and provided further that nothing herein shall prohibit the United States from making future additional reservations of mainstream water for use in any of such States as may be authorized by law and subject to present perfected rights and rights under contracts theretofore made with water users in such State under Section 5 of the Boulder Canyon Project Act or any other applicable federal statute:

(1) The Chemehuevi Indian Reservation in annual quantities not to exceed (i) 11,340 acre feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 1,900 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of February 2, 1907;

(2) The Cocopah Indian Reservation in annual quantities not to exceed (i) 2,744 acre feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 431 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of September 27, 1917;

(3) The Yuma Indian Reservation in annual quantities not to exceed (i) 51,616 acre feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 7,743 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of January 9, 1884;

(4) The Colorado River Indian Reservation in annual quantities not to exceed (i) 717,148 acre feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 107,588 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with priority dates of March 3, 1865, for lands reserved by the Act of March 3, 1865 (13 Stat. 541, 559); November 22, 1873, for lands reserved by the Executive Order of said date; November 16, 1874, for lands reserved by the Executive Order of said date, except as later modified; May 15, 1876, for lands reserved by the Executive Order of said date; November 22, 1915, for lands reserved by the Executive Order of said date;

(5) The Fort Mohave Indian Reservation in annual quantities not to exceed (i) 122,648 acre feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 18,974 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, and, subject to the next succeeding proviso, with priority dates of September 18,

1890, for lands transferred by the Executive Order of said date; February 2, 1911, for lands reserved by the Executive Order of said date; provided, however, that lands conveyed to the State of California pursuant to the Swamp and Overflowed Lands Act [9 Stat. 519 (1850)] as well as any accretions thereto to which the owners of such land may be entitled, and lands patented to the Southern Pacific Railroad pursuant to the Act of July 27, 1866 (14 Stat. 292) shall not be included as irrigable acreage within the Reservation and that the above specified diversion requirement shall be reduced by 6.4 acre feet per acre of such land that is irrigable; provided that the quantities fixed in this paragraph and paragraph (4) shall be subject to appropriate adjustment by agreement or decree of this Court in the event that the boundaries of the respective reservations are finally determined;

(6) The Lake Mead National Recreation Area in annual quantities reasonably necessary to fulfill the purposes of the Recreation Area, with priority dates of March 3, 1929, for lands reserved by the Executive Order of said date (No. 5105), and April 25, 1930, for lands reserved by the Executive Order of said date (No. 5339);

(7) The Havasu Lake National Wildlife Refuge in annual quantities reasonably necessary to fulfill the purposes of the Refuge, not to exceed (i) 41,839 acre feet of water diverted from the mainstream or (ii) 37,339 acre feet of consumptive use of mainstream water, whichever of (i) or (ii) is less, with a priority date of January 22, 1941, for lands reserved by the Executive Order of said date (No. 8647), and a priority date of February 11, 1949, for land reserved by the Public Land Order of said date (No. 559);

(8) The Imperial National Wildlife Refuge in annual quantities reasonably necessary to fulfill the purposes of the Refuge not to exceed (i) 28,000 acre-feet of water diverted from the mainstream or (ii) 23,000 acre-feet of consumptive use of mainstream water, whichever of (i) or (ii) is less, with a priority date of February 14, 1941;

(9) Boulder City, Nevada, is authorized by the Act of September 2, 1958, 72 Stat. 1726, with a priority date of May 15, 1931;

Provided further, that consumptive uses from the mainstream for the benefit of the above-named federal establishments shall, except as necessary to satisfy present perfected rights in the order of their priority dates without regard to state lines, be satisfied only out of water available, as provided in subdivision (B) of this Article, to each state wherein such uses occur and subject to, in the case of each reservation, such rights as have been created prior to the establishment of such reservation by contracts executed under Section 5 of, the Boulder Canyon Project Act or any other applicable federal statute.

III. The States of Arizona, California and Nevada, Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, Metropolitan Water District of Southern California, City of Los Angeles, City of San Diego, and County of San Diego, and all other users of water from the mainstream in said states, their officers, attorneys, agents and employees, be and they are hereby severally enjoined:

(A) From interfering with the management and operation, in conformity with Article II of this decree, of regulatory structures controlled by the United States;

(B) From interfering with or purporting to authorize the interference with releases and deliveries, in conformity with Article II of this decree, of water controlled by the United States;

(C) From diverting or purporting to authorize the diversion of water from the mainstream the diversion of which has not been authorized by the United States for use in the respective states; and provided further that no party named in this Article and no other user of water in said states shall divert or purport to authorize the diversion of water from the mainstream the diversion of which has not been authorized by the United States for its particular use;

(D) From consuming or purporting to authorize the consumptive use of water from the mainstream in excess of the quantities permitted under Article II of this decree.

IV. The State of New Mexico, its officers, attorneys, agents and employees, be and they are after four years from the date of this decree hereby severally enjoined:

(A) From diverting or permitting the diversion of water from San Simon Creek, its tributaries and underground water sources for the irrigation of more than a total of 2,900 acres during any one year, and from exceeding a total consumptive use of such water, for whatever purpose, of 72,000 acre-feet during any period of 10 consecutive years; and from exceeding a total consumptive use of such water, for whatever purpose, of 8,220 acre-feet during any one year;

(B) From diverting or permitting the diversion of water from the San Francisco River, its tributaries and underground water sources for the irrigation within each of the following areas of more than the following number of acres during any one year:

Luna Area	225
Apache Creek-Aragon Area	316
Reserve Area	725
Glenwood Area	1,003

and from exceeding a total consumptive use of such water for whatever purpose, of 31,870 acre-feet during any period of 10 consecutive years; and from exceeding a total consumptive use of such water, for whatever purpose, of 4,112 acre-feet during any one year;

(C) From diverting or permitting the diversion of water from the Gila River, its tributaries (exclusive of the San Francisco River and San Simon Creek and their tributaries) and underground water sources for the irrigation within each of the following areas of more than the following number of acres during any one year:

Upper Gila Area	287
Cliff-Gila and Buckhorn-Duck Creek Area	5,314
Red Rock Area	1,456

and from exceeding a total consumptive use of such water (exclusive of uses in Virden Valley, New Mexico), for whatever purpose, of 136,620 acre-feet during any period of 10 consecutive years; and from exceeding a total consumptive use of such water (exclusive of uses in Virden Valley, New Mexico), for whatever purpose, of 15,895 acre-feet during any one year;

(D) From diverting or permitting the diversion of water from the Gila River and its underground water sources in the Virden Valley,

New Mexico, except for use on lands determined to have the right to the use of such water by the decree entered by the United States District Court for the District of Arizona on June 29, 1935, in *United States v. Gila Valley Irrigation District, et al.* (Globe Equity No. 59) (herein referred to as the Gila Decree), and except pursuant to and in accordance with the terms and provisions of the Gila Decree; provided, however, that:

(1) This decree shall not enjoin the use of underground water on any of the following lands:

Owner	Subdivision and legal description	Section	Township	Range	Acres
Marvin Arnett and J. C. O'Dell	Part Lot 3	6	19S	21W	33.84
	Part Lot 4	6	19S	21W	52.33
	NW $\frac{1}{4}$ SW $\frac{1}{4}$	5	19S	21W	38.36
	SW $\frac{1}{4}$ SW $\frac{1}{4}$	5	19S	21W	39.80
	Part Lot 1	7	19S	21W	50.68
	NW $\frac{1}{4}$ NW $\frac{1}{4}$	8	19S	21W	38.03
Hyrum M. Pace, Ray Richardson, Harry Day and N. O. Pace, Est.	SW $\frac{1}{4}$ NE $\frac{1}{4}$	12	19S	21W	8.00
	SW $\frac{1}{4}$ NE $\frac{1}{4}$	12	19S	21W	15.00
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	12	19S	21W	7.00
C. C. Martin	S. part SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$	1	19S	21W	0.93
	W $\frac{1}{2}$ W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$	12	19S	21W	0.51
	NW $\frac{1}{4}$ NE $\frac{1}{4}$	12	19S	21W	18.01
A. E. Jacobson	SW part Lot 1	6	19S	21W	11.58
W. LeRoss Jones	E. Central part: E $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$	12	19S	21W	0.
	SW part NE $\frac{1}{4}$ NW $\frac{1}{4}$	12	19S	21W	8.93
	N. Central part: N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$	12	19S	21W	0.51
Conrad and James R. Donaldson	N $\frac{1}{2}$ N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$	18	19S	20W	8.00
James D. Freestone	Part W $\frac{1}{2}$ NW $\frac{1}{4}$	33	18S	21W	7.79
Virgil W. Jones	N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$; SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$	12	19S	21W	7.40
Darrell Brooks	SE $\frac{1}{4}$ SW $\frac{1}{4}$	32	18S	21W	6.15
Floyd Jones	Part N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$	13	19S	21W	4.00
	Part NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$	18	19S	20W	1.70
L. M. Hatch	SW $\frac{1}{4}$ SW $\frac{1}{4}$	32	18S	21W	4.40
	Virden Townsite				3.90
Carl M. Donaldson	SW $\frac{1}{4}$ SE $\frac{1}{4}$	12	19S	21W	3.40
Mack Johnson	Part NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$	10	19S	21W	2.80
	Part NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$	10	19S	21W	0.30
	Part N $\frac{1}{2}$ N $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$	10	19S	21W	0.10
Chris Dotz	SE $\frac{1}{4}$ SE $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$	3	19S	21W	2.66
	NW $\frac{1}{4}$ NE $\frac{1}{4}$; NE $\frac{1}{4}$ NE $\frac{1}{4}$	10	19S	21W	
Roy A. Johnson	NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$	4	19S	21W	1.00
Ivan and Antone Thygerson	NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$	32	18S	21W	1.00
John W. Bonine	SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$	34	18S	21W	1.00
Marion K. Mortenson	SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$	33	18S	21W	1.00
Total					380.81

or on lands or for other uses in the Virden Valley to which such use may be transferred or substituted on retirement from irrigation of any of said specifically described lands, up to a maximum total consumptive use of such water of 838.2 acre-feet per annum, unless and until such uses are adjudged by a court of competent jurisdiction to be an infringement or impairment of rights confirmed by the Gila Decree; and

(2) This decree shall not prohibit domestic use of water from the Gila River and its underground water sources on lands with rights confirmed by the Gila Decree, or on farmsteads located adjacent to said

lands, or in the Virden Townsite, up to a total consumptive use of 265 acre-feet per annum in addition to the uses confirmed by the Gila Decree, unless and until such use is adjudged by a court of competent jurisdiction to be an infringement or impairment of rights confirmed by the Gila Decree;

(E) Provided, however, that nothing in this Article IV shall be construed to affect rights as between individual water users in the State of New Mexico; nor shall anything in this Article be construed to affect possible superior rights of the United States asserted on behalf of National Forests, Parks, Memorials, Monuments and lands administered by the Bureau of Land Management; and provided further that in addition to the diversions authorized herein the United States has the right to divert water from the mainstream of the Gila and San Francisco Rivers in quantities reasonably necessary to fulfill the purposes of the Gila National Forest with priority dates as of the date of withdrawal for forest purposes of each area of the forest within which the water is used.

(F) Provided, further, that no diversion from a stream authorized in Articles IV (A) through (D) may be transferred to any of the other streams, nor may any use for irrigation purposes within any area on one of the streams be transferred for use for irrigation purposes to any other area on that stream.

V. The United States shall prepare and maintain, or provide for the preparation and maintenance of, and shall make available, annually and at such shorter intervals as the Secretary of the Interior shall deem necessary or advisable, for inspection by interested persons at all reasonable times and at a reasonable place or places, complete, detailed and accurate records of:

(A) Releases of water through regulatory structures controlled by the United States;

(B) Diversions of water from the mainstream, return flow of such water to the stream as is available for consumptive use in the United States or in satisfaction of the Mexican Treaty obligation, and consumptive use of such water. These quantities shall be stated separately as to each diverter from the mainstream, each point of diversion, and each of the States of Arizona, California, and Nevada;

(C) Releases of mainstream water pursuant to orders therefor but not diverted by the party ordering the same, and the quantity of such water delivered to Mexico in satisfaction of the Mexican Treaty or diverted by others in satisfaction of rights decreed herein. These quantities shall be stated separately as to each diverter from the mainstream, each point of diversion, and each of the States of Arizona, California and Nevada;

(D) Deliveries to Mexico of water in satisfaction of the obligations of Part III of the Treaty of February 3, 1944, and, separately stated, water passing to Mexico in excess of treaty requirements;

(E) Diversions of water from the mainstream of the Gila and San Francisco Rivers and the consumptive use of such water, for the benefit of the Gila National Forest.

VI. Within two years from the date of this decree, the States of Arizona, California, and Nevada shall furnish to this Court and to the

Secretary of the Interior a list of the present perfected rights, with their claimed priority dates, in waters of the mainstream within each state, respectively, in terms of consumptive use, except those relating to federal establishments. Any named party to this proceeding may present its claim of present perfected rights or its opposition to the claims of others. The Secretary of the Interior shall supply similar information, within a similar period of time, with respect to the claims of the United States to present perfected rights within each state. If the parties and the Secretary of the Interior are unable at that time to agree on the present perfected rights to the use of mainstream water in each state, and their priority dates, any party may apply to the Court for the determination of such rights by the Court.

VII. The State of New Mexico shall, within four years from the date of this decree, prepare and maintain, or provide for the preparation and maintenance of, and shall annually thereafter make available for inspection at all reasonable times and at a reasonable place or places, complete, detailed and accurate records of:

(A) The acreages of all lands in New Mexico irrigated each year from the Gila River, the San Francisco River, San Simon Creek and their tributaries and all of their underground water sources, stated by legal description and component acreages and separately as to each of the areas designated in Article IV of this decree and as to each of the three streams;

(B) Annual diversions and consumptive uses of water in New Mexico, from the Gila River, the San Francisco River and San Simon Creek and their tributaries, and all their underground water sources, stated separately as to each of the three streams.

VIII. This decree shall not affect:

(A) The relative rights *inter sese* of water users within any one of the states, except as otherwise specifically provided herein;

(B) The rights or priorities to water in any of the Lower Basin tributaries of the Colorado River in the States of Arizona, California, Nevada, New Mexico and Utah except the Gila River System;

(C) The rights or priorities, except as specific provision is made herein, of any Indian Reservation, National Forest, Park, Recreation Area, Monument or Memorial, or other lands of the United States;

(D) Any issue of interpretation of the Colorado River Compact.

IX. Any of the parties may apply at the foot of this decree for its amendment or for further relief. The Court retains jurisdiction of this suit for the purpose of any order, direction, or modification of the decree, or any supplementary decree, that may at any time be deemed proper in relation to the subject matter in controversy.

MR. JUSTICE DOUGLAS dissents.

MR. JUSTICE HARLAN and MR. JUSTICE STEWART dissent to the extent that the decree conflicts with the views expressed in the dissenting opinion of MR. JUSTICE HARLAN, 373 U. S. 546, 603.

THE CHIEF JUSTICE took no part in the consideration or decision of this case.

Appendix 2

COLORADO RIVER COMPACT

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, having resolved to enter into a compact under the Act of the Congress of the United States of America approved August 19, 1921 (42 Statutes at Large, page 171), and the Acts of the Legislatures of the said States, have through their Governors appointed as their Commissioners:

W. S. Norviel for the State of Arizona

W. F. McClure for the State of California

Delph E. Carpenter for the State of Colorado

J. G. Scrugham for the State of Nevada

Stephen B. Davis, Jr., for the State of New Mexico

R. E. Caldwell for the State of Utah

Frank C. Emerson for the State of Wyoming

who, after negotiations participated in by Herbert Hoover appointed by The President as the representative of the United States of America, have agreed upon the following articles:

ARTICLE I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different bene-

ficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters, and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

ARTICLE II

As used in this compact—

(a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

(c) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah, and Wyoming.

(d) The term "States of the Lower Division" means the States of Arizona, California, and Nevada.

(e) The term "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.

(h) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power.

ARTICLE III

(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b), and (c) may be made in the manner provided in paragraph (g) at any time after October first, 1963, if and when either Basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to The President of the United States of America, and it shall be the duty of the Governors of the signatory States and of The President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Colorado River System as mentioned in paragraph (f), subject to the legislative ratification of the signatory States and the Congress of the United States of America.

ARTICLE IV

(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its Basin, the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural, and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.

(b) Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(c) The provisions of this article shall not apply to or interfere with the regulation and control by any State within its boundaries of the appropriation, use, and distribution of water.

ARTICLE V

The chief official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey shall cooperate, ex-officio:

(a) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption, and use of water in the Colorado River Basin, and the interchange of available information in such matters.

(b) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(c) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

ARTICLE VI

Should any claim or controversy arise between any two or more of the signatory States: (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; (d) as to the construction or operation of works within the Colorado River Basin to be situated in two or more States, to be constructed in one State for the benefit of another State; or (e) as to the diversion of water in one State for the benefit of another State; the Governors of the States affected, upon the request of one of them, shall forthwith appoint Commissioners with power to consider and adjust such claim or controversy, subject to ratification by the Legislatures of the States so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested States.

ARTICLE VII

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

ARTICLE VIII

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre-feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situate.

ARTICLE IX

Nothing in this compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

ARTICLE X

This compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination all rights established under it shall continue unimpaired.

ARTICLE XI

This compact shall become binding and obligatory when it shall have been approved by the Legislatures of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each signatory State to the Governors of the other signatory States and the President of the United States, and The President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

IN WITNESS WHEREOF, the Commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

DONE at the City of Santa Fe, New Mexico, this twenty-fourth day of November, A.D. One Thousand Nine Hundred and Twenty-two.

(Signed) W. S. NORVIEL.

(Signed) W. F. McCLURE.

(Signed) DELPH E. CARPENTER.

(Signed) J. G. SCRUGHAM.

(Signed) STEPHEN B. DAVIS, JR.

(Signed) R. E. CALDWELL.

(Signed) FRANK C. EMERSON.

Approved:

(Signed) HERBERT HOOVER.

Appendix 3

BOULDER CANYON PROJECT ACT

[PUBLIC—No. 642—70TH CONGRESS]
[H. R. 5773]

AN ACT To provide for the construction of works for the protection and development of the Colorado River Basin, for the approval of the Colorado River Compact, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters thereof for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy as a means of making the project herein authorized a self-supporting and financially solvent undertaking, the Secretary of the Interior, subject to the terms of the Colorado River compact herein-after mentioned, is hereby authorized to construct, operate, and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon adequate to create a storage reservoir of a capacity of not less than twenty million acre-feet of water and a main canal and appurtenant structures located entirely within the United States connecting the Laguna Dam, or other suitable diversion dam, which the Secretary of the Interior is hereby authorized

to construct if deemed necessary or advisable by him upon engineering or economic considerations, with the Imperial and Coachella Valleys in California, the expenditures for said main canal and appurtenant structures to be reimbursable, as provided in the reclamation law, and shall not be paid out of revenues derived from the sale or disposal of water power or electric energy at the dam authorized to be constructed at said Black Canyon or Boulder Canyon, or for water for potable purposes outside of the Imperial and Coachella Valleys: *Provided, however,* That no charge shall be made for water or for the use, storage, or delivery of water for irrigation or water for potable purposes in the Imperial or Coachella Valleys; also to construct and equip, operate, and maintain at or near said dam, or cause to be constructed, a complete plant and incidental structures suitable for the fullest economic development of electrical energy from the water discharged from said reservoir; and to acquire by proceedings in eminent domain, or otherwise, all lands, rights-of-way, and other property necessary for said purposes.

SEC. 2. (a) There is hereby established a special fund, to be known as the "Colorado River Dam fund" (hereinafter referred to as the "fund"), and to be available, as hereafter provided, only for carrying out the provisions of this Act. All revenues received in carrying out the provisions of this Act shall be paid into and expenditures shall be made out of the fund, under the direction of the Secretary of the Interior.

(b) The Secretary of the Treasury is authorized to advance to the fund, from time to time and within the appropriations therefor, such amounts as the Secretary of the Interior deems necessary for carrying out the provisions of this Act, except that the aggregate amount of such advances shall not exceed the sum \$165,000,000. Of this amount the sum of \$25,000,000 shall be allocated to flood control and shall be repaid to the United States out of 62½ per centum of revenues, if any, in excess of the amount necessary to meet periodical payments during the period of amortization, as provided in section 4 of this Act. If said sum of \$25,000,000 is not repaid in full during the period of amortization, then 62½ per centum of all net revenues shall be applied to payment of the remainder. Interest at the rate of 4 per centum per annum accruing during the year upon the amounts so advanced and remaining unpaid shall be paid annually out of the fund, except as herein otherwise provided.

(c) Moneys in the fund advanced under subdivision (b) shall be available only for expenditures for construction and the payment of interest, during construction, upon the amounts so advanced. No expenditures out of the fund shall be made for operation and maintenance except from appropriations therefor.

(d) The Secretary of the Treasury shall charge the fund as of June 30 in each year with such amount as may be necessary for the payment of interest on advances made under subdivision (b) at the rate of 4 per centum per annum accrued during the year upon the amounts so advanced and remaining unpaid, except that if the fund is insufficient to meet the payment of interest the Secretary of the Treasury may, in his discretion, defer any part of such payment, and the amount so deferred shall bear interest at the rate of 4 per centum per annum until paid.

(e) The Secretary of the Interior shall certify to the Secretary of the Treasury, at the close of each fiscal year, the amount of money in the fund in excess of the amount necessary for construction, operation, and maintenance, and payment of interest. Upon receipt of each such certificate the Secretary of the Treasury is authorized and directed to charge the fund with the amount so certified as repayment of the advances made under subdivision (b), which amount shall be covered into the Treasury to the credit of miscellaneous receipts.

SEC. 3. There is hereby authorized to be appropriated from time to time, out of any money in the Treasury not otherwise appropriated, such sums of money as may be necessary to carry out the purposes of this Act, not exceeding in the aggregate \$165,000,000.

SEC. 4. (a) This Act shall not take effect and no authority shall be exercised hereunder and no work shall be begun and no moneys expended on or in connection with the works or structures provided for in this Act, and no water rights shall be claimed or initiated hereunder, and no steps shall be taken by the United States or by others to initiate or perfect any claims to the use of water pertinent to such works or structures unless and until (1) the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall have ratified the Colorado River compact, mentioned in section 13 hereof, and the President by public proclamation shall have so declared, or (2) if said States fail to ratify the said compact within six months from the date of the passage of this Act then, until six of said States, including the State of California, shall ratify said compact and shall consent to waive the provisions of the first paragraph of Article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven States signatory thereto, and shall have approved said compact without conditions, save that of such six-State approval, and the President by public proclamation shall have so declared, and, further, until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this Act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this Act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

The States of Arizona, California, and Nevada are authorized to enter into an agreement which shall provide (1) that of the 7,500,000 acre-feet annually apportioned to the lower basin by paragraph (a) of Article III of the Colorado River compact, there shall be apportioned to the State of Nevada 300,000 acre-feet and to the State of Arizona 2,800,000 acre-feet for exclusive beneficial consumptive use in perpetuity, and (2) that the State of Arizona may annually use one-half of the

excess or surplus waters unapportioned by the Colorado River compact, and (3) that the State of Arizona shall have the exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of said State, and (4) that the waters of the Gila River and its tributaries, except return flow after the same enters the Colorado River, shall never be subject to any diminution whatever by any allowance of water which may be made by treaty or otherwise to the United States of Mexico but if, as provided in paragraph (c) of Article III of the Colorado River compact, it shall become necessary to supply water to the United States of Mexico from waters over and above the quantities which are surplus as defined by said compact, then the State of California shall and will mutually agree with the State of Arizona to supply, out of the main stream of the Colorado River, one-half of any deficiency which must be supplied to Mexico by the lower basin, and (5) that the State of California shall and will further mutually agree with the States of Arizona and Nevada that none of said three States shall withhold water and none shall require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses, and (6) that all of the provisions of said tri-State agreement shall be subject in all particulars to the provisions of the Colorado River compact, and (7) said agreement to take effect upon the ratification of the Colorado River compact by Arizona, California, and Nevada.

(b) Before any money is appropriated for the construction of said dam or power plant, or any construction work done or contracted for, the Secretary of the Interior shall make provision for revenues by contract, in accordance with the provisions of this Act, adequate in his judgment to insure payment of all expenses of operation and maintenance of said works incurred by the United States and the repayment, within fifty years from the date of the completion of said works, of all amounts advanced to the fund under subdivision (b) of section 2 for such works, together with interest thereon made reimbursable under this Act.

Before any money is appropriated for the construction of said main canal and appurtenant structures to connect the Laguna Dam with the Imperial and Coachella Valleys in California, or any construction work is done upon said canal or contracted for, the Secretary of the Interior shall make provision for revenues, by contract or otherwise, adequate in his judgment to insure payment of all expenses of construction, operation, and maintenance of said main canal and appurtenant structures in the manner provided in the reclamation law.

If during the period of amortization the Secretary of the Interior shall receive revenues in excess of the amount necessary to meet the periodical payments to the United States as provided in the contract, or contracts, executed under this Act, then, immediately after the settlement of such periodical payments, he shall pay to the State of Arizona $18\frac{3}{4}$ per centum of such excess revenues and to the State of Nevada $18\frac{3}{4}$ per centum of such excess revenues.

SEC. 5. That the Secretary of the Interior is hereby authorized, under such general regulations as he may prescribe, to contract for the storage of water in said reservoir and for the delivery thereof at such points on the river and on said canal as may be agreed upon, for irri-

gation and domestic uses, and generation of electrical energy and delivery at the switchboard to States, municipal corporations, political subdivisions, and private corporations of electrical energy generated at said dam, upon charges that will provide revenue which, in addition to other revenue accruing under the reclamation law and under this Act, will in his judgment cover all expenses of operation and maintenance incurred by the United States on account of works constructed under this Act and the payments to the United States under subdivision (b) of section 4. Contracts respecting water for irrigation and domestic uses shall be for permanent service and shall conform to paragraph (a) of section 4 of this Act. No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated.

After the repayments to the United States of all money advanced with interest, charges shall be on such basis and the revenues derived therefrom shall be kept in a separate fund to be expended within the Colorado River Basin as may hereafter be prescribed by the Congress.

General and uniform regulations shall be prescribed by the said Secretary for the awarding of contracts for the sale and delivery of electrical energy, and for renewals under subdivision (b) of this section, and in making such contracts the following shall govern:

(a) No contract for electrical energy or for generation of electrical energy shall be of longer duration than fifty years from the date at which such energy is ready for delivery.

Contracts made pursuant to subdivision (a) of this section shall be made with a view to obtaining reasonable returns and shall contain provisions whereby at the end of fifteen years from the date of their execution and every ten years thereafter, there shall be readjustment of the contract, upon the demand of either party thereto, either upward or downward as to price, as the Secretary of the Interior may find to be justified by competitive conditions at distributing points or competitive centers, and with provisions under which disputes or disagreements as to interpretation or performance of such contract shall be determined either by arbitration or court proceedings, the Secretary of the Interior being authorized to act for the United States in such readjustments or proceedings.

(b) The holder of any contract for electrical energy not in default thereunder shall be entitled to a renewal thereof upon such terms and conditions as may be authorized or required under the then existing laws and regulations, unless the property of such holder dependent for its usefulness on a continuation of the contract be purchased or acquired and such holder be compensated for damages to its property, used and useful in the transmission and distribution of such electrical energy and not taken, resulting from the termination of the supply.

(c) Contracts for the use of water and necessary privileges for the generation and distribution of hydroelectric energy or for the sale and delivery of electrical energy shall be made with responsible applicants therefor who will pay the price fixed by the said Secretary with a view to meeting the revenue requirements herein provided for. In case of conflicting applications, if any, such conflicts shall be resolved by the said Secretary, after hearing, with due regard to the public

interest, and in conformity with the policy expressed in the Federal Water Power Act as to conflicting applications for permits and licenses, except that preference to applicants for the use of water and appurtenant works and privileges necessary for the generation and distribution of hydroelectric energy, or for delivery at the switchboard of a hydroelectric plant, shall be given, first, to a State for the generation or purchase of electric energy for use in the State, and the States of Arizona, California, and Nevada shall be given equal opportunity as such applicants.

The rights covered by such preference shall be contracted for by such State within six months after notice by the Secretary of the Interior and to be paid for on the same terms and conditions as may be provided in other similar contracts made by said Secretary: *Provided, however*, That no application of a State or a political subdivision for an allocation of water for power purposes or of electrical energy shall be denied or another application in conflict therewith be granted on the ground that the bond issue of such State or political subdivision, necessary to enable the applicant to utilize such water and appurtenant works and privileges necessary for the generation and distribution of hydroelectric energy or the electrical energy applied for, has not been authorized or marketed, until after a reasonable time, to be determined by the said Secretary, has been given to such applicant to have such bond issue authorized and marketed.

(d) Any agency receiving a contract for electrical energy equivalent to one hundred thousand firm horsepower, or more, may, when deemed feasible by the said Secretary, from engineering and economic considerations and under general regulations prescribed by him, be required to permit any other agency having contracts hereunder for less than the equivalent of twenty-five thousand firm horsepower, upon application to the Secretary of the Interior made within sixty days from the execution of the contract of the agency the use of whose transmission line is applied for, to participate in the benefits and use of any main transmission line constructed or to be constructed by the former for carrying such energy (not exceeding, however, one-fourth the capacity of such line), upon payment by such other agencies of a reasonable share of the cost of construction, operation, and maintenance thereof.

The use is hereby authorized of such public and reserved lands of the United States as may be necessary or convenient for the construction, operation, and maintenance of main transmission lines to transmit said electrical energy.

SEC. 6. That the dam and reservoir provided for by section 1 hereof shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power. The title to said dam, reservoir, plant, and incidental works shall forever remain in the United States, and the United States shall, until otherwise provided by Congress, control, manage, and operate the same, except as herein otherwise provided: *Provided, however*, That the Secretary of the Interior may, in his discretion, enter into contracts of lease of a unit or units of any Government-built plant, with right to generate

electrical energy, or, alternatively, to enter into contracts of lease for the use of water for the generation of electrical energy as herein provided, in either of which events the provisions of section 5 of this Act relating to revenue, term, renewals, determination of conflicting applications, and joint use of transmission lines under contracts for the sale of electrical energy, shall apply.

The Secretary of the Interior shall prescribe and enforce rules and regulations conforming with the requirements of the Federal Water Power Act, so far as applicable, respecting maintenance of works in condition of repair adequate for their efficient operation, maintenance of a system of accounting, control of rates and service in the absence of State regulation or interstate agreement, valuation for rate-making purposes, transfers of contracts, contracts extending beyond the lease period, expropriation of excessive profits, recapture and/or emergency use by the United States of property of lessees, and penalties for enforcing regulations made under this Act of penalizing failure to comply with such regulations or with the provisions of this Act. He shall also conform with other provisions of the Federal Water Power Act and of the rules and regulations of the Federal Power Commission, which have been devised or which may be hereafter devised, for the protection of the investor and consumer.

The Federal Power Commission is hereby directed not to issue or approve any permits or licenses under said Federal Water Power Act upon or affecting the Colorado River or any of its tributaries, except the Gila River, in the States of Colorado, Wyoming, Utah, New Mexico, Nevada, Arizona, and California until this Act shall become effective as provided in section 4 herein.

SEC. 7. That the Secretary of the Interior may, in his discretion, when repayments to the United States of all money advanced, with interest, reimbursable hereunder, shall have been made, transfer the title to said canal and appurtenant structures, except the Laguna Dam and the main canal and appurtenant structures down to and including Syphon Drop, to the districts or other agencies of the United States having a beneficial interest therein in proportion to their respective capital investments under such form of organization as may be acceptable to him. The said districts or other agencies shall have the privilege at any time of utilizing by contract or otherwise such power possibilities as may exist upon said canal, in proportion to their respective contributions or obligations toward the capital cost of said canal and appurtenant structures from and including the diversion works to the point where each respective power plant may be located. The net proceeds from any power development on said canal shall be paid into the fund and credited to said districts or other agencies on their said contracts, in proportion to their rights to develop power, until the districts or other agencies using said canal shall have paid thereby and under any contract or otherwise an amount of money equivalent to the operation and maintenance expense and cost of construction thereof.

SEC. 8. (a) The United States, its permittees, licensees and contractees, and all users and appropriators of water stored, diverted, carried, and/or distributed by the reservoir, canals, and other works herein authorized, shall observe and be subject to and controlled by

said Colorado River compact in the construction, management, and operation of said reservoir, canals, and other works and the storage, diversion, delivery, and use of water for the generation of power, irrigation, and other purposes, anything in this Act to the contrary notwithstanding, and all permits, licenses, and contracts shall so provide.

(b) Also the United States, in constructing, managing, and operating the dam, reservoir, canals, and other works herein authorized, including the appropriation, delivery, and use of water for the generation of power, irrigation, or other uses, and all users of water thus delivered and all users and appropriators of waters stored by said reservoir and/or carried by said canal, including all permittees and licensees of the United States or any of its agencies, shall observe and be subject to and controlled, anything to the contrary herein notwithstanding, by the terms of such compact, if any, between the States of Arizona, California, and Nevada, or any two thereof, for the equitable division of the benefits, including power, arising from the use of water accruing to said States, subsidiary to and consistent with said Colorado River compact, which may be negotiated and approved by said States and to which Congress shall give its consent and approval on or before January 1, 1929; and the terms of any such compact concluded between said States and approved and consented to by Congress after said date: *Provided*, That in the latter case such compact shall be subject to all contracts, if any, made by the Secretary of the Interior under section 5 hereof prior to the date of such approval and consent by Congress.

SEC. 9. All lands of the United States found by the Secretary of the Interior to be practicable of irrigation and reclamation by the irrigation works authorized herein shall be withdrawn from public entry. Thereafter, at the direction of the Secretary of the Interior, such lands shall be opened for entry, in tracts varying in size but not exceeding one hundred and sixty acres, as may be determined by the Secretary of the Interior, in accordance with the provisions of the reclamation law, and any such entryman shall pay an equitable share in accordance with the benefits received, as determined by the said Secretary, of the construction cost of said canal and appurtenant structures; said payments to be made in such installments and at such times as may be specified by the Secretary of the Interior, in accordance with the provisions of the said reclamation law, and shall constitute revenue from said project and be covered into the fund herein provided for: *Provided*, That all persons who served in the United States Army, Navy, Marine Corps, or Coast Guard during World War II, the War with Germany, the War with Spain, or in the suppression of the insurrection in the Philippines, and who have been honorably separated or discharged therefrom or placed in the Regular Army or Naval Reserve, shall have the exclusive preference right for a period of three months to enter said lands, subject, however, to the provisions of subsection (c) of section 4 of the Act of December 5, 1924 (43 Stat. 672, 702; 43 U. S. C., sec. 433); and also, so far as practicable, preference shall be given to said persons in all construction work authorized by this chapter: *Provided further*, That the

above exclusive preference rights shall apply to veteran settlers on lands watered from the Gila canal in Arizona the same as to veteran settlers on lands watered from the All-American canal in California: *Provided further*, That in the event such an entry shall be relinquished at any time prior to actual residence upon the land by the entryman for not less than one year, lands so relinquished shall not be subject to entry for a period of sixty days after the filing and notation of the relinquishment in the local land office, and after the expiration of said sixty-day period such lands shall be open to entry, subject to the preference in this section provided.¹

SEC. 10. That nothing in this Act shall be construed as modifying in any manner the existing contract, dated October 23, 1918, between the United States and the Imperial Irrigation District, providing for a connection with Laguna Dam; but the Secretary of the Interior is authorized to enter into contract or contracts with the said district or other districts, persons, or agencies for the construction, in accordance with this Act, of said canal and appurtenant structures, and also for the operation and maintenance thereof, with the consent of the other users.

SEC. 11. That the Secretary of the Interior is hereby authorized to make such studies, surveys, investigations, and do such engineering as may be necessary to determine the lands in the State of Arizona that should be embraced within the boundaries of a reclamation project, heretofore commonly known and hereafter to be known as the Parker-Gila Valley reclamation project, and to recommend the most practicable and feasible method of irrigating lands within said project, or units thereof, and the cost of the same; and the appropriation of such sums of money as may be necessary for the aforesaid purposes from time to time is hereby authorized. The Secretary shall report to Congress as soon as practicable, and not later than December 10, 1931, his findings, conclusions, and recommendations regarding such project.

SEC. 12. "Political subdivision" or "political subdivisions" as used in this Act shall be understood to include any State, irrigation or other district, municipality, or other governmental organization.

"Reclamation law" as used in this Act shall be understood to mean that certain Act of the Congress of the United States approved June 17, 1902, entitled "An Act appropriating the receipts from the sale and disposal of public land in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," and the Acts amendatory thereof and supplemental thereto.

"Maintenance" as used herein shall be deemed to include in each instance provision for keeping the works in good operating condition.

"The Federal Water Power Act," as used in this Act, shall be understood to mean that certain Act of Congress of the United States approved June 10, 1920, entitled "An Act to create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto; and to repeal section 18 of the River and Harbor Appropriation Act, approved August 8, 1917, and for other purposes."

"Domestic" whenever employed in this Act shall include water uses defined as "domestic" in said Colorado River compact.

¹ As amended by act of March 6, 1946 (60 Stat. 36).

SEC. 13. (a) The Colorado River compact signed at Santa Fe, New Mexico, November 24, 1922, pursuant to Act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," is hereby approved by the Congress of the United States, and the provisions of the first paragraph of article 11 of the said Colorado River compact, making said compact binding and obligatory when it shall have been approved by the legislature of each of the signatory States, are hereby waived, and this approval shall become effective when the State of California and at least five of the other States mentioned, shall have approved or may hereafter approve said compact as aforesaid and shall consent to such waiver, as herein provided.

(b) The rights of the United States in or to waters of the Colorado River and its tributaries howsoever claimed or acquired, as well as the rights of those claiming under the United States, shall be subject to and controlled by said Colorado River compact.

(c) Also all patents, grants, contracts, concessions, leases, permits, licenses, rights-of-way, or other privileges from the United States or under its authority, necessary or convenient for the use of waters of the Colorado River or its tributaries, or for the generation or transmission of electrical energy generated by means of the waters of said river or its tributaries, whether under this Act, the Federal Water Power Act, or otherwise, shall be upon the express condition and with the express covenant that the rights of the recipients or holders thereof to waters of the river or its tributaries, for the use of which the same are necessary, convenient, or incidental, and the use of the same shall likewise be subject to and controlled by said Colorado River compact.

(d) The conditions and covenants referred to herein shall be deemed to run with the land and the right, interest, or privilege therein and water right, and shall attach as a matter of law, whether set out or referred to in the instrument evidencing any such patent, grant, contract, concession, lease, permit, license, right-of-way, or other privilege from the United States or under its authority, or not, and shall be deemed to be for the benefit of and be available to the states of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, and the users of water therein or thereunder, by way of suit, defense, or otherwise, in any litigation respecting the waters of the Colorado River or its tributaries.

SEC. 14. This act shall be deemed a supplement to the reclamation law, which said reclamation law shall govern the construction, operation, and management of the works herein authorized, except as otherwise herein provided.

SEC. 15. The Secretary of the Interior is authorized and directed to make investigation and public reports of the feasibility of projects for irrigation, generation of electric power, and other purposes in the States of Arizona, Nevada, Colorado, New Mexico, Utah, and Wyoming for the purpose of making such information available to said states and to the Congress, and of formulating a comprehensive scheme of control and the improvement and utilization of the water of the Colo-

rado River and its tributaries. The sum of \$250,000 is hereby authorized to be appropriated from said Colorado River dam fund, created by section 2 of this act, for such purposes.

SEC. 16. In furtherance of any comprehensive plan formulated hereafter for the control, improvement, and utilization of the resources of the Colorado River system and to the end that the project authorized by this act may constitute and be administered as a unit in such control, improvement, and utilization, any commission or commissioner duly authorized under the laws of any ratifying state in that behalf shall have the right to act in an advisory capacity to and in cooperation with the Secretary of the Interior in the exercise of any authority under the provisions of sections 4, 5, and 14 of this act, and shall have at all times access to records of all federal agencies empowered to act under said sections, and shall be entitled to have copies of said records on request.

SEC. 17. Claims of the United States arising out of any contract authorized by this act shall have priority over all others, secured or unsecured.

SEC. 18. Nothing herein shall be construed as interfering with such rights as the states now have either to the waters within their borders or to adopt such policies and enact such laws as they may deem necessary with respect to the appropriation, control, and use of waters within their borders, except as modified by the Colorado River compact or other interstate agreement.

SEC. 19. That the consent of Congress is hereby given to the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming to negotiate and enter into compacts or agreements, supplemental to and in conformity with the Colorado River compact and consistent with this act for a comprehensive plan for the development of the Colorado River and providing for the storage, diversion, and use of the waters of said river. Any such compact or agreement may provide for the construction of dams, headworks, and other diversion works or structures for flood control, reclamation, improvement of navigation, division of water, or other purposes and/or the construction of power houses or other structures for the purpose of the development of water power and the financing of the same; and for such purposes may authorize the creation of interstate commissions and/or the creation of corporations, authorities, or other instrumentalities.

(a) Such consent is given upon condition that a representative of the United States, to be appointed by the President, shall participate in the negotiations and shall make report to Congress of the proceedings and of any compact or agreement entered into.

(b) No such compact or agreement shall be binding or obligatory upon any such states unless and until it has been approved by the legislature of each of such states and by the Congress of the United States.

SEC. 20. Nothing in this act shall be construed as a denial or recognition of any rights, if any, in Mexico to the use of the waters of the Colorado River system.

SEC. 21. That the short title of this act shall be "Boulder Canyon Project Act."

Approved, December 21, 1928.

Appendix 4

CALIFORNIA LIMITATION ACT

(Act of March 4, 1929; Ch. 16, 48th Sess.; Statutes and
Amendments to the Codes, 1929, pp. 38-39)

CHAPTER 16

An act to limit the use by California of the waters of the Colorado River in compliance with the act of Congress known as the "Boulder Canyon Project Act," approved December 21, 1928, in the event the Colorado River compact is not approved by all of the states signatory thereto

(Approved by the Governor March 4, 1929; in effect August 14, 1929)

The people of the State of California do enact as follows:

SECTION 1. In the event the Colorado River compact signed at Santa Fe, New Mexico, November 24, 1922, and approved by and set out at length in that certain act entitled "An act to ratify and approve the Colorado River compact, signed at Santa Fe, New Mexico, November 24, 1922, to repeal conflicting acts and resolutions and directing that notice be given by the Governor of such ratifications and approval," approved January 10, 1929 (Statutes 1929, Chapter 1), is

not approved within six months from the date of the passage of that certain act of the Congress of the United States known as the "Boulder Canyon Project Act," approved December 21, 1928, by the legislatures of each of the seven states signatory thereto, as provided by article eleven of the said Colorado River compact, then when six of said states, including California, shall have ratified and approved said compact, and shall have consented to waive the provisions of the first paragraph of article eleven of said compact which makes the same binding and obligatory when approved by each of the states signatory thereto, and shall have approved said compact without conditions save that of such six states approval and the President by public proclamation shall have so declared, as provided by the said "Boulder Canyon Project Act," the State of California as of the date of such proclamation agrees irrevocably and unconditionally with the United States and for the benefit of the states of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming as an express covenant and in consideration of the passage of the said "Boulder Canyon Project Act" that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California including all uses under contracts made under the provisions of said "Boulder Canyon Project Act," and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin states by paragraph "a" of article three of the said Colorado river compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

SEC. 2. By this act the State of California intends to comply with the conditions respecting limitation on the use of water as specified in subdivision 2 of section 4 (a) of the said "Boulder Canyon Project Act" and this act shall be so construed.

Appendix 5

88th CONGRESS, 1st Session

S. 1275

IN THE SENATE OF THE UNITED STATES

April 4, 1963

MR. KUCHEL (for himself, Mr. Jordan of Idaho, and Mr. Moss) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To clarify the relationship of interests of the United States and of the States in the use of waters of certain streams.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (1) the withdrawal or reservation of surveyed or unsurveyed public lands, heretofore or hereafter made, shall not affect any rights to the use of water acquired pursuant to State law either before or after the establishment of such withdrawal or reservation.

(2) The provisions of section 1 (b) of the Flood Control Act of 1944 (Act of December 22, 1944, 58 Stat. 888-889, as amended; 33 U.S.C. 701-1 (1958)) shall apply to all works hereafter constructed by

or under the authority of the United States with respect to waters arising within States lying wholly or partly west of the ninety-eighth meridian.

(3) Any right claimed by the United States to the beneficial diversion, storage, distribution, or consumptive use of water under the laws of any State shall be initiated and perfected in accordance with the procedure established by the laws of that State.

(4) No vested right to the beneficial diversion, storage or consumptive use of any waters, navigable or nonnavigable, which is recognized by the laws of the State or States in which such waters are diverted or used as compensable if taken by or under the authority of the State, shall be taken by or under authority of the United States without compensation; and where such rights are acquired otherwise than by agreement with the owner, they shall be taken by proceedings in eminent domain under the laws of the United States or of the State or States affected.

SEC. 2. Nothing in this Act shall be construed as—

(1) modifying or repealing any provision of any existing Act of Congress requiring that rights of the United States to the use of water be acquired pursuant to State law;

(2) permitting appropriations of water under State law which interfere with the provisions of international treaties of the United States; or

(3) affecting, impairing, diminishing, subordinating, or enlarging (a) the rights of the United States or any State to waters under any interstate compact or existing judicial decree, (b) any obligations of the United States to Indians or Indian tribes, or any claim or right owned or held by or for Indians or Indian tribes, (c) any water right heretofore acquired by others than the United States under Federal or State law, (d) any right to any quantity of water used for governmental purposes or programs of the United States at any time prior to the effective date of this Act; or (e) any right of the United States to use water which is hereafter lawfully initiated in the exercise of the express or necessarily implied authority of any present or future Act of Congress or State law when such right is initiated prior to the acquisition by others of any right to use water pursuant to State law.

Appendix 6

PROPOSED COMMITTEE LEGISLATION

An act to add Chapter 5 (commencing with Section 450) to Division 1 of the Water Code, relating to the powers and duties of the Governor with respect to reports from federal agencies on proposed flood control and reclamation projects.

The people of the State of California do enact as follows:

SECTION 1. Chapter 5 (commencing with Section 450) is added to Division 1 of the Water Code, to read:

CHAPTER 5. FEDERAL REPORTS ON PROPOSED FLOOD CONTROL AND RECLAMATION PROJECTS

450. The Governor is hereby designated as the state official to receive the reports of the Chief of Engineers, Department of the Army, and the Secretary of the Interior required by Section 701-1 of Title 33 of the United States Code with respect to proposed flood control or reclamation projects, or both.

451. Within 10 days after the receipt by him of any such report, the Governor shall transmit copies thereof to both houses of the Legislature, if the Legislature is then in session. If not, the Governor shall transmit copies thereof to the Rules

Committees of the Assembly and the Senate of the Legislature, which committees shall immediately assign them to appropriate interim committees for study.

452. Any legislative committee to which such a report has been assigned may submit written comments thereon to the Governor.

453. The Governor shall transmit to the appropriate federal agency, together with his comments and the comments of any state department or commission as to any such report, the written comments, if any, as to such report submitted to him by either house of the Legislature, or by both houses, or by any committee of the Legislature.

LEGISLATIVE COUNSEL'S DIGEST

Federal water projects.

Adds Ch. 5 (commencing with Sec. 450), Div 1, Wat.C.

Designates the Governor as the state official to receive federal reports re flood control and reclamation projects.

Requires him to transmit copies of such reports to both houses of the Legislature, if in session, or, if not, to the Rules Committee of each house for assignment to appropriate interim committees for study. Authorizes any legislative committees to which such reports are assigned to submit written comments thereon to the Governor, and requires him to transmit any comments of the houses of the Legislature, or of any legislative committees, along with his comments, to the appropriate federal agency.

O

ASSEMBLY INTERIM COMMITTEE REPORTS
1963-1965

VOLUME 26

NUMBER 14

WATER DISTRICT ORGANIZATION

A Report of the
**ASSEMBLY INTERIM COMMITTEE ON WATER
TO THE CALIFORNIA LEGISLATURE**

MEMBERS OF WATER DISTRICT ORGANIZATION SUBCOMMITTEE

CARLEY V. PORTER, *Chairman*

John L. E. Collier
Houston I. Flournoy
Myron H. Frew
Charles B. Garrigus
Harvey Johnson

Frank Lanterman
Charles W. Meyers
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MEMBERS OF FULL COMMITTEE

CARLEY V. PORTER, *Chairman*

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January 1965

Published by the
ASSEMBLY

OF THE STATE OF CALIFORNIA

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Speaker

HON. JEROME R. WALDIE
Majority Floor Leader

HON. CARLOS BEE
Speaker pro Tempore

HON. ROBERT T. MONAGAN
Minority Floor Leader

JAMES D. DRISCOLL
Chief Clerk

COMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WATER

January 7, 1965

HON. JESSE M. UNRUH
Speaker of the Assembly
Members of the Assembly
State Capitol, Sacramento

Gentlemen:

Your Assembly Interim Committee on Water herewith submits its final report on water district organization. This report was prepared by the Water District Organization Subcommittee and adopted by the full committee.

The principal recommendation of the committee is the enactment of a Uniform District Election Law to simplify and modernize the existing law relating to district elections. This is the first major recommendation in the committee's long-range program of modernization of water district enabling acts which began during the 1961-63 interim.

It is the committee's recommendation that this study on water district organization be continued during the 1965-67 interim when additional areas of water district organization can be examined by the committee.

Respectfully submitted,

CARLEY V. PORTER, *Chairman*
Assembly Interim Committee on Water

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FRANK P. BELOTTI
JOHN L. E. COLLIER
GORDON COLOGNE
WILLIAM E. DANNEMEYER
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reservations)
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JOHN P. QUIMBY
JOHN C. WILLIAMSON
EDWIN L. Z'BERG

SUBCOMMITTEE LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WATER

December 27, 1964

Assembly Interim Committee on Water
Assembly Post Office Box 38
State Capitol
Sacramento, California

Gentlemen :

Your Subcommittee on Water District Organization hereby submits its final report on its activities during the 1963-65 interim.

The subcommittee wishes to thank the many persons, districts and organizations who assisted it during this study.

Respectfully submitted,

CARLEY V. PORTER, *Chairman*
Subcommittee on Water District
Organization

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INTRODUCTION

The Assembly Interim Committee on Water began its studies of water district organization following the 1961 session. At the end of the 1961-63 interim, the committee issued its first report, *Study of Water District Laws*.¹ This report included text and tabular material on selected provisions of water district acts, and included recommendations for remedial legislation, the majority of which had the primary objective of making available basic data about water districts. The committee also sponsored legislation authorizing all districts to consolidate.

In its first report, the committee recommended "the Legislature should continue to examine and study water district acts carefully, emphasizing its desire to bring about uniformity of language and procedures whenever possible . . ."

At the 1963 session, Chairman Porter authored House Resolution 506, requesting a continuing study of water district organization. This resolution was referred to the Assembly Interim Committee on Water and, in turn, to the Subcommittee on Water District Organization and provides the basis for a large portion of the material presented in this report.

Early in the current interim, in January 1964, the committee issued a 1963 revision of its *Study of Water District Laws*,² which brought the earlier report up to date to reflect changes in water district acts made at the 1963 session of the Legislature.

The committee has had long experience in working with water districts and is fully cognizant of the great contributions which water districts have made to the growth and prosperity of our state through pioneering municipal, industrial and agricultural water developments. The great majority of water districts today provide efficient, modern water service to Californians. The major general water district acts, however, are state statutes enacted by the Legislature. The ultimate responsibility for their improvement and modification rests with the State Legislature. On occasion, various interests sponsoring legislation relating to water districts have not given adequate attention to the Legislature's role and have neglected the statewide public interest which must be considered with regard to every district act. The committee strongly feels that it has an obligation in reviewing legislation of statewide application to make certain that any legislation not only be agreeable and beneficial to the local area involved but also be in the general public interest.

In approaching its studies, this subcommittee has attempted to take a cold, hard look at certain aspects of water district acts with the positive objective of improving these acts so that the water districts of California can better meet the challenges of the nation's largest state in the 1960's. In the following sections, as a result of these general

¹ Volume 26, No. 5 (1961-63).

² Volume 26, No. 9 (1963-65).

studies, a number of specific proposals for modification of water district acts are presented.

In addition to this general study by the committee, legislation referred to the committee for interim study is discussed, together with the committee's recommendations.

Hearings of the subcommittee were held as follows:

January 21, 1964, Berkeley, executive session.

January 21, 1964, Berkeley, uniform election procedures.

January 22, 1964, Berkeley, AB 2118.

October 19, 1964, Bakersfield, Antelope Valley-East Kern Water Agency.

December 18, 1964, Sacramento, uniform election procedures.

I. A UNIFORM DISTRICT ELECTION LAW

Findings

1. Water districts generally have a low "political visibility" characterized by extremely low voter participation in district elections and an unprecedented level of election cancellation due to lack of competition for elective district offices.

2. Election dates for water district officials vary not only from one type of district to another but also districts formed under the same act often have different election dates. Nearly every week of the year some water district conducts an election.

3. Confusion surrounding district elections has been further intensified by the immense variety of technical procedures under which elections of the various districts are conducted. Often these procedures, due to their complexity, are not uniformly followed nor easily understood.

4. The number of times a voter must go to the polls each year is often large. A single election for water districts will focus the spotlight on those elections, increase voter participation at elections and reduce the number of elections cancelled.

5. Healthy and strong democratic local government requires the highest possible level of citizen awareness and participation in local government affairs, including those of water districts.

6. Provision of a new uniform district election law is supported by most of the state's water districts and by county clerks and registrars of voters.

Recommendation

The committee recommends enactment of a uniform district election procedure to apply to all general act and special act water districts in the state which are not already holding consolidated elections. The act should provide for elections on the first Tuesday after the first Monday in November of each odd-numbered year. The key feature of such a proposal would be a single neighborhood polling place for each voter regardless of the number of districts in which he is eligible to vote. The county clerk or registrar of voters should be given primary responsibility for conducting these elections. Standard procedures for the nomination of candidates, notice of election, and appointment in lieu of election, establishment of precincts and polling places, and other election procedures should be provided. Special procedures for land-owner voting districts should be established whenever necessary.

Background

In the committee's 1962 report it was recommended that "the Legislature should continue to examine and study Water District Acts carefully, emphasizing its desire to bring about uniformity of language and procedures whenever possible. . ." The committee, through staff investigation and research selected district general election procedures as the first area in which to develop uniform procedures.

The committee held a hearing in Berkeley in January 1964 to receive general recommendations with regard to such a procedure. Subsequently, the committee engaged the services of Adolph Moskowitz, a Sacramento attorney specializing in water law, to prepare a draft procedure for uniform elections. Mr. Moskowitz submitted his final report to the committee in December 1964, and a public hearing on his basic recommendations was held on December 18, 1964, in Sacramento.¹

At the outset considerable controversy arose over the question of modifying the existing *basis* of voting, that is by residence or land ownership. A number of general act water districts use land ownership as a basis for voting. Concern has been raised that in view of recent U.S. Supreme Court decisions regarding reapportionment such procedures may not be valid.² The question of land ownership as a basis for voting is a complex one and is a subject suitable for continued study during the forthcoming interim. The committee specifically excluded consideration of this matter from its proposal.

The committee received considerable expressions of support for a uniform election procedure. The Director of Water Resources indicated to the committee that:

The Department of Water Resources has supported and will continue to support your committee's efforts to achieve uniformity in needed areas of water district law . . . we are of the opinion that the lack of voter participation in, and knowledge of, water district elections is a matter of general concern.

While a spokesman for the Irrigation Districts Association, representing the largest single group of water districts in the state, told the committee that:

I would like to emphasize very much that of the members of the Association, many of them are well aware that the proposal is an attempt to get the water districts in order, and the generally favorable response to the proposal reflects this.

Lack of Uniformity in Existing Law

In examining general and special water district acts, the committee found generally similar but not identical procedures for elections. The existing lack of uniformity can be broken down into two general areas. First, there is a lack of uniformity as to procedural matters related to elections. This includes provisions such as the filing dates for candidates, the method of notice, the date on which appointment of officers is made in lieu of election, the method of canvassing the vote, requirements for ballots, and related technical matters. Table 1, prepared by the Legislative Counsel, summarizes four selected provisions in water district acts as an example of a needless lack of uniformity. The committee found that because there are so many different technical procedures, water district election officials often find the maze of provisions difficult to work with and confusing.

¹ Copies of Mr. Moskowitz's complete report, including text and supporting material, are on file in the committee office in Sacramento.

² The Attorney General of the State of California indicated to the committee chairman in letter dated February 4, 1964 ". . . that there was no constitutional prohibition from such [land ownership] voting requirements." See 39 Ops. Cal. Atty. Gen. 211, 212-213 (1962).

Table 1
SUMMARY OF SELECTED FEATURES OF LAWS RELATING TO GENERAL ELECTIONS
IN CERTAIN GENERAL ACT WATER DISTRICTS

<i>District</i>	<i>Filing date for petition for candidate</i>	<i>Method of giving notice</i>	<i>Appointment of officers in lieu of election</i>	<i>Canvass of votes</i>
California water (Sec. 34000 et seq., Wat.C.)*	Not less than 35 days before a general election (Sec. 35050).	By publication once a week for at least 2 weeks in a newspaper of general circulation published in each affected county (Sec. 35002).	Yes, if on the 34th day prior to the election there are insufficient nominees (Sec. 35054).	Canvassed by board of election after close of polls (Sec. 35100).
California water storage (Sec. 39000 et seq.)	Not less than 60 days before the election (Sec. 41305).	Not less than 24 days before election by publication once a week for 3 successive weeks and by posting in 3 public places in each election precinct (Sec. 41302).	Yes, if by the 59th day prior to the election there are insufficient nominees (Sec. 41307).	Canvassed by district board on 1st Monday after election (Sec. 41415).
County water (Sec. 30000 et seq.).	Between the 60th and 45th day prior to the election (Sec. 30754).	By publication at least once a week for 2 successive weeks before the date of election in a newspaper of general circulation published in the district and designated by the board of directors, or, if none, by publication in any paper of general circulation published in the county and designated by the board of directors (Sec. 30772).	Yes, if on the 35th day prior to the election there are insufficient nominees and a petition signed by 5 percent of the voters requesting that the election be held has not been presented to the board (Sec. 30815).	Canvassed by board of directors on 1st Monday after election (Sec. 30702).
Irrigation (Sec. 20500 et seq.)	Between the 65th and 40th day prior to the election (Sec. 21658).	By publication once a week for 2 successive weeks in a newspaper of general circulation published in the district, or, if none, by publication once a week for 2 successive weeks in a newspaper having general circulation in the district published in any affected county, or by posting in 3 public places in each election precinct (Sec. 21654); notices may also be mailed (Sec. 21655.1).	Yes, if on the 35th day prior to the election there are insufficient nominees and a petition signed by 5 percent of the qualified electors requesting that the election be held has not been presented to the board (Sec. 21661).	Canvassed by board on 1st Monday after election (Sec. 21707).

SUMMARY OF SELECTED FEATURES OF LAWS RELATING TO GENERAL ELECTIONS IN CERTAIN GENERAL ACT WATER DISTRICTS

Table 1—Continued

<i>District</i>	<i>Filing date for petition for candidate</i>	<i>Method of giving notice</i>	<i>Appointment of officers in lieu of election</i>	<i>Cannvass of votes</i>
Municipal water (1911 act) (Sec. 71000 et seq.)	Governed by provisions re election of county officers (Sec. 71505).	Governed by provisions re election of county officers (Sec. 71505).	Yes, if on the 65th day prior to the election there are insufficient nominees (Sec. 71510).	Governed by provisions re election of county officers (Sec. 71505).
Water conservation (1927 act) (Stats. 1927, Ch. 91, D.A. 9127a)	Within 15 days from the first publication of the notice calling the election (D.A. 9127a, Sec. 6).	By publication once a week for not less than 2 weeks in a newspaper in each of the counties in which the district is situated, if there be one, and by posting notice thereof in three public places in addition to posting in the office of the board of directors (D.A. 9127a, Secs. 6 and 14).	Yes, if there are insufficient nominees, and within 10 days after the first publication of notice of election a petition signed by 25 percent of the voters requesting that the election be held has not been presented to the district clerk (D.A. 9127a, Sec. 14).	Cannvassed by district board on 1st Monday after election (Sec. 16).
Water conservation (1931 act) (Stats. 1931, Ch. 1020, D.A. 9127c)	Within 15 days from the first publication of the notice calling the election (D.A. 9127c, Sec. 6).	By publication once a week for not less than 2 weeks in a daily or weekly paper in each of the counties in which the district is situated, if there be one, and by posting notice thereof in three public places in addition to posting in the office of the board of directors (D.A. 9127c).	Yes, if on the 8th day after first publication of notice of election there are insufficient nominees, and a petition signed by 5 percent of the electors requesting that the election be held has not been filed with the board (D.A. 9127c, Sec. 14.5).	Cannvassed by district board on 1st Monday after election (Sec. 16).
Water replenishment (Sec. 60000 et seq.)	Governed by Elections Code (Sec. 60210).	Governed by Elections Code (Sec. 60210).	Governed by Elections Code (Sec. 60210).	Apparently cannvassed by district board (see Sec. 60214).
Reclamation (Sec. 50000 et seq.)	Between the 75th and 54th day prior to the election (Sec. 50731.5).	By publication for 1 month in a newspaper in each county in which any of the district lands are situated, if any newspaper is published therein, and if not, in a newspaper having general circulation (Sec. 50732).	Yes, if on the 6th day prior to the election there are insufficient nominees and a petition signed by 5 percent of the voters requesting that the election be held has not been presented to the board (Sec. 50740).	Cannvassed by board of election (Sec. 50752).

• Unless otherwise specified, all section references are to the Water Code.

It is significant to note that there is no indication that this lack of uniformity has arisen because of any particular historical or substantive reason but rather because the district acts have been developed through the years independently of each other. Little consideration has been given through the years to developing districts along more uniform lines. The few such attempts, such as the District Organization Law, have been fruitless for the most part.

The area of water district election laws which is least uniform and which is most significant to this study is that of the *election date*. Table 2 indicates the general election dates for the major general act water districts of the state. Although some of the district acts require elections on the same date each year, it can be seen that California water district and reclamation district elections are held on completely irregular dates—either based on the date of formation or upon the bylaws of the district. As a result of this lack of uniformity in election dates, the committee found that water district elections occur throughout the calendar year. Nearly every Tuesday, some district somewhere in California is conducting a general district election.

We believe that the lack of uniformity of dates gives rise to a lack of voter knowledge even of the fact that an election is to be held. This is one of the committee's most serious objections to the existing law and is one of the major reasons for preparation of the uniform district election law. Director of Water Resources William E. Warne pointed out that:

Voters in water districts are often confused as to the places elections are to be held, the dates of elections, and the qualifications of district officials. The department is the frequent recipient of inquiry and complaint from individuals who profess a lack of knowledge of district affairs and district elections. We hear from people whose first awareness of being a "part of" a district arises when they receive their tax statement or notice of assessment. . . . Providing a uniform date for election will help in making the voters aware of local districts and their affairs.³

Table 2
GENERAL ELECTION DATES OF SELECTED WATER DISTRICTS

<i>District</i>	<i>Date of election</i>
California water (Sec. 34000 et seq., Wat.C.)	Every 2nd year after the formation of the district (Sec. 35000); exact time is governed by the district's bylaws (Sec. 35001).
California water storage (Sec. 39000 et seq.)	1st Tuesday in February in each odd-numbered year (Sec. 41300).
County water (Sec. 30000 et seq.)	Every 2nd year after formation on the fourth Tuesday in March (Sec. 30701), unless consolidated with the direct primary election (Sec. 30701.5).
Irrigation (Sec. 20500 et seq.)	1st Tuesday in February in each odd-numbered year (Sec. 21650).
Municipal water (1911 act) (Sec. 71000 et seq.)	On each even-numbered year at the time of the direct primary and consolidated therewith (Sec. 71450).

³ Hearing, December 18, 1964, *Transcript*, p. 6.

Table 2—Continued
GENERAL ELECTION DATES OF SELECTED WATER DISTRICTS

<i>District</i>	<i>Date of election</i>
Reclamation (Sec. 50000 et seq.)	Every 2 or 4 years as provided by district by-laws (Sec. 50730).
Water conservation (1927 act) (Stats. 1927, Ch. 91, D.A. 9127a)	1st Tuesday in February of each odd-numbered year (D.A. 9127a, Sec. 12).
Water conservation (1931 act) (Stats. 1931, Ch. 1020, D.A. 9127c)	1st Tuesday in February of each odd-numbered year (D.A. 9127c, Sec. 12).
Water replenishment (Sec. 60000 et seq.)	Governed by Elections Code (Sec. 60210).

In its draft legislation for a Uniform District Election Law, the committee has attempted to revise general procedures to make them more workable. The law is patterned after existing election code procedures. The following comment of one irrigation district to a committee inquiry as to its recent election points up just one of the many ludicrous situations which can result under the existing confused, disorganized and often undemocratic election procedures:

... the incumbent and one other person expressed a desire to hold office. Nomination papers could not be properly executed as there are only eight voters in the division [10 required]. The district board of directors therefore requested the county supervisors to make the selection. This was done with the incumbent returned to office.

Water District Elections Today

CANCELLATION OF ELECTIONS

As can be seen from Table 1 all water district acts provide that in the event that no candidates file for election to an office, or if only one candidate files for each post, the district may cancel the election. An appointment is then made by the county board of supervisors. The existence of this provision, together with the lack of uniformity of date and low public awareness of water districts, has created a situation where water district elections are the *exception rather than the rule*. It is the hope of the committee that one of the major results of the uniform election district law will be fewer canceled elections.

We believe it most important that public water districts, with general taxing and bonding powers and a broad range of other powers to provide services to the public, should be responsible to the public through regular district elections.

Recent information^{3a} indicates that this year, 90 percent of the Irrigation Districts and 100 percent of Water Conservation Districts (1931) canceled elections. Also, more than three-fourths of all irrigation, California and county water districts canceled elections during the four-year period from January 1, 1960, through November 1964

^{3a} The committee compiled results of the water district elections held in February 1965 and these are shown in Appendix 3 of this report. The committee is also grateful to the Assembly Committee on Municipal and County Government (Assemblyman John Knox, Chairman) for use of data which that committee collected with regard to recent water district elections. See Appendix 4 for sample election cancellation provisions.

(a period in which a total of two elections per district were scheduled to have been held). This rate of cancellation is extremely high. A summary of the cancellation rate of elections in these water districts for the four-year period is shown in Table 3 below.

Table 3
SELECTED WATER DISTRICTS
Cancellation of Elections (1-1-64 to 11-3-64)

<i>Type</i>	<i>Total number of districts</i>	<i>Districts reporting</i>	<i>Percentage of districts canceling elections</i>
Irrigation -----	113	65	81
County -----	186	88	77
California -----	109	39	76

The committee proposes in its Uniform District Election Law that an additional notice be required by districts prior to the closing date for nominations to inform the electorate that an election will be canceled if insufficient candidates do not file.

We reaffirm the desirability of having a district election cancellation procedure so that if there are insufficient candidates, districts can be spared the expense of an election and the uniform act incorporates such a procedure. The procedure can be abused, however.

VOTER PARTICIPATION

In addition to the extremely high rate of cancellation of elections, the voter participation in the water district elections that are held is often quite low. A study of district elections in the San Francisco Bay area prepared for the Association of Bay Area Governments indicated that county elections have a median turnout of 67 percent and city elections 45 percent. Unconsolidated water district elections averaged only 27 percent.⁴

The committee examined voter participation statistics for elections of irrigation districts and county water districts during the past four years and these are summarized in Table 4. The lowest turnout recorded was 2 percent, the mean turnout was 34 percent, and the median turnout was 28 percent. These figures are even more disturbing when one realizes that these statistics are based on only about 25 percent of the total elections that would have been held had elections not been canceled. Thus, even when public interest in the district is great enough to require an election, the average turnout is still quite low.

In the study of San Francisco Bay area district elections, it was concluded that district "elections are seldom given wide publicity; the local papers may or may not carry the returns. Unless a controversy has arisen in a district, voters are not likely to be aware of the identity of either the incumbent directors or the opposing candidates, if any."⁵

⁴ Association of Bay Area Governments (ABAG), *Special Districts in the San Francisco Bay Area: Some Problems and Issues* (by Stanley Scott and John Corzine), October 1963, p. 2.

⁵ *Ibid.*, p. 2. The committee's survey of district election results for 1965 elections bears out this comment. Of the irrigation districts responding to this query, 18 percent indicated press coverage of their elections was "fair," 13 percent termed it "poor," and 10 percent indicated no press coverage at all was given.

Table 4

VOTER PARTICIPATION IN ELECTIONS HELD BETWEEN JANUARY 1, 1960
AND NOVEMBER 3, 1964

Type	Number of districts	Number of districts answering survey reporting on election ¹	Low percent ²	High percent ²	Mean percent	Median percent
Irrigation						
0-10,000						
voters -- --		22	2	87	39	40.5
10,000-35,000						
voters -- --		4	3	48	27	29.5
Total -----	113	26	2	87	37	37.5
County						
0-1,000						
voters -- --		20	12	100	55	54.5
1,000-						
5,000 -- --		18	9	65	25	24.5
5,000-						
10,000 -- --		10	9	32	18	12.0
10,000-						
25,000 -- --		5	9	26	16	14.0
Total -----	186	53	9	100	34	28.0

¹ Only those districts which submitted information upon which voter participation could be computed were included.

² Ratio of votes cast to total voters eligible to vote.

The committee has found that in certain cases where elections are hotly contested turnout approximates that of city and county elections, but this is the exception not the rule.

Statistics developed in the study of San Francisco Bay Area Water District elections are illustrative of the dual problems of cancellation of elections and low turnout. The study covered Alameda, San Mateo, Contra Costa and Santa Clara district elections between 1956 and 1962. Over this six-year period, for county water districts alone, out of a total of 85 possible elections, only 20 elections, or 23 percent of the scheduled elections, were held. Thus 77 percent of the county water district elections in those four populous counties were canceled over a six-year period. Voter turnout in the elections that were held was also very low and averaged only 33.7 percent, ranging from a low of 10.4 percent to a high of only 57.4 percent.⁶

In investigating water district elections, the committee found in many cases a paucity of information was available from the districts themselves about their elections. One district indicated that it had not had an election since its formation in 1941. Many districts indicated that since formation, an election had never been held.

Surprisingly, 12 percent of the irrigation and county water districts replying to a survey indicated they did not know when their last election was held.

Thus, statistical information is often difficult to obtain. Forty-three percent of the irrigation districts and 46.5 percent of county water districts contacted indicated that they did not have adequate information available upon which to determine the percentage of voter participation.

⁶ *Ibid.*, appendix.

The committee found that in instances the statutory requirements for elections were not being complied with.

In its study the committee found that many water districts had very little if any community identity and too often districts were virtually impossible to locate. The result seemed to be general confusion, lack of public interest, much criticism of districts and frequent low "political visibility."

As the bay area study concluded :

One reason for voter apathy and lack of concern is that citizens are not informed about or interested in district activities. Even if they were, the sheer number of districts and the frequency of elections make impossible demands upon the voters' time and attention.⁷

It is expected that the conditions that led a member of this committee to comment "maybe we are electioning people to death" will be corrected in great measure by this legislation since by the consolidation of water district elections on a single day the percentage of turnout should increase and the number of elections canceled should decrease.

Democratic government can only stultify as a result of apathy and low citizens' interest and participation in its activities.

The Uniform District Election Law

An outline of the Uniform District Election Law follows:

OUTLINE OF UNIFORM DISTRICT ELECTION LAW

Form—A codified section establishing uniform election procedures applicable to all water districts which elect their board of directors and do not presently have consolidated elections. (To be later expanded to as many other types of districts as possible.)

Uniform Date—All elections for district officers are to be held on the first Tuesday after the first Monday in November of the odd-numbered years.

Unexpired Terms—Provision is made for the establishment of terms of office corresponding with the new election date. The first election under the law will be held in 1967.

Notice of Election—At least 75 days prior to the general district election day notice of election is to be published.

Nomination Petitions—Available 75 days prior to election day. Must be filed with secretary at district's office not later than 50 days prior to election day.

1. Petition must be signed by 10 or more electors or 25 percent of the electors if the number is less than 10. A voter may only sign one petition for each office.
2. A sample form of nomination paper and affidavit of nominee is provided in the law.

⁷ ABAG, *Ibid.*, p. 3.

Order of Names on Ballot—Incumbents are to appear first, other candidates in alphabetical order.

Notice of Appointment in Lieu of Election—Not less than 7 nor more than 14 days prior to the close of nominations the district secretary is to publish notice that only one or no nomination has been made.

Cancellation of Election—If on the 45th day prior to the general district election day there is an insufficient number of nominees and no petition signed by 5 percent of the electors requesting an election has been filed, secretary of the district shall notify the County Clerk or Registrar of Voters that no election is to be held and the supervising authority shall appoint to the office.

Conduct of Election by Registrar of Voters or County Clerk—Registrar of voters or county clerk of the affected county shall conduct the general district election. If a water district in which voter participation is determined by land ownership is located in two or more counties, the county clerks of the respective counties may contract to permit one clerk to conduct the election for the entire district.

Reimbursement of County—The county shall be reimbursed by each district for the actual expenses incurred.

Qualification of Electors—Qualification of voters will be determined by principal act of the electing district.

Voting—The principal act determines the number of votes a voter is entitled to cast.

District Boundaries—At least 75 days prior to election day the district secretary shall send to the county clerk or registrar of voters in order that a list of registered voters can be prepared.

List of Voters—The secretary of a district whose right to vote is based on the ownership of land shall send a list of qualified voters to the county clerk or registrar of voters at least 54 days prior to election day.

Precincts—County clerk or registrar of voters shall establish precincts, polls and appoint inspectors, judges and clerks.

Consolidated Polling Place—Polling places to be arranged so that a voter entitled to vote in more than one district shall cast his ballot at a single polling place.

Form of Ballot—County clerk or registrar of voters shall specify the form of ballot for districts whose voter qualifications are based on residence.

The form of ballot for land ownership districts shall be determined by their principal acts.

Preparation of Roster and Voting Lists—County clerk or registrar of voters shall prepare a list of voters for each ballot in each precinct. There shall be a separate roster for each ballot in each precinct.

Mailed Notice of Election—At least 10 days prior to the election the county clerk or registrar of voters shall mail to each voter a notice of election including date of the next general district election, address of

the polling place, and the names of the district(s) and the candidates for office.

Certificate of Votes—Tally lists and a certificate of votes shall be prepared at each precinct.

Disposition of Election Returns—The certificates, the roster of voters and tally lists shall be delivered to the county clerk or registrar of voters.

Canvass of Returns—The county clerk or registrar of voters shall canvass the returns and mail a statement of the result to the secretary of each district participating in the general district election.

Term of Office—Directors will hold office for four years.

Absentee Ballots—Absentee ballots shall be provided for resident voting districts. Proxy provisions will apply to landowner voting districts.

Due to the length of the legislation, the complete text of the law is not being included in this report.⁸

It is appropriate, however, to discuss several of the major features of the act, and the reasons for their inclusion in the committee's proposal.

Single Polling Place

Probably the most important feature of the act will be the provision of a single polling place for all water district elections. If a person resides in more than one district he will vote for all districts at the same neighborhood polling place. This is in sharp contrast to existing law when in some cases (even when elections are consolidated) the polling places are not, and one must go to several different places to vote.

Single Date

All water district elections will be held on the same day. The date selected for the election is the first Tuesday after November in each odd numbered year. At the present time the only regularly scheduled elections on this date in California are city elections in the City and County of San Francisco. There are no conflicts since San Francisco has only one public district. The date chosen also is the traditional election day in the United States.

Due to the complexity of district boundaries and other technical problems involved in conducting an election, it was advisable to select a date for the water district election on which no other elections were taking place. Ralph Epperson, a representative of the County Clerks Association (county clerks and registrars of voters will conduct the elections) advised the committee:

We would like first of all to endorse the proposed date of the first Tuesday after the first Monday in November of the odd-numbered years. This seems to fall best statewide for all county clerks to conduct an election.⁹

⁸ A list of the districts affected by the act and a compilation of the total number of local districts involved, by county, is found in Appendix A and B to this report.

⁹ Hearing, December 18, 1964, *Transcript*, p. 10.

Mr. Epperson, who is County Clerk of San Joaquin County, endorsed the concept of eventually having a number of election days each year for specific types of political bodies. He indicated that :

Our feeling is that we should be able to establish so many given days in a year for elections. This would be the first step where we have water districts the first Tuesday after the first Monday in November.¹⁰

Mr. J. E. Les Brown, County Clerk of Fresno County and Chairman of the County Clerks Association of California, indicated that :

. . . So far as this date is concerned it is the unanimous conclusion and concurrence that November in the odd-numbered years is a real workable date as far as we are concerned.¹¹

This date will also be desirable in that it avoids combining nonpartisan water district elections with partisan elections. Because of the large number of districts involved in each election on a single date, news media will be able to concentrate their coverage on water district election day. Including a special election day for water districts, each year the electorate of the state will be called upon to vote only a minimum number of times. In even-numbered years, elections are regularly scheduled in June and November for county and state offices and in the spring for general law cities. In odd-numbered years, school districts and many charter cities normally hold elections in the spring. At the outset special districts other than water districts will continue to elect on the present irregular basis. *It is hoped that the provisions applicable to water districts can be extended to all special districts in the state at a later date after the technical problems involved are carefully studied.*

Water districts, however, are the largest single group of public districts in the state and with a special provision for water districts a major portion of the special district elections in the state will be placed on a single date.

Conduct of Elections by County Clerk or Registrar of Voters

Water district elections will be conducted by the county clerk or registrar of voters. These county officials are experienced in handling elections and in many cases today conduct water district elections anyway under contract with districts. An attempt has been made to maintain as much district authority over elections as is consistent with a consolidated election procedure. The county clerks and registrars of voters, however, are equipped with modern election machinery to conduct the election. Their handling of the election should reduce the opportunity for districts to inadvertently forget elections. Uniform statewide compliance with the provisions of the election law should also result. The fact that all districts will be operating under a single uniform procedure should greatly reduce election errors.

Separate Provisions for Land Ownership Districts

One of the major problems which the committee encountered in drafting a proposal for uniform election date is the fact that many dis-

¹⁰ *Ibid.*, p. 15.

¹¹ *Ibid.*, p. 19.

tricts elect on the basis of land ownership. Complex procedures have been required in the past to effectively conduct an election based on this method of determining qualified voters and the number of votes per voter. Often thousands of parcels of land are involved. In this case the committee's proposed law requires that both types—land ownership and resident voter districts—utilize the same general procedures as to notice, for example. However, the specific details regarding election procedures such as counting of the ballots have been prepared with separate provisions for land ownership districts.¹² This procedure should result in overall simplicity and should make it possible for districts with different types of voting registration to conduct their elections simultaneously.

As in existing law no filing fee for district offices is proposed. With almost 75 percent of elections canceled and few candidates when elections are held, there is no justification for imposing a further impediment to potential candidates.

Most of the committee's proposed law follows substantially the provisions of the election code with regard to general elections in the state. It has also incorporated a number of unique features due to the unique nature of water districts.

There are a number of features of the proposed law which are not uniformly present in existing water district procedures. These include:

1. Absentee voters. Absentee ballots will be provided for all resident voter district elections. (For land ownership voter districts proxies will be provided.)

2. A sample ballot in the form of a postal card which includes the candidates for office and the location of the polling place will be required for every election.

3. Notice of election. The committee found that *none of the water district acts* required that a mailed notice be sent to all voters advising them of their polling place, a procedure always utilized for local city and county elections. It seems obvious that with the prolific number of district elections without a mailed notification of polling place, turnout will obviously be low. This notice will serve as a sample ballot by listing the candidates for office and, at the same time indicating the location of the polling place. This lack of notice of elections was one of the major drawbacks of existing district election procedures.

4. A single uniform ballot form will be provided for all residence voting districts.

¹² Consideration should be given by the Legislature in the future to simplification of these procedures as well. This was beyond the scope of this current study, however.

II. CITY AND COUNTY CONTROL OF WATER DISTRICTS WITH REGARD TO FIRE PROTECTION FACILITIES (A.B. 2118, 1963 General Session)

Findings

AB 2118 attempts to provide more uniform application of city and county ordinances controlling water laws for fire protection purposes by subjecting public water districts to these local ordinances. The committee finds that at present the need for a fire protection law of this type is not so great as to warrant the enacting of AB 2118, which is patently deficient in numerous ways. For example, the committee finds the application of fire protection standards would not be uniform under AB 2118 in that public utility companies could not constitutionally be so regulated, jurisdictional conflicts between regulatory agencies would result, and an inequitable distribution of the financial burden would be inevitable.

Recommendations

The committee recommends that AB 2118 not be reintroduced. The committee recommends that the feasibility of applying fire protection control legislation to fire protection entities rather than water districts should be considered as an alternative. Consideration should also be given to whether a statewide fire protection standards are needed in order to achieve uniformity of application and maximum fire protection to local areas. The committee suggests a final and most desirable alternative would be to utilize devices such as subdivision map approval and building permit and zoning ordinance standards to require adequate water flow for fire protection purposes in each area. Such an approach would apply fire protection standards to all entities involved in fire protection in a given area.

Background

AB 2118 introduced by Assemblyman Tom Carrell of Los Angeles County provides that suppliers of water for domestic use "... shall comply with all of those provisions of any city or county ordinance which pertain to supplying adequate water for fire protection in the locality in which such city or county ordinance applies."

A brief summary of the events leading up to this legislation will provide a background for examining the merits of AB 2118. On August 2, 1960, the Los Angeles County Board of Supervisors adopted Ordinance No. 7834, the "Water Ordinance." The ordinance is a long and complicated document setting forth procedures under which the county established specifications of minimum standards for water mains, and water systems for fire protection.

After the ordinance was adopted, a group of 14 public water districts in Los Angeles County organized to make a court test on the Water Ordinance to determine whether or not these public water districts were subject to the provisions of the Water Ordinance.

In *Baldwin Park County Water District v. County of Los Angeles*, 208 C.A. 2d 87 (1962) the district court of appeals held that the Legislature did not intend that irrigation and water districts should be subject to legislation by counties. The court concluded that in the case of the Water Ordinance, the ordinance was in conflict with state legislation. Since the above decision Los Angeles County has limited the Water Ordinance to water distributing entities other than public districts.

Assembly Bill 2118 which was sponsored by the County of Los Angeles would, in effect, overrule the court decision and specifically provide that cities and counties could regulate public water districts by ordinance in the very limited area of water supplies for fire protection. On January 22, 1964, the Subcommittee on Water District Organization met in Berkeley to receive testimony on AB 2118.

Levels of Fire Protection

Testimony revealed that standards have been developed by the Board of Fire Underwriters in order to determine fire insurance rates for the grading area under consideration. Captain Joseph Rotella of the Los Angeles County Fire Department testified that a reasonably adequate water system should receive a grade of class 1, 2, or 3.¹ Captain Rotella further stated that only 14 percent of the water systems in the fire protection areas under jurisdiction of the Los Angeles County Fire Department had ratings of 3 or better. The criteria of the Board of Fire Underwriters for determining the need for the proposed legislation were strongly criticized.

Testimony indicated that the Pacific Fire Rating Bureau assigns individual ratings to not only the *water systems of a fire area* but also to the other major factors in fire protection. Then an overall rating is established on the basis of the total individual ratings.² Thus, the fire rating for any given area is determined by a combination of such factors as fire department manpower, fire prevention, fire alarm facilities, and actual structural conditions. Data supplied by the Pacific Fire Rating Bureau revealed that in many instances the water service ratings were at least (relatively) equal to those of the grading class of the community.³

Certainly efforts made to protect homes and other valuable structures from the devastation of fires are commendable. Evidence presented at the January 22 hearing, however, did not clearly establish a pressing need for legislation of the type proposed. Ratings by the Board of Fire Underwriters are not in themselves an adequate criteria for examining water system fire fighting effectiveness because the ratings are only meaningful when considered as one of many other factors **related to fire** prevention. Furthermore, ratings of water systems made by the Pacific Fire Rating Bureau frequently are not coterminous with the boundaries of the fire protection area; thus the statistical evidence presented to

¹ Assembly Interim Committee on Water, Hearing January 22, 1964, Berkeley, California, p. 49.

² The individual ratings may be interdependent where, for example, the quality of the fire department is such that an otherwise highly rated water system would be ineffective. In such a case the water system rating would be modified.

³ See p. 163 (Appendix) January 22, 1964, Berkeley hearing.

the committee cannot be examined and compared with the other major fire prevention elements which constitute the areas total fire fighting capabilities.

**Application of City and County Water Ordinances:
Jurisdictional conflict between regulatory agencies**

The sponsors of AB 2118 urged its adoption on the theory that such legislation will provide a method by which local authorities can "... secure uniform compliance with ordinances designed to provide adequate water for fire protection."⁴

In fact, however, AB 2118 legislation *would not accomplish this purpose*. The bill would require a water district to comply with city or county ordinances. At present there are no legal requirements that these two groups of governmental entities coordinate their fire protection ordinances. The Los Angeles County Ordinance applies only in unincorporated areas. The incorporated areas include 76 different municipalities, each capable of enacting its own water ordinance. Instead of uniformity in this county, there is the possibility of 77 different water ordinances.

Also water systems are designed as engineering units and have no necessary relationship to geographical or political boundaries. Since many water districts serve water both in county areas and city areas it is quite likely that one water district would be subject to two, three or even more varying and conflicting fire protection codes. The only uniformity which would be secured by Assembly Bill 2118 would be in those water districts which were contained solely within unincorporated county area or within a single city.

Nonuniformity in Scope of Application

Assembly Bill 2118 also lacks uniformity in its application to water suppliers providing water for domestic use. City or county ordinances clearly apply to facilities of mutual water companies and would apply to public water districts if AB 2118 were enacted by virtue of overruling the *Baldwin* case. There is serious question whether the ordinances can be constitutionally applied to a private water company regulated by the Public Utilities Commission, i.e., a public utility.⁵ The Attorney General of California in an informal opinion to Chairman Porter stated that "... the provisions of Article XII, Section 23, of the California Constitution, preclude any regulations thereof [of private public utility companies] by a county."⁶ Edward Gaylord, Assistant County Counsel, County of Los Angeles, conceded there was

⁴Testimony by James Rostron, Division Engineer, Waterworks and Utilities Division, Department of County Engineer, County of Los Angeles, p. 90, January 22, 1964, hearing.

⁵These companies are substantial water purveyors in metropolitan areas, including Los Angeles County. For example, the California Water Service Company, the most extensive operation, serves 235,000 customers in 35 cities in the state.

⁶Letter from Attorney General Mosk to Chairman Porter, dated June 5, 1964. In a recent Los Angeles County Superior Court case, Los Angeles County was enjoined from enforcing the Water Ordinance against public utilities. The court held: Public utilities distributing water are regulated by the Public Utilities Commission by virtue of Article XII, Section 23, of the California Constitution and in California the Public Utilities Commission has preempted the field. *California Water Association v. County of Los Angeles*, minute order 842,988, January 19, 1965.

doubt as to the constitutionality of applying the Los Angeles Ordinance to public utilities subject to the Public Utilities Commission.⁷

It can be seen that the "uniformity" sought to be achieved by the proposed legislation may well be illusory if its application to a large number of domestic water purveyors was unconstitutional.

Inequitable Distribution of Financial Burden

The committee received considerable testimony to the effect that AB 2118 would shift the burden and cost of fire protection from fire fighting and fire protection districts and agencies to the water users of the public districts without commensurate benefits. Water line capacities, valve sizes and numerous other engineering requirements for adequate water system fire protection units frequently are unrelated to the nonfire needs of domestic water users. At present the water districts cooperate with fire districts and other fire protection entities in the establishment of fire protection facilities; there are no uniform methods used for the allocation of additional costs engendered by fire protection needs but a commonly used system is for the water district to charge the fire district a hydrant rental, which is in effect a service standby charge.⁸ AB 2118 would shift the costs presently allocable to the fire district to the water district.

Allocations of fire protection costs to water districts would be inequitable for two reasons. First, in most instances the boundaries of a water district are not coterminous with those of a fire district; therefore, the area receiving the benefits of fire protection facilities may not pay their fair share of the cost through the financing water district. Second, most water districts pay for their water service out of water revenue, that is, water charges, whereas almost all fire agencies are financed by direct tax on assessed valuation. The amount of water used by a home or business frequently bears no relation to the value of the property receiving the fire protection. Consequently, if additional fire protection costs were allocated through additional water rate charges a burden would be placed upon the water users of public water districts which in no way would be commensurate to the benefits received.

Possible Alternatives

Testimony at the committee's hearing emphasized the need for laws insuring that water systems to be developed in the future include fire flow capacity. Los Angeles County has, in fact, developed some ad hoc methods to at least partially accomplish this goal. For example, subdivision map approval has been conditioned on adequate fire protection facilities⁹ and building permit and zoning ordinance standards have been similarly used. Solving the problem along these lines on a permanent basis appears to be a much more direct and less cumbersome means of obtaining the basic objectives of proponents of AB 2118, that is, adequate fire protection facilities.¹⁰

⁷ *Hearing transcript*, January 22, 1964, p. 63.

⁸ *Ibid.*, p. 115.

⁹ *Ibid.*, pp. 72, 85.

¹⁰ Such an approach is even more appropriate when it is considered that the Los Angeles County Ordinance is applied only to new facilities and not to existing facilities anyway.

The feasibility of applying fire protection control legislation to fire protection entities rather than water districts should also be considered as an alternative. Finally, consideration should be given to whether statewide fire protection standards are needed in order to achieve uniformity of application and maximum fire protection to local areas.

In a letter dated March 17, 1964, to the Assembly Water Committee, the Los Angeles County Counsel submitted a redraft of Assembly Bill 2118.¹¹ The substance of this bill would be: (1) to limit its application to Los Angeles County; (2) to require water districts to comply with county and city ordinances which provide for minimum fire flow; (3) to require that 10 days notice be given to retail water sellers which would be affected by proposed amendments to local ordinances; and (4) to allow the granting of variances if unnecessary hardships would be caused by application of a local minimum fire flow ordinance. The committee does not believe that by limiting the legislation to a single county the substantive technical and other objectives to AB 2118 evaporate. The other proposed modifications are merely procedural.

¹¹ Letter on file in Assembly Water Committee office.

III. THE ANTELOPE VALLEY-EAST KERN WATER AGENCY (H.R. 71, 1964 Regular Session)

Recommendations

The east Kern portion of AVEK should not be severed, but particular attention should be given to the activities of this agency as part of the committee's continuing study of water districts. Legislation should be enacted restoring the original withdrawal procedures included in the AVEK Act at its enactment in 1959. The AVEK Act should be amended to eliminate the power of AVEK to control the formation and operation of other water districts within the AVEK boundaries. The committee recommends that technical amendments to the AVEK Act be enacted to clarify and correct errors in the act.

Background

House Resolution 71 of the 1964 Regular Session directed the Assembly Interim Committee on Water to study the Antelope Valley-East Kern Water Agency, "... including but not limited to, the formation, powers and operation of the agency, the feasibility and desirability of separating the Kern County area of the agency ..." Pursuant to this resolution, the subcommittee held a hearing in Bakersfield on October 19, 1964.

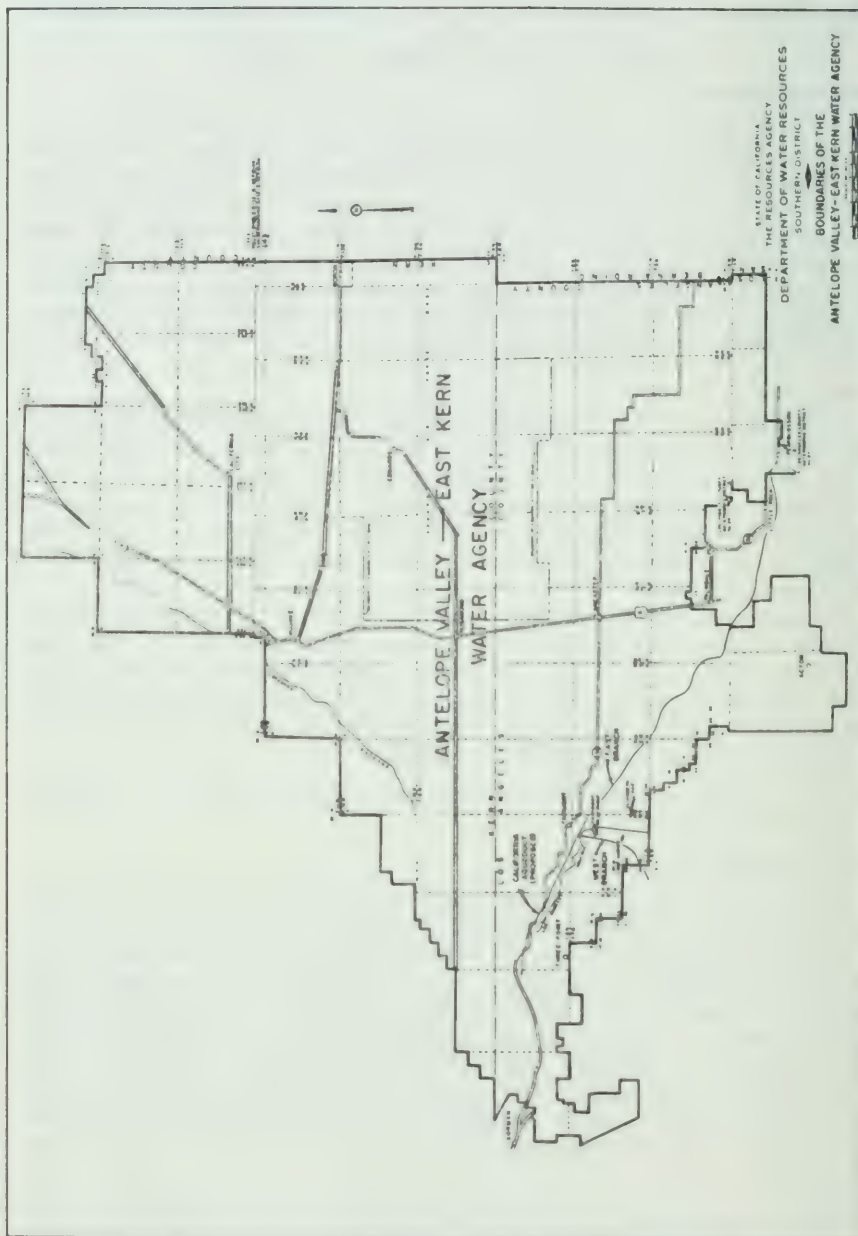
Witnesses at the Bakersfield hearing reviewed the unusual circumstances under which AVEK was created without a vote of the local residents and through unusual legislative action. Senator Walter Stiern, who represents the east Kern portion of the agency stated that the act creating AVEK did not go through normal legislative procedures. Senator Stiern described what he called the

"... bizarre way that this bill bounced around before it became enacted into law."¹

Severance of Kern County Territory

At the 1963 Regular Session of the Legislature Senate Bill 1524 was introduced by Senator Walter Stiern of Kern County. This bill would have eliminated Kern County territory from the agency by severing the agency at the Kern county boundary. It also would have changed the name of the agency to the Antelope Valley Water Agency. The bill was not enacted by the Legislature at that session. After the 1963 session, an Antelope Valley-East Kern Water Agency Advisory Committee was formed at the suggestion of Senator Stiern, to consider, among other matters relating to AVEK, the question of severance. The committee submitted its final report conclusions on August 31, 1964.

¹ See statement at October 19, 1964, hearing. The current dispute concerning severance is only one of the several that have resulted since the formation of AVEK. Assembly Interim Committee Reports Vol. 26, No. 6 (1961-63) describes in detail the rather serious questions raised concerning the creation of AVEK including a description of some of the legislative history.



Antelope Valley—East Kern Water Agency

Testimony at the Bakersfield hearing focused on two primary considerations regarding the feasibility of severing the east Kern area from AVEK. First it was contended that the "... two counties were joined together in the agency because they form a logical continuous area that by virtue of occupying one water basin could be effectively served by one district from the Feather River Project."² Several witnesses at the hearing were of a contrary opinion and felt that it had never been established that AVEK encompassed a single functional hydrological unit.³

The committee feels that resolution of the issue of whether AVEK's boundaries at present include a single ground water basin should not be determinative of the solution to be reached in this controversy. It is sufficient to note that there is a real question whether hydrologic data fully support the one-basin hypothesis.

The crucial issue which compels the committee to recommend against severance is the lack of an alternative distribution system for State Water Project water for the east Kern area. No testimony was received by the committee at the Bakersfield hearing indicating that the pro-severance groups had formulated or strongly considered what resolution should be made of their share of the State Water Project entitlement contracted for by AVEK.

James Doody of the Department of Water Resources stated that there were two possible alternatives. One, east Kern could be formed into a separate agency which then might receive an assignment of a portion of the AVEK state contract entitlement. Two, the severed portion could form a separate agency and contract with the Kern County Water Agency as a member unit of that agency. The Kern County Water Agency might in turn receive an assignment of a portion of the AVEK entitlement. Both these alternatives are presently unfeasible because the department indicated that it would not approve such an assignment unless the terms were agreeable to AVEK.

Mr. Doody stated that the department's basic concern is "... to protect the financial integrity of the State Water Project."⁴ The department has consistently taken this commendable position of protecting the state's contract. It has, however, generally been publicly indifferent toward the activities of the agency, many of which may also have an effect on the contract. Proper management of the district is essential. Success of the State Water Project cannot be insured solely by financial considerations.

AVEK has contracted for almost two acre-feet of water per person based on maximum annual entitlement and population at this time. Without question, enormous population and economic growth is required to make the present contract a financially sound one. The ability of the Antelope Valley and east Kern areas to generate this type of growth will certainly depend on the existence of harmonious relation-

² Testimony by Assemblyman Tom Waite. James Doody of the Department of Water Resources similarly testified to the existence of a common ground water basin.

³ Proponents of Severance Committee; Mr. R. James referring to Giannini Foundation Study No. 2, University of California Extension Service.

⁴ Testimony is on file with the committee. The department must also approve all annexations or exclusions which AVEK undertakes per its water service contract.

ships within the agency. A full understanding of the problems involved and a willingness to assist in every practical way is essential.

Aside from the difficulty of effectuating an assignment of a portion of the entitlement the question of cost of serving a severed area is a serious one. The Department of Water Resources felt that east Kern could be served, "... either through a separate facility or through a joint use facility with the Los Angeles portion of the agency."⁶ The estimated cost of a separate facility would total over \$15 million. This is almost half of the estimated cost of a fully integrated system to serve the entire existing area of the agency. Since east Kern is scheduled to receive only 20 percent of the AVEK entitlement, the additional cost of a separate facility appears to be excessive. The Kern County Water Agency indicated it could serve the east Kern area, but that it was not an advocate of severance.⁷ Again, the Kern County Agency noted that, "... if at all politically feasible, a joint use facility should be constructed . . ."⁸ The cost of parallel lines would be greater than a joint use facility. The large costs which would result from severance plus the lack of firm plans for an alternate distribution system in the event of severance prevent the committee at this time from recommending in favor of severance.

Management of the District

SCOPE OF OPERATIONS

Several phases of the operation of AVEK have been examined by the committee and its staff. A number of complaints regarding various plans of the agency's operation were presented to the committee. In this report we can only deal with a few major problem areas.⁹ There are several areas of AVEK management and operation which require immediate correction if severance is not to become the most feasible solution to the east Kern problems regardless of cost or impracticability.

First, the extension of the purposes for which AVEK was created. AVEK was intended to be a wholesaler of water delivered from the State Water Project.¹⁰ However, the committee has been given no information which indicates that AVEK has negotiated or entered into any contracts with local water agencies for the distribution of the enormous amount of water the agency is to receive from the State Water Project.¹¹ Not only is AVEK gradually creeping into the retail distribution

⁶ Statement to October 19, 1964, hearing.

⁷ Testimony by Dal Ogilvie, engineer-manager of the Kern County Water Agency, on file in the committee office.

⁸ *Ibid.*

⁹ The Major Taxpayers Committee, during its brief existence, made considerable headway in examining the agency's operations including the compilation of at least one engineering report.

¹⁰ Statement of Need and Justification for Enactment of Legislation to Create AVEK—Antelope Valley-East Kern Water Basin Association. Although the AVEK Act is patterned after the Municipal Water District Act of 1911, this group recognized that "... any attempt to create a Municipal Water District . . . will meet with opposition, will not be satisfactory to all parties, and will not adequately accomplish the purposes desired." The January 1962 report by the Department of Water Resources on the Feasibility of Serving the Antelope Valley-East Kern Water Agency from the State Water Facilities states, "... AVEK does not contemplate consumer service. . ." and "local water agencies will continue their present role as suppliers for individual water consumption."

¹¹ Testimony at the Bakersfield hearing by R. Lunt, engineer-manager of AVEK, indicated the agency could distribute the water, "... through the formation of improvement districts or direct assessment districts."

of state water to be received, it has already entered the retail water business by acquiring two water companies, forming improvement districts, issuing bonds, drilling wells and operating the companies.¹²

CONTROL OF LOCAL DISTRICTS

AVEK has gone one step further than acquiring retail water companies; it has in effect vetoed the application of a county waterworks district to provide retail service to residents within AVEK boundaries.¹³ Since the AVEK Act was hurriedly copied from the Municipal Water District Act of 1911 it includes a provision (Section 94) which was included in the Municipal Water District Act to prevent the overlap and duplication by municipal water districts with identical powers, an appropriate provision. This provision, however, gives AVEK unprecedented complete and seemingly boundless powers over the formation of other water districts within its area, a power held by no other special act district and one that became a part of the AVEK Act only due to the lack of adequate legislative consideration given the act in 1959. Clearly this section is inappropriate for the AVEK Act and strikingly illustrates the undesirability of creating special district acts merely by copying general district acts which were drafted for different purposes. We, therefore, recommend that Section 94 of the AVEK Act be amended to eliminate the power to veto the formation of other districts.

OTHER ACTIVITIES

AVEK has continued to expand its operations on many other fronts also. The agency was the prime sponsor of a million-dollar bond issue designed to finance a flood control improvement district. AVEK residents overwhelmingly voted to reject this phase of the proposed expansion.¹⁴ AVEK has also sought to enter the sewage effluent treatment field by applying for a federal grant and proposing a bond issue to finance the remainder of the needed funds while Los Angeles County is already studying the problem under a grant in the area. AVEK is also now seeking to modify its State Water Service contract to permit the agency to build a \$6 or \$7 million reservoir in the valley rather than have the state construct peaking facilities into its system pursuant to the original contract. The AVEK engineer-manager testified that \$400,000 in state funds might be available to finance the recreational features of the reservoir; subsequent news releases have informed AVEK residents that \$1 million in Davis-Grunsky funds might be used to reduce the cost of an agency-owned facility.¹⁵ No sooner had a feasi-

¹² Sunshine Ranchos and Westaire Mutual Water Companies.

¹³ AVEK board of directors refused to permit Los Angeles County Water Works District No. 35 to hold annexation election in the Sunshine Ranchos area; AVEK subsequently held an improvement district formation election in the area and purchased the Sunshine Ranchos Water Company. AVEK has consented to other annexations but has subjected their approval to a variety of conditions such as reserving the right to treat sewage effluent and requiring the annexing district to agree to purchase State Water Project water in lieu of pumping should AVEK so request. Los Angeles County Counsel has serious doubts concerning the validity of these restrictions.

¹⁴ September 22, 1964, special election—almost 70 percent voted against the bond issue.

¹⁵ Mojave Desert News, December 24, 1964; The Bakersfield Californian, December 15, 1964.

bility study for the reservoir been authorized than the AVEK agency discovered an underground subunit of the ground water basin and began planning the use of this area as an additional storage facility.¹⁶ As early as May 1962 the agency's manager asked the Legislature to amend laws relating to ground water to give AVEK unlimited control over the ground water resources of the area.¹⁷

WITHDRAWAL PROVISIONS

Further complicating the plight of any dissatisfied residents of the agency is the fact that the original withdrawal requirements of the act were so stiffened in 1961 that withdrawal from the agency is virtually impossible. For example, voters in the entire 1,500,000-acre district must vote to approve every withdrawal, regardless of size. The committee therefore recommends that the present withdrawal procedures in the act be replaced with the fair and reasonable ones as set forth in Section 84 of the act as originally passed by the State Legislature.¹⁸

FISCAL AFFAIRS

The financial operations of AVEK have been the subject of considerable concern on the part of the East Kern and Antelope Valley taxpayers. East Kern residents must pay a tax of 5 cents per \$100 assessed valuation to the Kern County Water Agency for State Water Project costs in addition to the taxes they pay to AVEK. Information submitted to the committee at its Bakersfield hearing indicates that AVEK is considering taking some steps to modify its program and eliminate an otherwise unfair burden on the taxpayers by financing a greater share of State Water Project costs out of water charges to water users. This was to be accomplished by adding a \$10-per-acre-foot charge to the cost of water.¹⁹ Data supplied to the committee reveals the Kern County residents of AVEK will pay 25 percent of the total agency taxes while receiving only 16 percent of the water.²⁰ The committee should point out that at times the information that has been submitted to it by the AVEK engineer-manager has been less than candid. A careful analysis of the formal report Mr. Lunt prepared for the committee at the Bakersfield hearing revealed that much of the

¹⁶ The Bakersfield *Californian*, December 1, 15, 1964.

¹⁷ Assembly Interim Committee on Water, Hearing Transcript, San Bernardino, May 22, 1962, pp. 164-173.

¹⁸ AVEK spokesman R. Lunt admitted at the Bakersfield hearing that present petition requirements are "... very severe." And these provisions were sponsored by the agency itself at the 1961 session.

¹⁹ Mr. Lunt testified that the \$10 figure was arbitrary and had yet to be approved by the board of directors.

²⁰ P. B-4, AVEK October 19, 1964, Report to Assembly Interim Committee on Water. Sec. 61.1 of the AVEK Act states:

It is the intent of this section to assure each area or district its fair share of water based upon the amounts paid into the agency, as they bear relation to the total amount collected by the agency. (Emphasis added.)

statistical data upon which the agency programs are premised financially may be deceptive or erroneous.²¹

The committee lacks sufficient information to determine if complaints over the relatively large administrative costs of AVEK—a district which will not have water to distribute for another six years—are justified.²² Administrative aspects of the district's operation are worthy of further study.

Summary

The committee feels that at this time severance of the East Kern Portion from the Antelope Valley-East Kern Water Agency would be unwise both financially and practically. It is to be emphasized, though, that this committee is aware of the criticisms which have been made of the AVEK Agency. Therefore, it is recommended that this committee, as part of its continuing study of water district organization continue to study the Antelope Valley-East Kern Water Agency. The committee urges the residents of both counties of AVEK to join together in resolving their problems within the framework of the present agency, assisted by the legislative modifications to the act recommended by this report.

The committee recommends that technical amendments be made to Section 52 of the AVEK Act as well.

²¹ Mr. Lunt in a letter to the committee dated October 29, 1964, admitted that a projected assessed valuation of the area upon which the estimated tax rate was based may be too large.

A comparison of the AVEK October 29, 1964, report, the AVEK Water Agency Advisory Committee Syllabus December 1963 report and the Department of Water Resources Feasibility Report January 1962 reveals that the agency has radically revised estimates of population and assessed valuation almost twofold.

*Projections made by
reports issued in*

		1964	1963	1962
Assessed valuation	{ 1980	918	542	591
(in millions -----)	{ 1990	1,827	881	1,018
Estimated population	{ 1980	482	338	285
(thousands) -----	{ 1990	911	546	490

This committee is aware that the relatively bright financial future forecasted on p. 14 in the report presented by AVEK in Bakersfield may prove overoptimistic. If the estimates of population and assessed valuation made by the agency and the state only two years before the current agency report prove to be more accurate, then current estimates of future taxes and water charges will be almost doubled.

²² \$39,909 preliminary budget 1963-64.

IV. EXTENSION OF THE WATER REPLENISHMENT DISTRICT ACT

Findings

The Water Replenishment District Act (Division 18, Water Code Sections 60000 et seq.) provides an excellent means of forming local districts with full water replenishment powers, including the replenishment assessment or "pump tax". These districts are formed on the basis of ground water basins and their organization in the future in areas throughout the state where critical ground water problems occur is more advantageous than enacting special legislation to provide a replenishment program. The existing restriction in the law limiting formation of these districts to seven southern California counties is obsolete.

Recommendations

The committee recommends that legislation be enacted removing the restriction on the formation of these districts and permitting their formation in *any area of the state*.

Background of the Act

In 1955 the Legislature created an unusual and in fact revolutionary new type of water district enabling act in California—the Water Replenishment District Act. Based on the outstanding and pioneering water replenishment activities of the Orange County Water District, a Special District Act, the Water Replenishment District Act authorized the formation of replenishment districts, one of the primary purposes of which was the utilization of a "replenishment assessment" or "pump tax" to finance the purchase of water for groundwater replenishment. The legislation was sponsored by the Southern California Water Coordinating Conference, and the original sponsors of the legislation sought immediate application of the act in Los Angeles County. Since its enactment, only one water replenishment district has been created on the local level, the Central and West Basin Water Replenishment District in Los Angeles County.¹ This district has an excellent record of accomplishments in the field of groundwater management.

The Water Replenishment District Act is presently limited in application to seven southern California counties (Santa Barbara, Los Angeles, Ventura, San Diego, Riverside, San Bernardino and Orange).

During the 1963-65 interim, the committee suggested the extension of the legislation to permit the formation of water replenishment districts in all of the state's 58 counties. In its *Study of Water District Laws*, this committee recommended that "formation of districts under general districts acts, rather than by special district act, should

¹ For detailed information on the act and its operation see the following reports of this committee: *Ground Water Problems in California*, Assembly Interim Committee Reports, 1961-63, Volume 26, No. 4; *Study of Water District Laws, (1963 Revision)*, Assembly Interim Committee Reports, 1963-65, Volume 26, No. 9.

be encouraged whenever practicable considering fully local needs. If existing general district acts prove to be consistently inadequate, resulting in the use of special district acts, considerations to be given to the enactment of new general district acts or the modification of existing acts to provide more flexibility."² In the last few years, areas not included in the southern California counties in which the water replenishment districts may be formed have utilized special legislation and special district acts to obtain water replenishment powers. For example, special legislation applying to *one general act district only* was enacted for the Alameda County Water District and the Stockton and East San Joaquin Water Conservation District. Replenishment powers were added to a number of *special districts acts* including the Santa Clara County Flood Control and Water District, the San Luis Obispo County Flood Control and Water Conservation District, and the Yolo County Flood Control and Water Conservation District. In addition, at the 1963 legislative session general replenishment powers were given to all districts formed under the Water Conservation Act of 1931, which today is then the only general district act having state-wide application and authorizing replenishment powers.

At the committee's hearing on December 18, 1964, testimony was requested on the advisability of extending the Water Replenishment District Act to all counties of the state. With regard to this proposal, the Director of Water Resources stated

. . . In many situations there are a number of different agencies with varying purposes and powers, each covering a part of the particular ground water basin. The result tends to be the incomplete utilization or sometimes misuse of ground and surface water resources.

An agency must have certain characteristics to undertake full ground water basin management. First its political boundaries should encompass the entire area of the underlying ground water basin. The boundaries of districts now in existence and exercising the powers of ground water replenishment, for the most part, were not influenced in their formation by the boundaries of underlying ground water basins. Secondly, the agency must have the authority to purchase, contract for, or otherwise finance the delivery of supplemental water supply. Thirdly, the agency must have legal authority to integrate the local and imported surface water supplies and ground water supplies into a planned pattern of overall water use.

An additional important problem is that of providing that the cost and benefits of ground water management will be equitably apportioned. Where the agency does not have complete control over the whole ground water basin there may be difficulty in recovering the cost of replenishment operations.

. . . The approach that your committee has recommended . . . seems to be a good step in the right direction. . . [their] purposes seems sufficient to enable them to equitably allocate costs and bene-

² Study of Water District Laws. *Op cit.*, p. 11.

fits. The Water Replenishment District Act also provides a method by which some of the geographical problems associated with ground water basins can be resolved. . . .³

Support for extension of the act was also received from the California Farm Bureau Federation. It should be pointed out that in the past, agricultural groups frequently objected to extension of the ground water replenishment programs because of the requirement that areas within replenishment districts are subjected to ground water recordation requirements.

Since use of the Water Replenishment District Act as a means of obtaining both recordation and ground water replenishment powers involves the formation of a local general act district, a local referendum or formation election would be required. According to representatives of the California Farm Bureau Federation:

Such enabling legislation would provide a permissive way for water users anywhere in the state, by their own action and according to their needs, to plan and carry on a basin management program. At the same time it would eliminate the need for local water districts to continually request special legislation. Amending the district acts to provide this authority has been the case during recent sessions of the Legislature.⁴

The committee concurs in this statement and recommends extension of the Water Replenishment District Act by eliminating the limitation in the act which now permits formation of water replenishment districts *only* in seven southern California counties. It is hoped that extension of the act will reduce the amount of special legislation required to meet water replenishment problems of other areas of California.

³ *Transcript*, December 18, 1964, pp. 35, 36, 37.

⁴ *Ibid.*, pp. 40-41.

V. REPEAL OF OBSOLETE ACTS

Findings

The committee finds that the Limited Water District Law of 1959 and the California Resort District Law have never been utilized and are obsolete. The committee finds that the Municipal Water District Law of 1935 has received only minimum use. The act duplicates general city powers and is unnecessary.

Recommendations

The committee recommends that the Limited Water District Law of 1959 and the California Resort District Law be repealed.

The committee recommends that legislation be enacted prohibiting the formation of new districts under the Municipal Water District Law of 1935. The committee recommends that as soon as all activity under the 1935 law ceases that legislation be enacted repealing this act as obsolete.

Background

In this committee's first report it was pointed out that the last legislative attempt to review district acts and eliminate those which were obsolete or inoperative was in 1953. In its first report in November 1962 this committee recommended repeal of the California Water Storage and Conservation District Act (1941) which had never been utilized. The committee-sponsored legislation was enacted into law accomplishing this objective.

During the present interim, the committee has continued its investigation of acts which are obsolete and has concluded that several district acts should be repealed.

Limited Water District Law of 1959

This act authorized the formation of municipal water districts in a small area of northern Santa Clara County. As a result of unique problems peculiar to the area, the special act rather than the existing general district act was used for this purpose. The act was to be effective only until 1961. Subsequent developments made its utilization unnecessary. The act therefore is of no present usefulness and should be repealed.

The Municipal Water District Law of 1935

Not to be confused with the widely used Municipal Water District Act of 1911, the Municipal Water District Law of 1935 has been seldom used. At one time, several districts were active and in operation, however, the committee's investigation indicates that today no district is actually functioning as a district, although the provisions of the law are being utilized by a single municipality to provide basic municipal powers. According to the Legislative Counsel all of the powers available to municipalities through the Municipal Water District Law of 1935 are also available under the general laws applicable to cities.

In order to provide an orderly phasing out of existing utilization of this law for these purposes it is recommended that legislation be enacted prohibiting the formation of new districts in the future under this act. It is recommended further that at a subsequent legislative session when it is established that no further use is made of this act, the act be repealed as obsolete.

California Resort District Law

According to the Department of Water Resources:

Our records indicate that no districts have been formed under this act. We know of only two attempts to form districts under this act and both failed. This act is generally cumbersome to operate and very time consuming for small affairs of such a district.

This act has a number of general water powers, including the provision of sewage disposal, drainage and fire protection.

The Department of Water Resources is the supervising agency for formation of these districts and reviews their project reports and conducts formation proceedings.

This act also deeply involves the department in day-to-day operations of these districts by such matters as paying claims on warrants drawn by the department.

It should be noted at this point that the committee finds the department's comments helpful in evaluating legislation relating to districts.

However, the department as a general rule has taken a "hands off" attitude toward proposed changes in district acts. This lack of the department's assistance has contributed to the general lack of uniformity of water district acts and has denied the Legislature the benefit of the department's vast knowledge of water problems.

It is hoped that in the future the department will exercise appropriate leadership in district matters and will advise the Legislature rather than dismiss district legislation as strictly a "local matter."

VI. CODIFICATION OF THE WATER CONSERVATION ACT OF 1931

Findings

The committee finds that the Water Conservation Act of 1931, a general district act of broad powers, including replenishment or "pump tax" powers, has been used throughout the State of California. The committee finds that this act is expected to be continued to be used as a general enabling act for the formation of local water conservation districts. The committee finds further that the act is presently uncoded and is in need of modernization and codification.

Recommendations

The committee recommends that legislation be introduced codifying the Water Conservation Act of 1931 as Division 21 of the Water Code. The committee recommends that a nonsubstantive codification be enacted in order that the act can be brought up to date technically to reflect modern language and current terminology in other water district acts as well. In view of this action we also recommend limiting further use of the Water Conservation Act of 1927 to permit its use to be phased out. It is not widely used and other district acts with similar powers are available.

Background

The Water Code was codified in 1943 including many of the most popular general water district acts. Subsequent to the establishment of the Water Code new water district acts have been enacted as a part of the code. Through the years, however, a number of water district acts have remained as uncoded general laws of the State of California. In most cases these acts are special district acts or general district acts of little application and use (for example only one district each has been formed under the Metropolitan Water District Act and the County Water Authority Act). The committee believes that the Water Code itself, which is readily available, should contain not only those district acts which are active and frequently used throughout the state but all such acts. In recent years various groups have been interested in codifying water district acts and the very widely used (50 districts) Municipal Water District Act of 1911 was codified and added to the Water Code in 1963.

The committee believes that the present number of general district acts is sufficient to meet the many and varied needs of the local areas in the provision of water district and water service. The Water Conservation Act of 1931 is one of the acts which should be readily available for use throughout the state. It is the only general district act with broad general powers which also includes the authority to levy a replenishment assessment or "pump tax." Its use should be particularly valuable in areas where a district with both water replenishment powers and other broad powers is required.

The use of the Water Conservation Act for this purpose should reduce the number of special district acts or the need for special legislation affecting only a limited number of general district acts. In August 1963 this committee requested the Legislative Counsel to prepare a codification of the Water Conservation Act of 1931. A nonsubstantive draft was prepared by the counsel, who followed the same principle which served as the guide to the California Code Commission; i.e. to attempt to set forth the existing law in code form without substantive change.¹ The language of the act has been modernized and organization of the act has been revised to make it more consistent with the standard form of organization of most of the water district acts found in the Water Code.

It does not appear that there are additional uncodified general district acts for which codification would be desirable. It is hoped that in the future, formation of new water districts will be made under the established codified water district acts so that eventually all but the most widely used water district acts can be repealed or have their use limited as proposed by this committee in the case of the Municipal Water District Act of 1935 and the Water Conservation Act of 1927.

¹ Copies of the codification, together with cross-reference tables and comparison with existing law are available in limited supply from the office of the committee.

APPENDIX A

LIST OF WATER DISTRICT ACTS AFFECTED BY UNIFORM DISTRICT ELECTION LAW

I. *General Act Districts* *

California Water Storage Districts (Div. 13, Water Code)

California Water Districts (Div. 14, Water Code)

County Water Districts (Div. 12, Water Code)

Irrigation Districts (Div. 11, Water Code)

Reclamation Districts (Div. 15, Water Code)

Water Conservation Districts of 1927 (Deering Act 9127a)

Water Conservation Districts of 1931 (Deering Act 9127c)

II. *Special Act Districts* †

San Benito County Flood Control and Water Conservation District

Crestline Lake Arrowhead Water Agency

Mojave Water Agency

Kings River Conservation District

Orange County Water District

* Municipal Water Districts of 1911 and Water Replenishment Districts consolidate elections with the direct primary.

† All other special act districts either do not have an elected governing body or are consolidated with other elections already.

APPENDIX B

NUMBER OF DISTRICTS AFFECTED BY UNIFORM WATER DISTRICT ELECTION LAW

<i>County</i>	<i>General act districts</i>	<i>Special act districts</i>	<i>County</i>	<i>General act districts</i>	<i>Special act districts</i>
Alameda	7	—	Placer	7	—
Alpine	—	—	Plumas	1	—
Amador	5	—	Riverside	19	—
Butte	9	—	Sacramento	34	—
Calaveras	1	—	San Benito	4	1
Colusa	10	—	San Bernardino	23	2
Contra Costa	24	—	San Diego	23	—
Del Norte	—	—	San Francisco	1	—
El Dorado	5	—	San Joaquin	54	—
Fresno	40	—	San Luis Obispo	8	—
Glenn	6	—	San Mateo	8	—
Humboldt	5	—	Santa Barbara	6	—
Imperial	6	—	Santa Clara	9	—
Inyo	—	—	Santa Cruz	7	—
Kern	17	—	Shasta	6	—
Kings	33	1	Sierra	1	—
Lake	8	—	Siskiyou	6	—
Lassen	3	—	Solano	8	—
Los Angeles	24	—	Sonoma	5	—
Madera	7	—	Stanislaus	21	—
Marin	2	—	Sutter	14	—
Mariposa	—	—	Tehama	5	—
Mendocino	8	—	Trinity	—	—
Merced	18	—	Tulare	23	—
Modoc	3	—	Tuolumne	2	—
Mono	2	—	Ventura	8	—
Monterey	4	—	Yolo	14	—
Napa	5	—	Yuba	9	—
Nevada	4	—			
Orange	19	1	Total	601	5

APPENDIX C

1965 WATER DISTRICT ELECTION RESULTS

Election February 2

(Compiled by Assembly Water Committee)

IRRIGATION DISTRICTS

Alpaugh—All elections *canceled*
Alta—All elections *canceled*
Anderson-Cottonwood—All elections *canceled*
Banta-Carbona—All elections *contested*
Bard—All elections *canceled*
Beaumont—1 election *contested* 2 *canceled*
Big Springs—No response
Big Valley—Inactive
Browns Valley—4 elections *contested*, 1 *canceled*
Butte Valley—All elections *canceled*
Byron-Bethany—All elections *canceled*
Camp Far West—All elections *canceled*
Carmichael—All elections *contested*
Carpenter—All elections *canceled*
Central California—All elections *canceled*
Citrus Heights—All elections *canceled*
Consolidated—All elections *canceled*
Corcoran—All elections *canceled*
Cordua—No response
Deer Creek—All elections *canceled*
Delano-Earlimart—1 election *contested*, 3 *canceled*
Ducor—All elections *canceled*
East Contra Costa—All elections *contested*
El Camino—All elections *contested*
El Dorado—All elections *canceled*
Elk Grove—All elections *canceled*
El Nido—All elections *canceled*
Empire West Side—All elections *canceled*
Exeter—All elections *canceled*
Fair Oaks—1 election *contested*, 2 *canceled*
Fresno—1 election *contested*, 2 *canceled*
Galt—No response
Glenn-Colusa—All elections *canceled*
Grenada—No response
Helix—All directors *contested*
Hills Valley—"We are not active. We have received no water"
Hot Spring Valley—All elections *canceled*
Imperial—3 elections *contested*, 1 *canceled*
Ivanhoe—All elections *canceled*

- Jackson Valley—All elections *canceled*
James—All elections *canceled*
Kings River Delta—"Did not and will not be holding an election as our district is and has been inactive for years"
Kinneloa—No response
La Canada—All elections *canceled*
Laguna—No response
Lakeside—All elections *canceled*
Lemoore—"District inactive. No election since about 1925"
Linden—All elections *canceled*
Lindmore—All elections *canceled*
Lindsay-Strathmore—All elections *canceled*
Littlerock Creek—All elections *canceled*
Lower Tule River—3 elections *contested*, 1 election *canceled*
Lucerne—Inactive
Madera—All elections *canceled*
Maxwell—All elections *canceled*
Mendota—Inactive
Merced—All elections *canceled*
Modesto—All elections *canceled*
Mokelumne River—"No elections held recently. Original directors have continued to serve"
Montague Water Conservation District—All elections *contested*
Naglee Burk—No response
Nevada—No response
Oakdale—3 elections *contested*, 1 election *canceled*
Orange Cove—All elections *canceled*
Oroville-Wyandotte—2 elections *contested*, 1 election *canceled*
Palmdale—All elections *contested*
Palm Ranch—1 election *contested*, 3 elections *canceled*
Paradise—1 election *contested*, 2 elections *canceled*
Pixley—All elections *canceled*
Porterville—All elections *canceled*
Potter Valley—"We haven't had an election in more than 10 years. It's hard to find eligible owners for appointment. We spent money to advertise and no petitions were picked up"
Princeton-Codora-Glenn—All elections *canceled*
Provident—All elections *canceled*
Ramona—All elections *canceled*
Richvale—All elections *canceled*
Riverdale—1 election *contested*, 2 elections *canceled*
San Dieguito—3 elections *contested*, 2 elections *canceled*
Santa Fe—All elections *contested*
Saucelito—All elections *canceled*
Scott Valley—All elections *canceled*
Serrano—All elections *canceled*
Shafter-Wasco—All elections *canceled*
Solano—All elections *canceled*
South Bay—No response

South Fork—All elections *canceled*
 South Montebello—No response
 South San Joaquin—1 election *contested*, 1 election *canceled*
 Stinson—No response
 Stone Corral—All elections *canceled*
 Stratford—All elections *canceled*
 Table Mountain—All elections *canceled*
 Terra Bella—All elections *canceled*
 Thermalito—All elections *contested*
 Tranquillity—All elections *canceled*
 Tulare—No response
 Tule—No response
 Tulelake—All elections *canceled*
 Turlock—All elections *canceled*
 Vandalia—All elections *canceled*
 Vista—All elections *canceled*
 Walnut—"Our directors are appointed by the board of supervisors
 (no one would ever vote when elections were held years ago)"
 Waterford—All elections *canceled*
 West Side—No response
 West Stanislaus—All elections *canceled*
 Woodbridge—All elections *canceled*

SUMMARY

	Number	Percentage
Number of districts	105	--
Districts reporting	89	--
Districts canceling <i>some</i> elections	14	16
Districts canceling <i>all</i> elections	66	74
Districts canceling <i>no</i> elections	9	10

WATER CONSERVATION DISTRICTS (1931 ACT)

Central San Joaquin—All elections *canceled*
 Chino Basin—All elections *canceled*
 North San Joaquin—All elections *canceled*
 San Bernardino Valley—All elections *canceled*
 Santa Clara Valley—All elections *canceled*
 Santa Maria Valley—All elections *canceled*
 Santa Ynez River—All elections *canceled*
 South Santa Clara Valley—All elections *canceled*
 Stockton and East San Joaquin—No response
 United—All elections *canceled*

SUMMARY

	Number	Percentage
Number of districts	10	--
Districts canceling <i>all</i> elections	9	100
Districts holding elections	0	00

APPENDIX D

SPECIAL ELECTION CANCELLATION AND APPOINTMENT PROVISIONS OF THE IRRIGATION DISTRICT ACT

In conducting the elections results survey (see Appendix C) a large number of the districts which canceled elections cited as authority for not holding the election the following sections of the Irrigation District Act. These sections vividly illustrate how some provisions of existing law actually encourage districts to appoint rather than elect officials.

CHAPTER 2. SELECTING OFFICERS IN CERTAIN CASES

Article 2. Appointments in Default of Election

21285. A petition containing all of the following may be presented to the board of supervisors of the principal county:

(a) A showing that not more than twenty-five owners of land are residents and electors in the district.

(b) A showing that no general election was held on the last date on which it should have been held and that no special election was held in its place.

(c) Verification of the showings.

(d) Prayer that the board of supervisors appoint directors.

(e) Signatures of the owners of more than one-half of the land. (Amended by Stats. 1943, Ch. 945.)

21286. The board of supervisors shall set a date for the hearing of the petition and shall give notice of the hearing by publication in at least two issues of a newspaper published in the principal county.

21287. The date of the hearing shall be not less than 10 nor more than 30 days from the presentation of the petition.

21288. At the hearing, if the facts alleged in the petition are established to the satisfaction of the board of supervisors, it shall so find by resolution.

21289. Upon the adoption of the resolution the board of supervisors shall appoint for the district three directors, each of whom shall be an owner of land within the district but need not be a resident of the district.

21290. The directors so appointed shall take office as soon as they qualify and shall hold office for a period of four years and thereafter until their successors are elected or appointed and qualify.

21291. The directors so appointed shall constitute the board of the district.

21292. Upon its organization as a board the board so constituted shall fill by appointment the offices of treasurer, collector, and assessor, and none of the persons so appointed need be residents or landowners within the district.

Article 3. Appointments When Land Tax Deeded

21310. The commission may file a report with the board of supervisors of a principal county informing the board that:

(a) Not less than 90 per cent of the land in the district is deeded for delinquent taxes or assessments to either the State or the district or both.

(b) No election of directors of the district has been held for a period of more than four years next preceding the filing of the report.

(c) In the opinion of the commission the interests of the public will best be served by the appointment of directors pursuant to this article.

21311. Upon receipt of the report the board of supervisors shall set a date for a hearing on the report and shall promptly give notice by publication in at least two issues of a newspaper published in the principal county of the time and place at which the hearing will be held.

21312. The date of the hearing shall be not less than 10 nor more than 30 days from the first publication of the notice.

21313. If at the hearing it appears to the satisfaction of the board of supervisors that not less than 90 per cent of the land is deeded for delinquent taxes or assessments to either the State or the district or both and that no election of directors has been held for more than four years next preceding, the board of supervisors may appoint for the district three directors.

21314. The directors so appointed need not be residents or landowners in the district, but each shall be a resident landowner of a county supervisorial district in which all or a portion of the land in the district is situated.

21315. The directors so appointed shall take office as soon as they qualify and shall hold office for a period of four years and thereafter until their successors are elected or appointed and qualify.

21316. The directors so appointed shall constitute the board of the district.

21317. Upon its organization as a board the board so constituted shall fill by appointment the offices of treasurer, collector, and assessor, and none of the persons so appointed need be residents or landowners within the district.

Article 4. Return to Elective Method

21335. Not more than 60 nor less than 30 days before the first Wednesday in February of any odd numbered year a majority of the electors in a district then having directors appointed pursuant to Articles 2 or 3 of this chapter may petition the board of the district that an election be held.

21336. The petition shall show all of the following:

(a) There are persons who could qualify under Section 21100 as directors representing each division in the district.

(b) There are more than twenty-five owners of land in the district who are residents and electors thereof.

(c) There are sufficient electors in the district to conduct an election.

(Amended by Stats. 1943, Ch. 945.)

21337. If the board finds the facts alleged in the petition are true, it shall order that a general election be held, at which election a director for each division and all other elective officers shall be elected.

21338. The directors elected shall at their first meeting classify themselves into two groups in the same manner and with the same effect as is provided as to directors elected at a formation election.

It can be seen that following the default of an election, a majority of the district electors must petition the board to "return to the elective method." This provision permits virtual perpetual appointment because at one time an election was not held.

The following sections of the Irrigation District Act show how existing law further contemplates and makes special provision for districts which fail to call elections *as required by law*. This provision, in effect, condones districts which fail to comply with district election laws. In addition, the sections place the burden of correcting this failure of district officials on the voters of the district who must then petition to have an election conducted. As a result, a district can completely fail to call an election with impunity.

Article 4. Special Elections for Officers

21725. If a general election is not held as required, upon the filing with the secretary of a petition signed by 10 per cent of the voters requesting that a special election be called for the election of officers, the board shall call a special election for the election of officers to offices which should have been filled at a general election or the terms of whose incumbents have expired.

21726. The election shall be held at not less than 35 nor more than 50 days after the filing of the petition.

(Amended by Stats. 1947, Ch. 933.)

21727. The term of each officer elected at a special election is the unexpired term in the office to which he is elected.

The Uniform District Election Law would repeal all of the above provisions of the Irrigation District Act and any similar provisions in other district acts which discourage the holding of district elections.

